



EXHIBIT B

TO

UNIFORM FRANCHISE OFFERING CIRCULAR

FRANCHISE AGREEMENT

WITH ATTACHMENTS

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. GRANT OF FRANCHISE	1
1.1 Grant of Franchise.....	1
1.2 Operation of the Business.....	2
1.3 Permanent Sites and Events.....	2
1.4 Principal Business Address.....	2
1.5 Reservation of Rights.....	2
1.6 Ownership and Principal Contact of Franchisee.....	2
2. TERM	3
2.1 Term.....	3
2.2 Rights Upon Expiration.....	3
2.3 Exercise of Option for Successor Franchise.....	3
2.4 Conditions of Refusal.....	3
3. PROPRIETARY MARKS AND THE SYSTEM	3
3.1 Marks.....	3
3.2 No Use of Other Marks.....	4
3.3 System.....	4
3.4 Mark Infringement.....	4
3.5 Franchisee's Business Name.....	4
3.6 Change of Marks.....	4
3.7 Consents to Use of Marks.....	4
3.8 Goodwill.....	4
3.9 Confidentiality of Proprietary Information.....	4
3.10 Nondisclosure and Noncompetition Agreement.....	5
3.11 Signage.....	5
3.12 Library of Operating Manuals.....	5
4. FEES	5
4.1 Initial Franchise Fee.....	5
4.2 Refund of Initial Franchise Fee.....	5
4.3 Marketing Fee.....	6
4.4 Intranet Management Fee.....	6
4.5 Product Payment Terms.....	6
4.6 Late or Insufficient Payments.....	7
5. ADVERTISING	7
5.1 Advertising.....	7
5.2 Marketing Fund.....	7
5.3 Local Advertising Cooperatives.....	8
6. SERVICES PROVIDED BY MAUI WOWI	8
6.1 Before Opening.....	8
6.2 After Opening.....	9
6.3 Directors of Regional Support.....	9
7. OBLIGATIONS OF FRANCHISEE	9
7.1 Compliance with Applicable Laws.....	9
7.2 System Compliance.....	9
7.3 Inspections.....	9
7.4 Restrictions on Products.....	10
7.5 Insurance.....	10
7.6 Appearance and Customer Service.....	10
7.7 Signs.....	10
7.8 Training.....	10
7.9 Conferences and Annual Convention.....	11
7.10 Franchisee Reports.....	11
7.11 Correction of Defects.....	12

7.12	Indemnification.....	12
7.13	Management Involvement of Franchisee	12
7.14	Modification	13
7.15	Electronic Information, Communications, and Computer Systems	13
7.16	Performance Requirements.....	13
7.17	Web Page.....	13
7.18	Restrictions on Sale of Equipment.....	13
7.19	Protection of Computer, Electronic, and Communications Systems	14
8.	PURCHASES OF PRODUCTS.....	14
8.1	Inventory.....	14
8.2	Limitations on Supply Obligations	14
8.3	No Warranties	14
8.4	Changes in Inventory	14
9.	BREACH AND TERMINATION	14
9.1	Termination by Maui Wowi.....	14
9.2	Termination by Maui Wowi – No Cure Period.....	14
9.3	Termination by Maui Wowi – 10-Day Cure Period	16
9.4	Termination by Maui Wowi – 30-Day Cure Period	17
9.5	Termination by Franchisee.....	17
10.	OBLIGATIONS OF FRANCHISEE UPON TERMINATION OR EXPIRATION	17
10.1	Post-Termination Obligations	17
10.2	Acknowledgements.....	18
10.3	Survival	18
11.	PURCHASE OPTION.....	18
11.1	Purchase Option	18
12.	TRANSFERS OF THE FRANCHISE	18
12.1	Transfer by Maui Wowi.....	18
12.2	Transfer by Franchisee	19
12.3	Conditions to Transfer	19
12.4	Maui Wowi’s Assistance in Transfers	19
12.5	Registration of Proposed Franchise Sale.....	20
12.6	Transfer to an Entity.....	20
12.7	Involuntary Transfers.....	20
12.8	First Right of Refusal.....	20
12.9	Death or Disability.....	20
12.10	Transfer by Court Order.....	21
13.	RELATIONSHIP OF THE PARTIES.....	21
13.1	Independent Contractors.....	21
14.	COVENANTS	21
14.1	Non-Competition During Term.....	21
14.2	Post-Termination Covenant Not to Compete.....	21
14.3	Post-Termination Restriction on Solicitation of Employees	22
14.4	Confidentiality of Proprietary Information	22
14.5	Prohibition Against Reshipment	22
14.7	Interpretation	22
14.8	Confidentiality Agreement	22
15.	DISPUTE RESOLUTION	22
15.1	Mediation	22
15.2	Arbitration	22
15.3	Scope of Arbitration.....	23
15.4	Limitation on Proceedings.....	23
15.5	Governing Law/Consent to Venue and Jurisdiction	23
15.6	Injunctive Relief	23
15.7	Limitations on Actions	23
15.8	Alternative Dispute Resolution	24

16.	MISCELLANEOUS	24
16.1	Waiver	24
16.2	Modifications	24
16.3	Notices	24
16.4	Prevailing Party	24
16.5	Headings; Construction	24
16.6	Beneficiaries	24
16.7	Corporate Authority	25
16.8	Payments	25
16.9	Set Off	25
16.10	Joint and Several Liability	25
16.11	Successors In Interest	25
16.12	Integration	25
16.13	Invalidity	25
16.14	Cross Default and Cross Termination Provisions	25
16.15	Acknowledgment	26

ATTACHMENTS

Attachment I	Addendum to Franchise Agreement
Attachment II	Guaranty and Assumption of Franchisee's Obligations
Attachment III	Statement of Ownership
Attachment IV	Collateral Assignment of Telephone Numbers, Telephone Listings and Internet Addresses
Attachment V	ACH Authorization Form
Attachment VI	Authorization for Credit Card Payments
Attachment VII	Sample Acknowledgment of Termination and Release Agreement
Attachment VIII	Addendum to Lease and Collateral Assignment of Lease

OPERATING UNIT RIDERS TO THE FRANCHISE AGREEMENT

RIDERS TO THE FRANCHISE AGREEMENT FOR SPECIFIC STATES

**EXHIBIT B
TO UNIFORM FRANCHISE OFFERING CIRCULAR**

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is entered into and made effective as of the date set forth on the signature page hereof, by and between Maui Wowi Franchising, Inc., a Colorado corporation, located at 5445 DTC Parkway, Suite 1050, Greenwood Village, Colorado 80111 ("Maui Wowi") and the franchisee named on the signature page of this Agreement ("Franchisee").

RECITALS

A. Maui Wowi has developed a system using the service mark MAUI WOWI® and related trade names and trademarks ("Marks") for the operation of a business ("MAUI WOWI Business" or "Business") that sells Fresh Hawaiian beverages, including fresh fruit smoothies, espresso drinks, brewed Hawaiian coffee, a variety of Hawaiian products, bottled waters, frozen confections, nutritional supplements, and related products using Maui Wowi's proprietary mobile, self-contained units ("Ka'anapali Carts" and "Event Concession Trailers") or Maui Wowi's proprietary fixed-location kiosks ("Fixed Kiosks") or at stand alone store front locations ("Retail Stores"). Retail Stores fall under three categories: "In-Line" locations, which are traditional store front locations, "Drive-Thru" locations, which may be stand alone or in conjunction with an In-Line location, and "Non-Traditional" locations. The Ka'anapali Cart and Event Concession Trailer are usually operated at activities including but not limited to fairs, sporting events, conventions, rodeos, festivals, trade shows, grand openings and seminars ("Events"). However, the Ka'anapali Cart and Event Concession Trailer may also be operated from permanent, fixed sites located in malls, strip centers, schools, office buildings, hospitals, health clubs, drive-thrus, auditoriums, arenas, and concert and sports venues ("Permanent Sites"). The Fixed Kiosk and Retail Store are operated from Permanent Sites only.

B. Maui Wowi's products include, but are not limited to, its proprietary: (1) fresh fruit smoothie mixes ("MAUI WOWI Blends" or "Blends"), (2) Hawaiian coffee and espresso drinks, (3) bottled waters, (4) frozen confections, (5) nutritional supplements, and (6) such other products as has been or may be introduced and authorized by Maui Wowi (collectively "MAUI WOWI Products" or "Products").

C. The system includes (1) supplies such as cups, blenders, coffee machines, espresso machines, trademarked and branded clothing, custom gift cards, signs, décor, the Operating Units, as defined below, and other equipment, ("MAUI WOWI Supplies and Equipment"), and the specifications for such equipment and supplies; (2) the recipes, business format, proprietary specifications, methods and procedures for the preparation, marketing and sale of the MAUI WOWI Products ("MAUI WOWI Services"); (3) the MAUI WOWI Products themselves; and (4) other procedures and confidential information (collectively, the "System").

D. Franchisee desires to enter into an agreement with Maui Wowi to obtain the rights to operate a MAUI WOWI Business using the Marks and the System; and

E. Franchisee has fully investigated and has familiarized itself with the essential aspects and purposes of the System.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions contained in this Agreement, and the acts to be performed by the respective parties, the parties agree as follows:

1. GRANT OF FRANCHISE

1.1 **Grant of Franchise.** Maui Wowi grants to Franchisee the non-exclusive right to establish and operate a MAUI WOWI Business that sells fresh fruit smoothies, brewed Hawaiian coffee and espresso drinks, frozen confections, MAUI WOWI branded clothing and ancillary products, bottled waters, nutritional supplements and related products from a Ka'anapali Cart, Event Concession Trailer, Fixed Kiosk, or Retail Store at Events and/or Permanent Sites. The type of franchise granted under this Agreement is designated in the Addendum to this Agreement, attached as Attachment I ("Addendum"). Each selling point, whether a Ka'anapali Cart, Event Concession Trailer, Fixed Kiosk, or Retail Store is considered a "MAUI WOWI Operating Unit" or "Operating Unit." All MAUI WOWI Products must be sold by Franchisee only from an approved Operating Unit. Upon signing this Agreement, Franchisee and Maui Wowi shall execute

an Operating Unit Rider to this Agreement in the form attached ("**Operating Unit Rider**"), which will designate the initial Operating Unit to be opened and operated by Franchisee. Franchisee and Maui Wowi shall execute additional Operating Unit Riders to open and operate each additional Operating Unit that is permitted under this Agreement.

1.2 **Operation of the Business.** Franchisee shall operate its MAUI WOWI Business, and use the Marks and System in connection with its MAUI WOWI Business, as they may be changed, improved and developed by Maui Wowi in the future, only in accordance with the terms and conditions of this Agreement. Franchisee shall purchase and operate its Business only from the MAUI WOWI Operating Units set forth in the applicable Operating Unit Riders, at agreed upon Events or Permanent Sites, or a combination of both, up to the maximum number permitted based on the type of franchise purchased as stated in the Addendum. The Franchisee must obtain Maui Wowi's prior written consent if Franchisee wishes to convert one of its Operating Units to a different type of Operating Unit, and shall execute another Operating Unit Rider in that event. Franchisee shall use its best efforts to promote its MAUI WOWI Business and to open the maximum number of Operating Units permitted under the Addendum.

1.3 **Permanent Sites and Events.**

1.3.1 Franchisee shall not operate its MAUI WOWI Business at a Permanent Site or an Event without the prior written consent of Maui Wowi. Franchisee shall follow Maui Wowi's process and procedures to obtain the consent of Maui Wowi, including but not limited to completing any applications, conducting such studies, providing copies of any contracts, and paying such amounts as may be required by Maui Wowi as part of the approval process. As a condition of Maui Wowi approving any lease that Franchisee may enter into for any Permanent Site, a condition of approval shall be Franchisee and its landlord executing the Addendum to Lease and Collateral Assignment of Lease, attached hereto as Attachment VIII. In no event shall Franchisee operate any part of its MAUI WOWI Business anywhere in the State of Utah, including from any Events located in the State of Utah.

1.3.2 If Franchisee desires to operate an Operating Unit from a Permanent Site, it understands and agrees that other than the specific Permanent Site location, it does not receive any protected or exclusive territory nor any exclusive right to any particular market or customers. Franchisee must obtain Maui Wowi's approval for the Permanent Site where an Operating Unit will be located and comply with the other terms described in the Operating Unit Riders for that Operating Unit.

1.4 **Principal Business Address.** Franchisee shall designate a principal business office address, telephone number, fax number and its electronic mail address for billing and notification purposes ("**Principal Business Address**"). The Principal Business Address may be Franchisee's home or other place where the administrative affairs of the Business are conducted. The initial Principal Business Address shall be set forth in the Addendum. Franchisee shall at all times keep Maui Wowi apprised of the location of its Principal Business Address as outlined in the Library of Operating Manuals.

1.5 **Reservation of Rights.** Franchisee acknowledges that the franchise granted hereunder is non-exclusive and that Maui Wowi and its Affiliate retain the rights, among others: (i) to use, and to license others to use, the Marks and System for the operation of MAUI WOWI Businesses, at any approved Permanent Site or Event other than at the approved Permanent Site of an Operating Unit of a franchisee or at a Protected Event (as defined in the Operating Unit Rider); (ii) to use the Marks and System to identify services and products, promotional and marketing efforts or related items, and to identify products and services similar or identical to those which Franchisee will sell, but made available through alternative channels of distribution other than through franchisees, at any location, including, but not limited to, by way of the Internet, catalog, television, retail store freezer or display or through the wholesale sale of MAUI WOWI Products to unrelated retail outlets or to food distributors or outlets located in stadiums, arenas, airports, convenience stores, Internet sales, turnpike rest stops, grocery stores, or supermarkets; (iii) to use and license the use of other proprietary marks or methods in connection with the sale of products and services similar to those which Franchisee will sell or in connection with the operation of freezers located in retail stores, at any location other than at a MAUI WOWI Operating Unit, which locations are the same as, or similar to, or different from traditional MAUI WOWI locations, on any terms and conditions as Maui Wowi deems advisable, and without granting Franchisee any rights therein; (iv) to acquire, combine with, merge with or be acquired by, any business or person, wherever located, including a business that competes directly with Franchisee's Business; and (v) to implement and maintain multi-area marketing programs at any time, including Internet and regional or national accounts, which may include any Retail Store or Event. Maui Wowi reserves the right to establish mandatory policies and procedures for these multi-area marketing programs.

1.6 **Ownership and Principal Contact of Franchisee.** If Franchisee is an entity, Franchisee shall complete and update throughout the term of this Agreement, as necessary, the Statement of Ownership attached as Attachment III.

In addition, if Franchisee is an entity, all persons who own more than 10 percent of the beneficial ownership interests in the entity shall guaranty Franchisee's performance under this Agreement by signing the Guaranty and Assumption of Franchisee's Obligations attached as Attachment II. If Franchisee is a limited liability company, partnership, corporation or other entity, Franchisee shall provide to Maui Wowi a resolution signed by all members, directors or partners, as appropriate, designating the principal contact for the Business. This principal contact must be a managing member, general partner or controlling shareholder. This representative shall have the authority to speak for and bind Franchisee in all matters pertaining to this Agreement, and all matters regarding the Business. If Franchisee is an entity, the entity shall engage in no business other than the operation of the MAUI WOWI Business governed by this Agreement unless Maui Wowi approves such other business in writing. Maui Wowi may, in its sole discretion, for any reason, elect to withhold approval.

2. TERM

2.1 **Term.** The term of this Agreement shall be 10 years unless terminated earlier pursuant to Article 9. This Agreement shall become effective when executed by both Maui Wowi and Franchisee.

2.2 **Rights Upon Expiration.** At the end of the initial term, Franchisee shall have the option to renew its franchise rights for one additional 10-year term, by acquiring successor franchise rights, provided Maui Wowi does not exercise its rights in accordance with **Section 2.4** below and if Franchisee:

2.2.1 At least 30 days prior to expiration of the term, executes the form of Franchise Agreement then in use by Maui Wowi;

2.2.2 Has complied with all provisions of this Agreement during the current term, including the payment on a timely basis of all Product payments and other fees due hereunder. "Compliance" shall mean, at a minimum, that Franchisee has not received any written notification from Maui Wowi of breach hereunder more than three times during the term, regardless of whether the breaches have been cured by Franchisee;

2.2.3 Upgrades, remodels or refurbishes any equipment, signage, and each Permanent Site store or other Operating Unit, as is applicable, at the Franchisee's sole expense (the necessity of which shall be in the sole discretion of Maui Wowi) to conform with the then current Library of Operating Manuals;

2.2.4 Executes a general release, in a form satisfactory to Maui Wowi, of all claims against Maui Wowi and its Affiliate, and their respective officers, directors, employees and agents arising out of or related to this Agreement or any other agreement with Maui Wowi or its Affiliate; and

2.2.5 Pays a successor franchise fee of 20 percent of the then applicable franchise fee.

2.3 **Exercise of Option for Successor Franchise.** Franchisee may exercise its option for a successor franchise by giving written notice of Franchisee's intent to exercise the option to Maui Wowi no less than 180 days and no more than 270 days prior to the scheduled expiration of this Agreement. Franchisee's successor franchise rights shall become effective by signing the Franchise Agreement then currently being offered to new franchisees of Maui Wowi.

2.4 **Conditions of Refusal.** Maui Wowi shall not be obligated to offer Franchisee a successor franchise upon the expiration of this Agreement if Franchisee fails to comply with any of the above conditions of renewal. In that event (except for failure to execute the then current Franchise Agreement or failure to pay the successor franchise fee) Maui Wowi shall give notice of expiration at least 180 days prior to the expiration of the term, and the notice shall set forth the reasons for the refusal to offer successor franchise rights. Upon the expiration of this Agreement, Franchisee shall comply with the provisions of Article 10 below.

3. PROPRIETARY MARKS AND THE SYSTEM

3.1 **Marks.** Franchisee acknowledges that Maui Wowi has the right to license and control Franchisee's use of the service mark and trademark "MAUI WOWI[®]" and other of the Marks, and that the Marks shall remain under the control of Maui Wowi. Franchisee acknowledges that it has not acquired any right, title or interest in the Marks except for the right to use the Marks in the operation of its MAUI WOWI Business as it is governed by this Agreement. Franchisee agrees not to use any of the Marks as part of an electronic mail address, or as part of any URL, web page, domain name, locator, link, metatag, or on any sites on the Internet and the world wide web.

3.2 **No Use of Other Marks.** Franchisee shall use no service mark or trade mark other than the "MAUI WOWI[®]" service mark or any other Marks as may be specified by Maui Wowi for use in the identification, marketing, promotion or operation of a MAUI WOWI Business.

3.3 **System.** Franchisee acknowledges that Maui Wowi owns and controls the distinctive plan for the establishment, operation and promotion of a MAUI WOWI Business and all related methods of doing business, previously defined as the System, which include, but are not limited to, Maui Wowi's standards and specifications for the Operating Units, recipes, MAUI WOWI Blends, operational methods, MAUI WOWI Products, MAUI WOWI Services, MAUI WOWI Supplies and Equipment, marketing techniques, written promotional materials, advertising, and accounting systems, all of which constitute confidential trade secrets of Maui Wowi, and Franchisee acknowledges that Maui Wowi has valuable rights in and to these trade secrets. Franchisee acknowledges and agrees that it will promptly notify Maui Wowi about all modifications or additions to the System made by Franchisee and that all modifications or additions shall inure solely to the benefit of Maui Wowi and may be adopted by Maui Wowi and incorporated into the System without Maui Wowi owing any compensation to Franchisee. Franchisee additionally acknowledges that it has not acquired any right, title or interest in the System except for the right to use the System in the operation of its MAUI WOWI Business as it is governed by this Agreement and that it is obligated to maintain the confidentiality of the System in accordance with Section 3.9 below.

3.4 **Mark Infringement.** Franchisee shall notify Maui Wowi in writing within three days of the date any possible infringement or illegal use by others of a trademark that is the same as or confusingly similar to any of the Marks that comes to its attention. Franchisee acknowledges that Maui Wowi shall have the right, in its sole discretion, to determine whether any action will be taken on account of any possible infringement or illegal use. Maui Wowi may prosecute the action in Maui Wowi's own name and may join Franchisee as a party to the action if Maui Wowi determines it to be reasonably necessary for the continued protection and quality control of the Marks and System. Maui Wowi shall bear the reasonable cost of any such action, including attorneys' fees. Franchisee shall fully cooperate with Maui Wowi in any such litigation.

3.5 **Franchisee's Business Name.** Franchisee acknowledges that between Maui Wowi and Franchisee, Maui Wowi has a prior and superior claim to the "MAUI WOWI" trade name. Franchisee shall not use the words "MAUI WOWI" in the legal name of its corporation, limited liability company, partnership or any other business entity used in conducting the Business provided for in this Agreement. Franchisee also agrees not to register or attempt to register a trade name using the words "MAUI WOWI" in Franchisee's name or that of any other person or business entity, without the prior written consent of Maui Wowi. Franchisee shall not identify itself as being "Maui Wowi, Inc.," "Maui Wowi Franchising, Inc." or as being associated with Maui Wowi in any manner other than as a franchisee or licensee. Franchisee shall, in all advertising and promotion and promotional materials, display its business name only in obvious conjunction with the phrase "an independent MAUI WOWI Licensee" or "an independent MAUI WOWI Franchisee" or with other words and in other phrases to identify itself as an independent owner of the Business, as may be required in the Library of Operating Manuals.

3.6 **Change of Marks.** If Maui Wowi, in its sole discretion, shall determine it necessary to modify or discontinue use of any proprietary Mark, or to develop additional or substitute marks, Franchisee shall, within a reasonable time after receipt of written notice of a modification or discontinuation from Maui Wowi, take such action, at Franchisee's sole expense, as may be necessary to comply with the modification, discontinuation, addition or substitution.

3.7 **Consents to Use of Marks.** Franchisee additionally agrees to execute all additional documents and assurances in connection with the use of the Marks as reasonably requested by Maui Wowi and agrees to fully cooperate with Maui Wowi or any other franchise owner or licensee of Maui Wowi in securing all necessary and required consents of any state agency or legal authority to the use of the Marks or any other name that is or becomes a part of the System.

3.8 **Goodwill.** All goodwill associated with the Marks and the System, including any goodwill that might be deemed to have arisen through Franchisee's operation of its MAUI WOWI Business or other activities shall inure solely to the benefit of Maui Wowi.

3.9 **Confidentiality of Proprietary Information.** Franchisee agrees to: (a) fully and strictly adhere to all security procedures required by Maui Wowi in its sole discretion for maintaining the proprietary information as proprietary; (b) disclose proprietary information to its employees only to the extent necessary to market MAUI WOWI Products and MAUI WOWI Services and for the operation of its MAUI WOWI Business in accordance with this Agreement; (c) not use any proprietary information in any other business or in any manner not specifically authorized or approved in writing by Maui Wowi; and (d) exercise the highest degree of diligence and make every effort to maintain the absolute confidentiality of all proprietary information during and after the term of this Agreement. Maui Wowi will

indemnify Franchisee against any losses claimed by a third party concerning Franchisee's use of Maui Wowi's proprietary information.

3.10 **Nondisclosure and Noncompetition Agreement.** Franchisee is required to have its owners, members, partners or shareholders, its Managers (as defined in Section 6.1.4 below), principal employees, anyone Franchisee may choose to send to Maui Wowi's training, and anyone who has access to the Library of Operating Manuals or any of Maui Wowi's proprietary information, execute Maui Wowi's standard Nondisclosure and Noncompetition Agreement before performing any work at the Business or otherwise having access to Maui Wowi's proprietary information. A copy of all the signed agreements shall be delivered to Maui Wowi within one week of their execution.

3.11 **Signage.** Franchisee shall display a standard sign, as may be specified by Maui Wowi, on/in its MAUI WOWI Operating Unit indicating that the location/business is independently owned and operated as a franchised business.

3.12 **Library of Operating Manuals.** Franchisee agrees that Maui Wowi's Library of Operating Manuals and other written materials, including information posted on Maui Wowi's website and information sent to Franchisee by electronic and regular mail, manuals, written procedures, memoranda and their supplements loaned to Franchisee by Maui Wowi (collectively, "**Library of Operating Manuals**") shall remain the sole property of Maui Wowi and must be returned to Maui Wowi at Maui Wowi's direction. Franchisee, its members, shareholders, partners, and guarantors, if any, acknowledge that the contents of the Library of Operating Manuals and Franchisee's knowledge of Maui Wowi's processes, services, products, know-how and the System, are secret, unique and confidential and contain trade secrets and other material proprietary to Maui Wowi. Franchisee acknowledges that its entire knowledge of the operation of the Business is and shall be derived from information disclosed to Franchisee by Maui Wowi and that certain of the information is proprietary, confidential and a Trade Secret of Maui Wowi. "**Trade Secrets**" refer to the whole or any portion of know-how, knowledge, methods, specifications, processes, procedures or improvements regarding the Business that is valuable and secret in the sense that it is not generally known to competitors of Maui Wowi. Franchisee shall maintain the absolute confidentiality of all Trade Secrets during and after the term of this Agreement, and shall not use any such information in any other business or in any manner not specifically authorized or approved in writing by Maui Wowi. Franchisee agrees not to disclose the contents of the Library of Operating Manuals to unauthorized persons and to use Franchisee's best efforts to prevent unauthorized disclosure to any person, as this disclosure would cause irreparable harm to Maui Wowi and the System. Franchisee understands that the Library of Operating Manuals is loaned to Franchisee, and that at all times the Library of Operating Manuals remains the sole property of Maui Wowi, and Franchisee agrees to return the Library of Operating Manuals to Maui Wowi on the termination of this Agreement or at times as may otherwise be directed by Maui Wowi. Franchisee shall not copy or otherwise duplicate the Library of Operating Manuals or any other proprietary materials. At any time at Maui Wowi's discretion, Maui Wowi may convert the Library of Operating Manuals to an exclusively electronic format and require Franchisee to access the document through the Internet or through an intranet created and supported by Maui Wowi. Maui Wowi retains the right to modify, change, add to, delete or supplement the Library of Operating Manuals and to specify other systems, procedures or forms in any manner it deems necessary, and shall notify Franchisee about changes in writing by fax, mail, electronic mail or postings on Maui Wowi's website on the Internet. Except as specifically provided in this Agreement, any modifications to the Library of Operating Manuals will not materially alter Franchisee's economic rights under this Agreement.

4. FEES

4.1 **Initial Franchise Fee.** The Initial Franchise Fee is set forth in the Addendum and is due and payable in one lump sum when Franchisee signs this Agreement. The Initial Franchise Fee and payments for purchases of Ka'anapali Carts, Event Concession Trailers, Fixed Kiosks, MAUI WOWI Products, and MAUI WOWI Supplies and Equipment are non-refundable except as stated in Section 4.2 below.

4.2 **Refund of Initial Franchise Fee.** If Maui Wowi, in its sole and absolute discretion, determines that Franchisee or Franchisee's employee(s) have not successfully completed (or are not making satisfactory progress in) the Hawaiian training program or initial training program, then Maui Wowi may elect to terminate this Agreement, thereby canceling all of Franchisee's rights and all of Franchisee's and Maui Wowi's obligations under this Agreement, and/or any other agreements between Maui Wowi and Franchisee, by providing Franchisee with written notice of Maui Wowi's intent to cancel this Agreement. If Maui Wowi elects to terminate this Agreement in accordance with this Section, Maui Wowi shall refund 50 percent of the Initial Franchise Fee paid by Franchisee within 30 days of the termination. Franchisee acknowledges that Maui Wowi shall be entitled to retain the remaining 50 percent of the Initial Franchise Fee set forth above, the Hawaiian Training Fee (defined in Section 7.8.1), and any other fees paid by Franchisee to Maui Wowi, in consideration of Maui Wowi's sales, training and other costs associated with making the franchise sale to Franchisee. Within five business days of receipt of the termination notice, Franchisee covenants and agrees to return the Library of Operating Manuals (as defined below) and all associated documents and property belonging to Maui Wowi, and

Franchisee, and each owner of Franchisee, agrees to execute documentation providing for a general release (except where prohibited by law), in the form required by Maui Wowi, of all claims, liabilities and/or obligations, however arising, known or unknown, against Maui Wowi and all other Maui Wowi-related persons or entities. Maui Wowi shall provide Franchisee with a similar release; provided, however, that Franchisee's indemnity, non-competition, and confidentiality obligations, and the dispute resolution provisions contained in this Agreement shall survive the termination of this Agreement and the execution of any release by Maui Wowi.

4.3 **Marketing Fee.** Franchisee shall acquire the MAUI WOWI Products and the MAUI WOWI Supplies and Equipment, as well as the Ka'anapali Carts, Event Concession Trailers, and Fixed Kiosks (as applicable) through Maui Wowi's affiliate, Maui Wowi International, Inc. ("**Affiliate**"), or other affiliates or suppliers designated or approved by Maui Wowi. At the time of each purchase of MAUI WOWI Products, MAUI WOWI Supplies and Equipment, a Ka'anapali Cart, an Event Concession Trailer, or a Fixed Kiosk, Franchisee shall pay the Affiliate, as a Marketing Fee ("**Marketing Fee**"), an additional 12 percent of the then current wholesale price of the item being purchased, which fee shall be automatically be charged to Franchisee in addition to the purchase price of the item purchased. The Affiliate shall then remit the Marketing Fee to Maui Wowi or an affiliated entity designated by Maui Wowi for deposit into the Marketing Fund described in Section 5.2 below. Marketing Fees are not refundable under any circumstances once paid. If Franchisee sells to its customers an approved non-proprietary product purchased from a third party or a non-MAUI WOWI branded item purchased from Maui Wowi's Affiliate, Franchisee will pay Maui Wowi via a weekly report (as discussed in Section 7.10 below), or, at a greater interval in Maui Wowi's sole discretion, a 6 percent royalty fee ("**Royalty Fee**") and 2 percent Marketing Fee on the gross revenue ("**Gross Revenue**") generated by the sale of the approved non-proprietary product or non-MAUI WOWI branded item sold by the Franchisee. Gross Revenue is the total of all receipts derived from sales by the Franchisee, whether the receipts are evidenced by cash, credit, checks, gift certificates, scrip, coupons, services, property, or other means of exchange. Gross Revenue shall exclude only sales tax receipts that Franchisee must by law collect from customers and that Franchisee pays to the government, promotional or discount coupons to the extent that Franchisee realizes no revenue, and employee receipt of services or products, if free, or any portion not paid for by an employee. Maui Wowi reserves the right to discontinue or defer the Marketing Fee, or limit the products, supplies, equipment, and items to which the Marketing Fee is applied, in its sole discretion.

4.4 **Intranet Management Fee.** Franchisee shall be assessed a monthly Intranet Management Fee as outlined in the Library of Operating Manuals. Initially the Intranet Management Fee shall be \$29.95, although Maui Wowi reserves the right to increase the Intranet Management Fee by modifying the Library of Operating Manuals. The Intranet Management Fee covers a range of services, all of which are outlined in more detail in the Library of Operating Manuals. The Intranet Management Fee shall be collected during the first seven days of each month in accordance with the terms set forth in Section 4.5.

4.5 **Product Payment Terms.** Franchisee shall pay for all purchases of MAUI WOWI Products, and Equipment, the Intranet Management Fee, and all other items purchased from Maui Wowi or Maui Wowi's Affiliate via automated clearing house ("**ACH**") or via charges to Franchisee's credit card. Maui Wowi or its Affiliate shall have the right to withdraw the entire amount of the purchase price from Franchisee's designated bank account ("**ACH Account**") or to charge Franchisee's credit card in accordance with the terms set forth in the Library of Operating Manuals, as modified by Maui Wowi periodically. Franchisee shall, upon execution of this Agreement or any time after at Maui Wowi's request, execute all documents or forms as Maui Wowi determines are necessary for Maui Wowi to process ACH withdrawals from Franchisee's ACH Account for payments due hereunder, including the ACH Authorization Form attached as Attachment V and all documents or forms as Maui Wowi determines are necessary for Maui Wowi to automatically charge Franchisee's credit card for payments due hereunder, including the Authorization for Credit Card Payments attached as Attachment VI. Franchisee agrees that it shall be responsible for (i) any ACH transfer fee or similar charge imposed by the bank, and (ii) should any ACH not be honored by Franchisee's bank for any reason, for that payment plus any service charge applied by Maui Wowi and the bank. Franchisee agrees that any time an ACH transaction is not honored, Maui Wowi is authorized to charge Franchisee's credit or debit card for the full amount previously requested via ACH plus any bank service charges that may apply, a handling fee of 2.5 percent of the amount previously requested, and a \$50.00 non-sufficient funds fee. (See Attachment VI.) Franchisee also agrees that any time a credit card transaction is not honored, Maui Wowi is authorized to charge Franchisee's ACH Account for the full amount previously requested via credit card plus any incidental charges that may apply, a handling fee of 2.5 percent of the amount previously requested, and a \$50.00 non-sufficient credit fee. Franchisee also agrees that it shall at all times throughout the term of this Agreement maintain the minimum amounts in Franchisee's ACH Account as required by the terms of the Library of Operating Manuals, as modified by Maui Wowi periodically, and maintain a credit limit on Franchisee's credit card of at least \$5,000.00. It shall be a material default of this Agreement if Franchisee closes the ACH Account without Maui Wowi's consent, or if Franchisee closes the ACH Account with Maui Wowi's consent and fails within a reasonable time thereafter, not to exceed five business days, to establish another account and execute all documents necessary for Maui Wowi to process the payments by ACH for the new ACH Account. Likewise, it shall be a material default of this

Agreement if Franchisee closes the credit card account listed in the Authorization for Credit Card Payments without Maui Wowi's consent, or if Franchisee closes the credit card account with Maui Wowi's consent and fails within a reasonable time thereafter, not to exceed five business days, to establish another credit card account and execute all documents necessary for Maui Wowi to process the payments by credit card for the new credit card account. Maui Wowi reserved the right to require Franchisee to make payments pursuant to any other system that may be established in the future.

4.6 **Late or Insufficient Payments.** If Franchisee fails to pay any fees or any other amounts owed to Maui Wowi or its Affiliate when due, in addition to any other amounts due in this Article 4, or if Franchisee fails to submit any report under Section 7.10 when due, Franchisee shall pay an "Late Fee" of \$100.00. In addition, interest shall begin to accrue from the date of non-payment on any amounts owed by Franchisee to Maui Wowi or its Affiliate at the greater of (a) the Prime Rate plus 4 percent, or (b) 18 percent per annum calculated monthly on any outstanding balance. "Prime Rate" is the announced base rate applicable to corporate loans as stated in the *Wall Street Journal*.

5. ADVERTISING

5.1 **Advertising.**

5.1.1 Franchisee shall obtain Maui Wowi's prior written approval of all advertising or other marketing or promotional programs published by any method, including print, broadcast and electronic media, regarding the Business, including, without limitation, "Yellow Pages" advertising, newspaper ads, flyers, brochures, coupons, direct mail pieces, specialty and novelty items, radio, television, Internet and world wide web advertising. Franchisee will submit all such advertising or other marketing or promotional programs for Maui Wowi's approval by e-mail, express delivery or by mail, return receipt requested. Franchisee acknowledges and agrees that Maui Wowi may disapprove of any advertising, marketing or promotional programs submitted to Maui Wowi, for any reason, in Maui Wowi's sole discretion. Franchisee shall also obtain Maui Wowi's prior written approval of all promotional materials provided by vendors. The proposed written advertising or a description of the marketing or promotional program shall be submitted to Maui Wowi at least 30 days prior to publication, broadcast or use. Franchisee acknowledges that advertising and promoting the Business in accordance with Maui Wowi's standards and specifications is an essential aspect of the System, and Franchisee agrees to comply with all advertising standards and specifications. Franchisee shall display all required promotional materials, signs, point of purchase displays and other marketing materials on or around its MAUI WOWI Operating Unit in the manner required by Maui Wowi. Franchisee shall not, under any circumstances, use handwritten signs or other advertising materials that have not been approved by Maui Wowi in the operation of its MAUI WOWI Operating Unit.

5.1.2 Maui Wowi reserves the right to require Franchisee to spend a certain percentage of Franchisee's Gross Revenue each quarter on local advertising efforts (the "Local Advertising Expenditure"). This required Local Advertising Expenditure shall not exceed 3 percent of the Franchisee's Gross Revenue each quarter. If Maui Wowi does implement the Local Advertising Expenditure requirement, Maui Wowi also reserves the right to require that Franchisee submit receipts documenting the Local Advertising Expenditure and prepare and submit a quarterly report to Maui Wowi detailing the Local Advertising Expenditure for each quarter (in which event such quarterly report shall be submitted to Maui Wowi no later than 10 days following the end of each calendar quarter).

5.1.3 Franchisee must participate in any promotional campaigns and advertising or other programs that Maui Wowi or its Affiliate may periodically establish.

5.2 **Marketing Fund.**

5.2.1 Maui Wowi or the applicable Affiliate shall deposit the Marketing Fee described in Section 4.3 above, in a separate bank account ("Marketing Fund"). The Marketing Fund's primary purpose is to support sales by the System and to build brand identity. The Affiliate shall administer the Marketing Fund and may use one or more professional advertising agencies, promotions, or public relations professionals or media buyers to assist in advertising and advertising campaigns. Marketing shall be placed in local, regional, or national media of Maui Wowi's choice. The Affiliate shall be entitled to use the Marketing Fund for production and placement of media advertising; agency costs and commissions; creation and production of video, audio and written advertisements; administering regional and multi-regional advertising programs; direct response literature; direct mailings; online mailings; brochures; collateral advertising material; research; surveys of advertising effectiveness; providing materials and personnel to support the marketing function and creating, producing, and implementing websites for Maui Wowi and/or its franchisees; in-house staff assistance and related administrative costs; local promotions; and supporting public relations; and other advertising expenditures relating to advertising Maui Wowi services and products. If Maui Wowi or its Affiliate places advertising rather than engage an advertising agency for this purpose, Maui Wowi or its Affiliate shall be entitled to receive a reasonable fee for such services, which will not exceed the highest rate charged for similar services by any recognized

advertising agency not owned in whole or part by Maui Wowi or its officers, directors, or employees (in addition to reimbursement for costs incurred). The Marketing Fund may also be used to pay the overhead expenses related to the Marketing Fund. Maui Wowi and its Affiliate have the right but no obligation to contribute to the Marketing Fund.

5.2.2 Upon written request of Franchisee, the Affiliate will make available to Franchisee, no later than 120 days after the end of each calendar year, an annual unaudited financial statement for the Marketing Fund which indicates how deposits to the Marketing Fund has been spent. Maui Wowi may at any time defer or reduce the required contributions of Franchisee or, upon 30 days prior written notice to Franchisee, reduce or suspend Marketing Fund contributions and operations for one or more periods of any length, or terminate (and, if terminated, reinstate) the Marketing Fund. If the Marketing Fund is terminated, all unspent monies will be distributed to the contributors in proportion to their respective Marketing Fund contributions during the preceding 12 month period. Any unused amount of the Marketing Fund in any calendar year will be applied to the following year's advertising expenses. Maui Wowi and its Affiliate make no guarantee to Franchisee or to any other franchisee that advertising expenditures from the Marketing Fund will benefit Franchisee or any other franchisee directly, on a pro rata basis, or at all. Maui Wowi and its Affiliate assume no other direct or indirect liability or obligation to Franchisee regarding collecting the Marketing Fee from other franchisees, or maintaining, directing or administering the Marketing Fund.

5.3 **Local Advertising Cooperatives.** Maui Wowi may establish a regional advertising cooperative ("**Local Advertising Cooperative**") in a region that includes Franchisee's Events or Retail Stores. A Local Advertising Cooperative is a group that consists of franchisees located within a particular geographical area, which conducts local or regional advertising for its members. If a Local Advertising Cooperative is established in a region that includes Franchisee's Events or Retail Stores, Franchisee shall join and participate in it. The rules and regulations of the Local Advertising Cooperative, including what contributions are required by Franchisee, and how such contributions are to be spent, must be in writing and established by its members, but must be submitted for prior approval to Maui Wowi. Maui Wowi may establish additional requirements regarding membership to, and operations and management of, Local Advertising Cooperatives, and Franchisee agrees to abide by any such additional requirements. Maui Wowi may require any Local Advertising Cooperative to change, dissolve or merge in Maui Wowi's discretion. All Local Advertising Cooperatives shall provide quarterly marketing plans, budgets, and financial reports to Maui Wowi.

6. SERVICES PROVIDED BY MAUI WOWI

6.1 **Before Opening.** Franchisee's Business is deemed to open when Franchisee begins operating the first Operating Unit under this Agreement. Before Franchisee's Business begins operating, Maui Wowi or its designees shall provide the following services:

6.1.1 Counsel Franchisee on necessary start-up and inventory items and assist Franchisee with ordering, through Maui Wowi's Affiliate, MAUI WOWI Products and MAUI WOWI Supplies and Equipment that are necessary for commencement of operations, including MAUI WOWI Blends, Hawaiian coffee, espresso, bottled waters, frozen confections, shirts, hats, aprons, parasols, cups, straws and other Products, Supplies and Equipment purchased from Maui Wowi's Affiliate or other suppliers.

6.1.2 Provide Franchisee with advice about which optional equipment to purchase.

6.1.3 Provide a Hawaiian training program for Franchisee (or, if Franchisee is not an individual, then a managing member, partner or officer of Franchisee designated by Franchisee to participate personally in the MAUI WOWI Business) in various locations in Hawaii. Franchisee will be responsible for all of Franchisee's airfare expenses associate with the Hawaiian training program. Franchisee must attend and successfully complete the Hawaiian training program within six months of signing this Agreement and prior to the commencement of operations of the MAUI WOWI Business.

6.1.4 Provide an initial training program for up to two individuals in a Denver, Colorado metropolitan area location. Franchisee (or, if Franchisee is not an individual, then a managing member, partner or officer of Franchisee designated by Franchisee to participate personally in the MAUI WOWI Business) must attend and successfully complete the initial training program prior to the commencement of operations of the MAUI WOWI Business. Any person designated by Franchisee to assume the primary responsibility for operating an Operating Unit of Franchisee ("**Manager**") must attend and successfully complete the initial training program prior to the commencement of operations of that Operating Unit. Maui Wowi, may, in its discretion, extend the initial training program for Franchisee if Franchisee will be operating a Retail Store or Fixed Kiosk. Franchisee must pay for all travel and living expenses associated with training for all of Franchisee's personnel attending training. During the training course, Franchisee will be instructed in the operation of the Business, marketing, management and hands-on training in operating the Maui Wowi

Operating Unit. If Franchisee cancels its attendance at the initial training program less than two weeks before the initial training program, Franchisee shall be required to pay to Maui Wowi a cancellation fee in the amount of \$500.00.

6.1.5 Establish and provide to Franchisee operating standards and specifications for the operation of its MAUI WOWI Business in the Library of Operating Manuals as presented in writing or on the website. At the initial training program, Maui Wowi will loan Franchisee a copy of the confidential Library of Operating Manuals. Maui Wowi may change or update these procedures, standards and specifications at Maui Wowi's discretion. Franchisee must strictly follow these procedures, standards and specifications in the Library of Operating Manuals and in the Franchise Agreement. Failure to do so is grounds for termination of this Agreement. (See Sections 3.3, 3.12, 7.2, and 9.3.1.)

6.2 **After Opening.** During the operation of the Business, in addition to other obligations set forth elsewhere in this Agreement, Maui Wowi or its designees will provide the following services:

6.2.1 If Franchisee acquires a Standard Franchise or Empire Builder Franchise, provide each of the items set forth in Section 6.1 above for each additional Operating Unit Franchisee opens and operates except the training set forth in Sections 6.1.3 and 6.1.4.

6.2.2 Provide a reasonable amount of consultation with Franchisee by telephone. If additional assistance is needed, at the reasonable request of Franchisee, Maui Wowi will provide assistance at Maui Wowi's then current daily rate, plus the cost of food, travel and lodging incurred by Maui Wowi. Maui Wowi is not required to provide any other on-going assistance to Franchisee. Maui Wowi will provide additional training upon reasonable request at Maui Wowi's then current daily rate, plus the cost of food, travel and lodging incurred by Maui Wowi.

6.2.3 Provide Franchisee with reasonable numbers of samples of new advertising and promotional materials as they are developed by Maui Wowi, if requested by Franchisee. Maui Wowi reserves the right to charge Franchisee for any of these materials.

6.2.4 Hold national, regional, or local conferences for all MAUI WOWI franchisees, at certain times at Maui Wowi's discretion, to discuss sales techniques, operational standards, and advertising. (See Section 7.9 below.)

6.3 **Directors of Regional Support.** Maui Wowi reserves the right, in its sole discretion, to delegate some or all of its obligations under this Agreement to a Director of Regional Support with regional responsibility over the geographic area in which Franchisee operates at Events or in Retail Stores. These obligations may include, but are not limited to, initial and ongoing training, site selection assistance for Permanent Sites, inspections, and operations support. Franchisee agrees in advance to any delegation and assignment by Maui Wowi of any portion or all of Maui Wowi's obligations and rights under this Agreement. Franchisee acknowledges that it is not a third party beneficiary of any Director of Regional Support Agreement between Maui Wowi and any Director of Regional Support.

7. OBLIGATIONS OF FRANCHISEE

7.1 **Compliance with Applicable Laws.** Franchisee agrees to (i) comply with all applicable laws, ordinances and regulations or rulings of every nature which in any way regulate or affect the operation of its Business, including, without limitation, obtaining all required food handling and other permits, certificates, business licenses, health department approvals and similar items, (ii) pay promptly all taxes and business expenses, and (iii) comply with all laws covering occupational hazards, accommodations for the disabled, including the Americans with Disabilities Act, if applicable, health, workers' compensation insurance and unemployment insurance. Franchisee agrees, at its expense, to modify its MAUI WOWI Operating Units if required to comply with any applicable laws or regulations. Franchisee shall not engage in any activity or practice that result, or may reasonably be anticipated to result, in any public criticism of the System or any part thereof.

7.2 **System Compliance.** Franchisee shall comply with the System, Library of Operating Manuals, and any other systems, procedures and forms that are in effect, or that may come into effect in the future. The MAUI WOWI Operating Units, MAUI WOWI Supplies and Equipment, MAUI WOWI Products, other materials and the procedures shall be utilized and each smoothie, espresso drink or other food product shall be prepared and served in accordance with the standards and procedures of Maui Wowi. Maui Wowi may require Franchisee to add additional products or concepts to the Business in the future, at Franchisee's sole expense.

7.3 **Inspections.** Franchisee consents to reasonable inspections of Franchisee's Operating Units and MAUI WOWI Business operations during normal business hours or Event hours at reasonable intervals by a duly authorized representative of Maui Wowi. Maui Wowi shall have the right to observe Franchisee and its employees rendering

services, to confer with Franchisee's employees and customers and to generally review the Business operations for compliance with the standards and procedures set forth in the Library of Operating Manuals, with or without prior notification to Franchisee.

7.4 **Restrictions on Products.** Franchisee is prohibited from offering or selling any services or products not authorized by Maui Wowi as being a part of the System. However, if Franchisee proposes to offer, conduct or utilize any services, products, equipment, materials, forms, items, supplies or services for use in connection with or sale through its MAUI WOWI Business which have not been previously approved by Maui Wowi as meeting its specifications, Franchisee shall first notify Maui Wowi in writing requesting approval. Maui Wowi may, in its sole discretion, for any reason, elect to withhold approval; however, in order to make its determination, Maui Wowi may require submission of specifications, information or samples of the products, services, materials, forms, items or supplies. Maui Wowi will advise Franchisee within a reasonable time whether the products, services, materials, forms, items or supplies meet its specifications. If Maui Wowi approves the sale of third-party products, the Royalty Fee set forth in **Section 4.3** above shall be payable to Maui Wowi based on the Gross Revenue derived from the sale of such third-party products. Franchisee shall purchase all MAUI WOWI Products and MAUI WOWI Supplies and Equipment required for the operation of its MAUI WOWI Business from suppliers designated or approved by Maui Wowi or, if there is no designated or approved supplier for a particular item, from suppliers approved in advance by Maui Wowi who meet all of Maui Wowi's specifications and standards as to quality, composition, finish, appearance and service, and who shall adequately demonstrate their capacity and facilities to supply Franchisee's needs in the quantities, at the times, and with the reliability requisite to an efficient operation of the Business.

7.5 **Insurance.** Franchisee shall, at all times during the term of this Agreement, keep in force, by advance payment or payments, general liability, combined single limit, bodily injury and property damage insurance by an insurance company acceptable to Maui Wowi, including premises operations, products liability and all other occurrences against claims of any person, employee, customer, agent or otherwise in an amount of at least \$1 million per occurrence, \$2 million in the aggregate, or other amounts as Maui Wowi shall determine in the future, which policy shall name Maui Wowi and its Affiliate, their officers and directors, as additional named insureds against any liability which may accrue against them by reason of the ownership, maintenance or operation by Franchisee of its MAUI WOWI Business or Operating Units. Said policy shall stipulate that Maui Wowi shall receive a 30-day prior written notice of cancellation. Original or duplicate copies of all insurance policies, certificates of insurance, or other proof of insurance acceptable to Maui Wowi shall be furnished to Maui Wowi together with proof of payment within 30 days of issuance thereof. If Franchisee fails to obtain the required insurance and keep the same in full force and effect, Maui Wowi may withdraw from Franchisee's ACH account or charge to Franchisee's credit card account the premium cost thereof, which Maui Wowi shall then forward to the insurance carrier. However, failure of Franchisee to obtain said insurance constitutes a material breach of this Agreement entitling Maui Wowi to terminate this Agreement pursuant to the provisions set forth in **Article 9**. Franchisee will also procure and pay for all other insurance required by state or federal law, including, without limitation, workers' compensation and unemployment insurance. Maui Wowi has obtained beneficial rates and insurance coverage for its franchise owners. Franchisee may be required to obtain this insurance in order to provide beneficial coverage throughout the franchise network.

7.6 **Appearance and Customer Service.** Franchisee and its employees shall (i) maintain a clean and attractive appearance, (ii) give prompt, courteous and efficient service to the public, and (iii) otherwise operate its MAUI WOWI Business in strict compliance with the policies, practices and procedures contained in the Library of Operating Manuals to preserve, maintain and enhance the reputation and goodwill of the System. Franchisee may not alter, change, or modify the System, including the Operating Units, the MAUI WOWI Products, or the MAUI WOWI Supplies and Equipment, in any way without the prior written consent and approval of Maui Wowi. All employees of Franchisee servicing the general public must wear specified clothing and adhere to Maui Wowi's guidelines for appearance in accordance with the standards set forth in the Library of Operating Manuals. Maui Wowi reserves the right to establish maximum resale prices for use with multi-area marketing programs and special price promotions. Maui Wowi also reserves the right, in Maui Wowi's discretion, to require that Franchisee play music approved by Maui Wowi at Franchisee's Operating Unit(s).

7.7 **Signs.** All signs to be used on, in or in connection with the Business, must be purchased from Maui Wowi, its Affiliate or other approved supplier, or must be approved in writing by Maui Wowi prior to their use by Franchisee.

7.8 **Training.**

7.8.1 Upon execution of this Agreement, Franchisee shall pay \$3,500.00 as the fee for Franchisee to participate in the Hawaiian training program ("**Hawaiian Training Fee**"). Franchisee (or, if Franchisee is not an

individual, then a managing member, partner or officer of Franchisee designated by Franchisee to participate personally in the MAUI WOWI Business) shall attend and successfully complete Maui Wowi's Hawaiian training program described in **Section 6.1.3** above. Franchisee may, at its option, have additional individuals attend the Hawaiian training program by paying an additional Hawaiian Training Fee of \$3,500.00 for each individual. If Franchisee cancels the attendance of Franchisee or any other individual scheduled to participate in the Hawaiian training program 76 days or more prior to date the program is scheduled to begin, Franchisee will receive a refund of the Hawaiian Training Fee less \$250.00. If Franchisee cancels the attendance of Franchisee or any other individual 46 to 75 days prior to date the program is scheduled to begin, Franchisee will receive a refund of the Hawaiian Training Fee less \$500.00. If Franchisee cancels the attendance of Franchisee or any other individual eight to 45 days prior to date the program is scheduled to begin, Franchisee will receive a refund of 50 percent of the Hawaiian Training Fee. If Franchisee cancels the attendance of Franchisee or any other individual within eight days of the date the program is scheduled to begin, Franchisee shall not be entitled to any refund of the Hawaiian Training Fee.

7.8.2 Franchisee (or, if Franchisee is not an individual, then a managing member, partner or officer of Franchisee designated by Franchisee to participate personally in the MAUI WOWI Business) and its Manager(s), if applicable, shall complete Maui Wowi's initial training program described in **Sections 6.1.4** and **6.2.1** above. Franchisee shall train its employees according to standards and procedures established by Maui Wowi.

7.8.3 Upon notification, Maui Wowi may require Franchisee to attend additional training if Maui Wowi determines that Franchisee has failed to comply with the provisions of this **Section 7.8** of the Agreement. Franchisee must make progress in and complete the Hawaiian training program and the initial training program to Maui Wowi's satisfaction, or Maui Wowi shall have the right to terminate this Agreement in accordance with **Section 4.2**.

7.9 **Conferences and Annual Convention.** Maui Wowi will hold national, regional, or local conferences for all MAUI WOWI franchisees, at times determined in Maui Wowi's discretion, to discuss sales techniques, operational standards, and advertising. Franchisee is required to attend the Annual Franchise Owner National Convention and any other conferences for which Maui Wowi determines Franchisee's attendance is mandatory. The cost for two people to attend the Annual MAUI WOWI Franchise Owner National Convention is \$1,000.00 which does not include lodging, food, or airfare. This amount will be withdrawn automatically through ACH or charged to Franchisee's credit card no more than 90 days prior to the conference. Franchisee must pay all of Franchisee's (and, if applicable, Franchisee's employee's) travel and living expenses. Upon attendance, \$500.00 will be credited to Franchisee's ACH Account within 30 days. Franchisee will be charged \$500.00 for each additional attendee that Franchisee brings to the conference in excess of two. These conferences will be held at locations chosen by Maui Wowi. There will be additional costs for any other conferences or conventions.

7.10 **Franchisee Reports.** Franchisee shall maintain during the term of this Agreement, and shall preserve for a minimum of seven years thereafter, full, complete and accurate records of all sales, marketing activities, closeout sheets, payroll, and accounts payable in accordance with the standard accounting system described by Maui Wowi in the Library of Operating Manuals or otherwise specified in writing by Maui Wowi. In all instances, the accounting and reporting system, and all statements and reports to be submitted by Franchisee, shall conform to U.S. Generally Accepted Accounting Principles applied consistently on a year-to-year basis.

7.10.1 **Submission of Gross Revenue Reports.** Franchisee must furnish Maui Wowi with reports of the Gross Revenue of Franchisee's Business on a weekly basis. Reports of Gross Revenue are to be received by Maui Wowi on the third business day following the last day of each week. For the purposes of this Agreement, each week will be considered to start on Sunday and end on Saturday. Franchisee must furnish Maui Wowi with any additional financial statements and balance sheets of Franchisee's Business and Franchisee's most recent federal income tax returns within 15 days after Franchisee's receipt of Maui Wowi's written request for the information. If requested by Maui Wowi, financial statements shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. Each report of Gross Revenue and other financial statement must be signed by Franchisee or Franchisee's Treasurer or Chief Financial Officer, attesting that the statement is true and correct, and prepared in accordance with the Library of Operating Manuals, this Agreement, and as otherwise specified in writing by Maui Wowi. Reports of Gross Revenue and other financial statements are to be sent to Maui Wowi via mail, facsimile or e-mail at Franchisee's transmission cost. Maui Wowi shall be permitted to use any information in the reports of Gross Revenue in any manner it desires, including any earnings claim or other document used to promote the sale of franchises, provided that in any such earnings claim or other document used to promote the sale of franchises, Maui Wowi shall not disclose any information that could identify Franchisee.

7.10.2 **Audit of Books and Records.** Maui Wowi has the right at any time during business hours and without prior notice, to examine, compile, review, or audit all business records, financial and otherwise, related to

Franchisee's Business. Any inspection or audit shall be conducted at Maui Wowi's expense. If any inspection or audit discloses a deficiency in amounts of payments owed to Maui Wowi pursuant to this Agreement, then these amounts will become immediately payable to Maui Wowi by Franchisee, with interest from the day the payments were due at the lesser of 18 percent per annum, or the maximum rate allowed by law. In addition, if the deficiency for any audit period equals or exceeds 2 percent of the correct amount of any amounts of payments owed to Maui Wowi, Franchisee must pay all reasonable costs and expenses that Maui Wowi incurred in connection with the inspection or audit, including the costs and fees of any independent accountant and the travel and living expenses and compensation of any of Maui Wowi's employees or agents conducting the inspection or audit, within 10 business days of notice thereof. For purposes of this Section, an audit period will be each quarter of the fiscal year. Should the audit disclose an overpayment of any amounts of payments owed to Maui Wowi, Maui Wowi shall pay Franchisee or credit Franchisee's account, in Maui Wowi's sole discretion, the amount of overpayment within 30 days of Maui Wowi's verification of the overpayment by Franchisee. If Franchisee fails to submit any reports required hereunder to Maui Wowi, and Maui Wowi conducts an audit of Franchisee's books and records, Franchisee must pay all reasonable costs and expenses that Maui Wowi incurred in connection with the inspection or audit, including the costs and fees of any independent accountant and the travel and living expenses and compensation of any of Maui Wowi's employees or agents conducting the inspection or audit, within 10 business days of notice thereof.

7.10.3 **Failure to Comply with Reporting Requirements.** If Franchisee's records and procedures are insufficient to permit a proper determination of Gross Revenue, Maui Wowi shall have the right to deliver to Franchisee an estimate, made by Maui Wowi, of Gross Revenue for the period under consideration, and Franchisee shall pay to Maui Wowi any amount determined by Maui Wowi to be due based on such Gross Revenue estimates within five business days of the date of the notice. Any estimated payments shall be deemed the minimum amount of fees due for the required reports, and Franchisee shall remain liable for all fees in excess of these amounts once the actual Gross Revenues related to these reports are determined. Additionally, Franchisee shall be liable for the Late Fee and interest set forth in Section 4.6 above per each overdue report due to Maui Wowi.

7.10.4 **Financial Information from Third Parties.** Franchisee authorizes Maui Wowi to make reasonable inquiries of Franchisee's bank, suppliers and trade creditors concerning Franchisee's Business, and agrees to direct relevant persons and companies to provide to Maui Wowi this information and copies of documents pertaining to its Business as Maui Wowi may request.

7.11 **Correction of Defects.** Should Maui Wowi notify Franchisee at any time of defects, deficiencies or unsatisfactory conditions in the appearance or conduct of Franchisee's MAUI WOWI Business, Franchisee shall correct immediately any such items. Franchisee shall establish and maintain an image and reputation for the Business consistent with the standards set forth in this Agreement, the Library of Operating Manuals, or as otherwise specified by Maui Wowi. Franchisee shall keep its MAUI WOWI Operating Units painted, clean and in good order and repair.

7.12 **Indemnification.** Franchisee agrees to indemnify, defend and hold harmless Maui Wowi, its parent corporation, its subsidiaries and Affiliate, and their respective shareholders, directors, officers, employees, agents, successors and assignees ("**Indemnified Parties**") against, and to reimburse them for all claims, obligations and damages described in this Section, all third party obligations and all claims and liabilities directly or indirectly arising out of the operation of the Business or arising out of the use of the Marks and System in any manner not in accordance with this Agreement. For purposes of this indemnification, claims shall mean and include all obligations, actual and consequential damages and costs reasonably incurred in the defense of any claim against the Indemnified Parties, including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. Maui Wowi shall have the right to defend any such claim against it. This indemnity shall continue in full force and effect following and notwithstanding the expiration or termination of this Agreement.

7.13 **Management Involvement of Franchisee.** Franchisee (or, if Franchisee is not an individual, then a managing member, partner or officer of Franchisee designated by Franchisee to participate personally in the MAUI WOWI Business) is obligated to participate personally in the operation of its Business and be the primary operator of the Business at all times, unless Maui Wowi waives this requirement in writing in Maui Wowi's sole discretion. If Franchisee acquires a Standard Franchise or an Empire Builder Franchise, Franchisee will be permitted to operate multiple Operating Units, as set forth in the Addendum, and a Manager who has completed the initial training program will be responsible for the operation of each Operating Unit, unless Maui Wowi waives this requirement in writing in Maui Wowi's sole discretion. Franchisee shall use its best efforts to build, develop and expand the Business at each of its Operating Units, and to open the maximum number of Operating Units permitted under this Agreement and the Addendum.

7.14 **Modification.** Maui Wowi may reasonably change or modify the System, including the MAUI WOWI Operating Units and the MAUI WOWI Products, and Franchisee agrees to accept, be bound by, use, implement and display any changes to the System, including changes, additions to and deletions from the product line. Franchisee will make whatever expenditures are reasonably required to implement changes or modifications. Maui Wowi shall have complete ownership and control of any changes, modifications, enhancements or suggestions whether made by Maui Wowi or Franchisee.

7.15 **Electronic Information, Communications, and Computer Systems.** Franchisee is required to maintain Franchisee's books and records of each Operating Unit on a computer using Quick Books Small Business Accounting Software (QuickBooks Pro or Premier for Windows versions only) and the standardized chart of accounts established by Maui Wowi and/or Maui Wowi's Affiliate. Franchisee must have access to the Internet via a high speed Internet connection (no dial-up) where available, have an electronic mail address and check, a minimum of two times per week, Franchisee's electronic mailbox and the portion of Maui Wowi's website devoted to franchise operators. Franchisee will be required to pay the monthly Intranet Management Fee set forth in Section 4.4 above for the access to and use of this portion of the website, which provides a network for communication and ordering. Any computer capable of performing these functions is acceptable, although Maui Wowi reserves the right to require Franchisee to purchase additional or specific computer hardware and software and to specify other computer-related standards in the future. If Franchisee operates a Retail Store, Franchisee must have a computer with this accounting software and high speed Internet access at Franchisee's Retail Store. Maui Wowi reserves the right to independently access Franchisee's electronic information and data and to collect and use Franchisee's electronic information and data in any manner Maui Wowi chooses to promote development of the System and the sale of franchises.

7.16 **Performance Requirements.** Franchisee is required to actively market, promote, develop and sell the MAUI WOWI Products at Events or at Permanent Sites, or both, as may be designated in the applicable Operating Unit Rider(s). If Franchisee opens a Ka'anapali Cart or Event Concession Trailer for Franchisee's first Operating Unit, Franchisee agrees to begin operating within six months after signing this Agreement. If Franchisee opens a Retail Store or Fixed Kiosk for Franchisee's first Operating Unit, Franchisee agrees to begin operating within 12 months after signing this Agreement. For purposes of this Agreement, the MAUI WOWI Business is deemed to open upon the earlier of when Franchisee begins operating the MAUI WOWI Business, or six months (for a Ka'anapali Cart or Event Concession Trailer) or 12 months (for a Retail Store or Fixed Kiosk) after Franchisee executes this Agreement. Franchisee's failure to conduct business within the stated time frame, or failure to consistently market, promote, develop and sell MAUI WOWI Products at Events or at Retail Stores throughout the term of this Agreement may result in termination of this Agreement.

7.17 **Web Page.** Franchisee shall not establish any website, including any web pages or world wide web pages, without Maui Wowi's prior written approval. In addition, Franchisee must receive prior written approval from Maui Wowi for the design, links, names and representations included on any website or other information posted on the Internet related to the MAUI WOWI Business or including any of Maui Wowi's Marks. Maui Wowi shall determine, at its sole discretion, if a link will be established to any web page, including one of Maui Wowi or its Affiliate. Maui Wowi may require Franchisee to discontinue any website or other electronic advertising or promotion if Franchisee misuses the Marks on Franchisee's website. Additionally, Maui Wowi reserves the right to require that Franchisee use a central web page designer of Maui Wowi's choosing, in which event Franchisee will be obligated to pay to Maui Wowi's Affiliate an initial and then monthly web interface design fees.

7.18 **Restrictions on Sale of Equipment.** If Franchisee acquires either a Standard Franchise or an Empire Builder Franchise as indicated in the Addendum, Franchisee acknowledges it is purchasing the rights to own and operate multiple MAUI WOWI Operating Units after signing this Agreement. Franchisee agrees that it will purchase all proprietary MAUI WOWI Supplies and Equipment from Maui Wowi's Affiliate within the time limits applicable to the type of franchise being purchased and Franchisee acknowledges that when the applicable time limit expires, Franchisee shall be prohibited from owning or operating additional MAUI WOWI Operating Units without entering into a separate Franchise Agreement with Maui Wowi. Franchisee shall not be obligated to operate more than one MAUI WOWI Operating Unit, even if Franchisee acquires a Standard Franchise or an Empire Builder Franchise, but Franchisee shall use Franchisee's best efforts to open and operate the maximum allowable Operating Units. Franchisee shall not sell or purchase any MAUI WOWI Supplies and Equipment at any time from or to a third party, including another current or former Maui Wowi franchisee, without Maui Wowi's prior written consent. If Franchisee is opening Franchisee's first Operating Unit under this Agreement, Franchisee must purchase new MAUI WOWI Supplies and Equipment from Maui Wowi and its Affiliate for use in that Operating Unit upon opening. If Franchisee acquires an Empire Builder Franchise, opens all 10 Operating Units within the first three years, and is in good standing, Franchisee will receive one Standard Franchise for no additional initial fee. For that Standard Franchise, the Hawaiian Training Fee shall also be waived and the Hawaiian training program shall not be provided, unless Franchisee elects to participate in the Hawaiian training program again and pays the Hawaiian Training Fee again.

7.19 **Protection of Computer, Electronic, and Communications Systems.** Franchisee shall be solely responsible for protecting Franchisee's computer, electronic, and communications systems from viruses, computer hackers, and other computer-related and technology-related problems, and Franchisee releases Maui Wowi from all claims it may have as a result of viruses, hackers, or other computer-related or technology-related problems.

8. PURCHASES OF PRODUCTS

8.1 **Inventory.** Franchisee acknowledges that the goodwill associated with the Marks is largely based on the recipes and preparation methods for MAUI WOWI Blends, proprietary Hawaiian coffee, espresso, bottled waters, frozen confections, cups and other proprietary MAUI WOWI Products and MAUI WOWI Services, and, therefore, Franchisee's sources of supply for its MAUI WOWI Products are very important to the operation of Franchisee's Business. Throughout the term of this Agreement, Franchisee shall purchase MAUI WOWI Products only from Maui Wowi or its Affiliate or another source approved in writing by Maui Wowi. Franchisee shall, during the term of this Agreement, maintain inventory levels of MAUI WOWI Products sufficient to meet customer demands and in compliance with Maui Wowi's standards and specifications as may be described in the Library of Operating Manuals. Franchisee must maintain sufficient inventory levels of whatever Products Franchisee chooses to sell. Franchisee acknowledges and agrees that Maui Wowi and its Affiliate may receive rebates, promotional fees, and other financial considerations from designated and approved suppliers and that Maui Wowi and its Affiliate have the right to expend these funds in any way Maui Wowi and its Affiliate deem necessary or appropriate.

8.2 **Limitations on Supply Obligations.** Nothing in this Agreement shall be construed to be a promise or guarantee by Maui Wowi as to the continued existence of a particular MAUI WOWI Product, nor shall any provision imply or establish an obligation on the part of Maui Wowi and its Affiliate to sell MAUI WOWI Products to Franchisee if Franchisee is in arrears on any payment to Maui Wowi or its Affiliate or otherwise in default under this Agreement. If Franchisee fails to pay in advance in full for each shipment of Products purchased, Maui Wowi or its Affiliate shall not be obligated to sell Products to Franchisee unless otherwise specified in writing by an officer of Maui Wowi. In addition, Maui Wowi may impose interest on any late payments on the terms described in Section 4.6.

8.3 **No Warranties.** Neither Maui Wowi nor any of its Affiliate makes any warranties, express or implied, regarding merchantability or fitness for a particular purpose of any of the MAUI WOWI Products purchased by Franchisee from Maui Wowi or its Affiliate.

8.4 **Changes in Inventory.** It is understood that Maui Wowi shall have the right, at any time and without notice, to add items to, withdraw items from, or change the mix of the MAUI WOWI Products required to be offered for sale by Franchisee through its MAUI WOWI Business; to add to or delete from the list of approved suppliers of MAUI WOWI Products; and to change the prices, discounts, or terms of sale of any MAUI WOWI Products, however, no changes in prices, discounts or terms shall affect accepted orders pending with Maui Wowi and its Affiliate at the time of change. No changes will give Franchisee the right to recover damages against, or be reimbursed by, Maui Wowi or its Affiliate for any losses suffered by Franchisee, nor will Franchisee be entitled to require Maui Wowi and its Affiliate to accept return of any of the MAUI WOWI Products rendered obsolete by these changes. If changes occur, however, the sale by Franchisee of its existing MAUI WOWI Products that are no longer approved, or MAUI WOWI Products in its existing stock from a supplier no longer approved, shall not be considered a violation of this Agreement.

9. BREACH AND TERMINATION

9.1 **Termination by Maui Wowi.** Maui Wowi may, at its option, terminate this Agreement before the expiration of its term if Franchisee breaches or violates any term, condition or provision of this Agreement in any respect or defaults in the performance or fulfillment of any term or provision of this Agreement, including, without limitation, those breaches described below.

9.2 **Termination by Maui Wowi – No Cure Period.** Maui Wowi shall have the right, at its option, to terminate this Agreement and all rights granted to Franchisee, without affording Franchisee any opportunity to cure the same (subject to any state laws to the contrary, where state law shall prevail) effective upon receipt of notice by Franchisee, upon occurrence of any of the following events:

9.2.1 Franchisee or Franchisee's employees fail to satisfactorily complete the Hawaiian training program or initial training program as provided in Section 4.2.

9.2.2 Franchisee becomes insolvent or is adjudicated bankrupt; or any action is taken by Franchisee, or by others against Franchisee under any insolvency, bankruptcy or reorganization act, (this provision may not be enforceable under federal bankruptcy law, 11 U.S.C. §§ 101, *et seq.*), or if Franchisee makes an assignment for the benefit of creditors, or a receiver is appointed by or for Franchisee.

9.2.3 Any material judgment (or several judgments which in the aggregate are material) is obtained against Franchisee and remains unsatisfied or of record for 30 days or longer (unless a supersedeas or other appeal bond has been filed); or if execution is levied against Franchisee's Business or any of the property used in the operation of the Business and is not discharged within five days; or if the real or personal property of Franchisee's Business shall be sold after levy thereupon by any sheriff, marshal or constable.

9.2.4 Franchisee is convicted of a felony, a crime involving moral turpitude, or any crime or offense that is reasonably likely, in the sole opinion of Maui Wowi, to materially and unfavorably affect the System, Marks, goodwill or reputation of the System or the Marks.

9.2.5 Franchisee or any of Franchisee's principal owners or employees violates any of the non-competition or confidentiality covenants by which Franchisee is bound.

9.2.6 Franchisee commits three or more breaches of the same or different conditions of this Agreement during the term of this Agreement.

9.2.7 Franchisee uses any of the Marks or other property right, either tangible or intangible, granted by Maui Wowi other than in connection with the operation of the Business.

9.2.8 Franchisee's actions result in a threat or danger to public health or safety.

9.2.9 Franchisee (i) makes any material misrepresentations relating to the acquisition of the Business, or (ii) engages in conduct that reflects adversely upon the reputation of the Business or the System.

9.2.10 Franchisee abandons the Business as evidenced by any one of the following:

9.2.10.1 If Franchisee elects to operate a Ka'anapali Cart or Event Concession Trailer Operating Unit and fails to commence operations within six months of execution of this Agreement, fails to operate at a minimum of one Event during any 12-month period if the Operating Unit is being operated at Events, or voluntarily abandons its Operating Unit operating at a Permanent Site for a period of five consecutive days or any shorter period that indicates an intent by Franchisee to discontinue operation of its MAUI WOWI Business, unless such abandonment is due to fire, flood, earthquake or other similar causes beyond Franchisee's control and not related to the availability of funds to Franchisee, or is due to the seasonal nature of the location of Franchisee's Ka'anapali Cart or Event Concession Trailer and Franchisee has obtained the prior written consent of Maui Wowi to operate on a seasonal basis;

9.2.10.2 If Franchisee elects to operate a Fixed Kiosk or Retail Store and fails to commence operations within 12 months of execution of this Agreement, or voluntarily abandons its MAUI WOWI Business for a period of five consecutive days, or any shorter period that indicates an intent by Franchisee to discontinue operation of its MAUI WOWI Business, unless such abandonment is due to fire, flood, earthquake or other similar causes beyond Franchisee's control and not related to the availability of funds to Franchisee, or is due to the seasonal nature of the location of Franchisee's Fixed Kiosk or Retail Store and Franchisee has obtained the prior written consent of Maui Wowi to operate on a seasonal basis; or

9.2.10.3 Franchisee sells all or substantially all of the Equipment required to operate the Business without Maui Wowi's advanced written consent.

9.2.11 Franchisee attempts to transfer, hypothecate, pledge, sell or assign all or any part of this Agreement, the Business, the Franchisee entity, or any material portion of the property associated with the Business or attempts to sublicense to another any of the rights or property licensed to Franchisee hereunder without first receiving written authorization from an officer of Maui Wowi.

9.2.12 Franchisee verbally or physically assaults or abuses any other franchisee or any officer, director or employee of Maui Wowi after receiving a verbal or written warning against this conduct from Maui Wowi regarding this conduct.

9.2.13 Franchisee relocates an Operating Unit from a Permanent Site without completing the Site Submittal Workbook (defined in the Operating Unit Rider) and obtaining Maui Wowi's advanced written permission as required by the Operating Unit Rider.

9.2.14 Franchisee submits on two or more occasions during the term of this Agreement, or any successor franchise term, a report, financial statement, tax return, schedule or other information or supporting record which understates its Gross Revenue by more than 2 percent, unless Franchisee demonstrates to Maui Wowi's satisfaction that the understatement or variance resulted from verifiable inadvertent error.

9.2.15 Franchisee submits reports more than five days late on four or more occasions during the term of this Agreement, or during the term of any successor franchise, unless due to circumstances beyond the control of Franchisee.

9.2.16 Franchisee signs a letter of intent related to a Permanent Site for an Operating Unit prior to submitting the required Site Submittal Workbook (as defined in the Operating Unit Rider) or other information or documentation required to be submitted pursuant to the Operating Unit Rider.

9.3 **Termination by Maui Wowi – 10-Day Cure Period.** Maui Wowi shall have the right to terminate this Agreement (subject to any state laws to the contrary, where state laws shall prevail), if Franchisee commits any of the following breaches and fails to cure the same within 10 days following Maui Wowi's written notice to Franchisee, in which case this Agreement will terminate without further notice to Franchisee, effective upon expiration of the 10-day period:

9.3.1 Franchisee fails or refuses to maintain and operate its MAUI WOWI Business in compliance with this Agreement, the System and the Library of Operating Manuals, other than in a manner that constitutes a default of **Sections 9.2 or 9.4**, including, but not limited to, failing to adhere to any remodeling or refurbishment requirements including updating its MAUI WOWI Operating Unit(s) to utilize the then current trade dress, at least once every five years, at Franchisee's expense.

9.3.2 Franchisee fails to obtain MAUI WOWI Products, MAUI WOWI Supplies and Equipment, or the MAUI WOWI Operating Units from Maui Wowi or its Affiliate or any other products, equipment or services from approved or designated suppliers or vendors.

9.3.3 Franchisee sells unapproved products or goods from or through the MAUI WOWI Operating Unit or Business or Franchisee participates in the unauthorized use of proprietary information.

9.3.4 Franchisee fails to pay for any MAUI WOWI Products, the MAUI WOWI Supplies and Equipment, any MAUI WOWI Operating Units, or fails to pay any fees or other amounts due to Maui Wowi, or any affiliate or assigns of Maui Wowi, or Franchisee fails to pay third parties for amounts related to the operation of its MAUI WOWI Business within the applicable time period. However, as long as financing from the United States Small Business Administration remains outstanding, Franchisee will be given the same opportunity to cure defaults under any agreement between Maui Wowi or its Affiliate and Franchisee, as Franchisee is given under this Agreement.

9.3.5 Franchisee fails to submit to Maui Wowi a report of Gross Revenue or other financial statement(s) required to be delivered to Maui Wowi by Franchisee, when due under **Section 7.10**, or fails to submit an Event Report (as defined in the Operating Unit Rider) when due as required under the Ka'anapali Cart or Event Concession Trailer Operating Unit Rider to the Franchise Agreement, or fails to submit any other report or statement to Maui Wowi or its Affiliate required by this Agreement or otherwise requested by Maui Wowi or its Affiliate, by its due date.

9.3.6 Franchisee denies Maui Wowi, or its designee, the right to inspect its Operating Unit(s) or Business operations at any Event, or any Permanent Site.

9.3.7 Franchisee fails to maintain insurance as required by Maui Wowi.

9.3.8 Franchisee fails to comply with any federal, state or local law or regulation applicable to the operation of the Business.

9.3.9 Franchisee closes the ACH Account or Franchisee's credit card account for the credit card provided on the Authorization for Credit Card Payments without Maui Wowi's consent, or closed the ACH Account or

credit card account with Maui Wowi's consent and fails within a reasonable time thereafter, not to exceed five business days, to establish another account and execute all documents necessary for Maui Wowi to process these payments by ACH for the new ACH Account or by credit card charges to the new credit card account.

9.3.10 Franchisee or the estate of Franchisee fails to make an authorized transfer within 120 days following Franchisee's death or permanent incapacity.

9.4 **Termination by Maui Wowi – 30-Day Cure Period.** Maui Wowi shall have the right to terminate this Agreement (subject to any state laws to the contrary, where state laws shall prevail), if Franchisee commits any of the following breaches and fails to cure the same within 30 days following Maui Wowi's written notice to Franchisee, in which case this Agreement will terminate without further notice to Franchisee, effective upon expiration of the 30-day period:

9.4.1 If Franchisee operates one or more Ka'anapali Carts or Event Concession Trailers and fails to order a minimum of \$3,000.00 of MAUI WOWI Products from Maui Wowi or its Affiliate for 360 days or longer.

9.4.2 If Franchisee operates one or more Fixed Kiosks or Retail Stores and fails to order a minimum of \$3,000.00 of MAUI WOWI Products from Maui Wowi or its Affiliate for 360 days or longer.

9.4.3 Franchisee fails to comply with any other term or condition in this Agreement not specifically listed in Sections 9.2 or 9.3 above.

9.5 **Termination by Franchisee.** Franchisee shall have the right to terminate this Agreement as the result of a material breach of this Agreement by Maui Wowi, provided Franchisee provides Maui Wowi with written notice of the breach and a reasonable opportunity to cure any breach, but in no event shall Maui Wowi have less than 30 days to cure any alleged material breach.

10. OBLIGATIONS OF FRANCHISEE UPON TERMINATION OR EXPIRATION

10.1 **Post-Termination Obligations.** Upon termination or expiration of this Agreement for any reason, Franchisee shall cease to be a licensed franchisee of Maui Wowi and shall:

10.1.1 Immediately pay Maui Wowi or its Affiliate for all purchases of MAUI WOWI Operating Units, MAUI WOWI Products, MAUI WOWI Supplies and Equipment, Marketing Fees, Royalty Fees, and other fees or charges owed to Maui Wowi or its Affiliate;

10.1.2 Grant Maui Wowi the option to purchase all or any part of Franchisee's inventory, equipment, Ka'anapali Carts, Event Concession Trailers, Fixed Kiosks, MAUI WOWI Products, MAUI WOWI Blends, signs and accessories and other personal property relating to the Business as set forth in Section 11.1 and abide by the terms thereof if Maui Wowi elects to exercise its option;

10.1.3 Not hold itself or any businesses associated with Franchisee out as a current or former MAUI WOWI franchisee;

10.1.4 Immediately cease to advertise or in any way use the System, Marks, MAUI WOWI Operating Units, MAUI WOWI Products, processes, materials, logos, methods, procedures, commercial property, symbols, or promotional materials provided by or licensed to Franchisee by Maui Wowi or in any way connected with the Business;

10.1.5 Remove all unique markings, colors, décor, Marks and other features ("Trade Dress") that identify each Ka'anapali Cart, Event Concession Trailer, Fixed Kiosk, Retail Store, and the Business as a MAUI WOWI Business; and otherwise take all necessary steps to disassociate itself from the System and Maui Wowi, including, but not limited to, the removal of signs and all Trade Dress, destruction of printed materials, changing of telephone listings, telephone numbers and the like and to assign and transfer the telephone listings, facsimile numbers, and Internet addresses used in the operation of the Business to Maui Wowi. Franchisee acknowledges that all telephone numbers, facsimile numbers, and Internet addresses used in the operation of its MAUI WOWI Business constitute assets of Maui Wowi; and upon termination or expiration of this Agreement, Franchisee shall take such action within five days as may be required to cancel or assign to Maui Wowi or its designee, all of Franchisee's right, title and interest in and to Franchisee's telephone numbers, facsimile numbers and Internet addresses, and shall notify the telephone company, all listing agencies, and all Internet service providers (ISP's) of the termination or expiration of Franchisee's right to use any telephone number, facsimile number, and Internet and e-mail addresses, and any regular, classified or other telephone directory listings

associated with the Marks, and to authorize a transfer of same to or at the direction of Maui Wowi. Franchisee irrevocably appoints Maui Wowi, with full power of substitution, as its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute all directions and authorizations as may be necessary or prudent to accomplish the obligations of this Section. This appointment is evidenced by Attachment IV;

10.1.6 Take all actions as shall be necessary to amend or cancel any assumed name, fictitious or business name or equivalent registration that contains any trade name or mark of Maui Wowi or in any way identifies Franchisee as being affiliated with the System;

10.1.7 Notify immediately all of its suppliers, utilities, Events coordinators, Permanent Site landlords, creditors and others with whom it has done business that Franchisee is no longer affiliated with Maui Wowi or the System and provide proof to Maui Wowi of this notification within five days of the termination or expiration of this Agreement;

10.1.8 Return to Maui Wowi by first class prepaid United States mail the Library of Operating Manuals, all training, advertising and promotional aids and materials and all other printed materials obtained by Franchisee from Maui Wowi pertaining to the operation of its MAUI WOWI Business; and

10.1.9 Furnish evidence satisfactory to Maui Wowi of compliance with this Section within 30 days after the termination or expiration of this Agreement.

10.2 **Acknowledgements.** Upon the termination or expiration of this Agreement for any reason, Franchisee acknowledges and agrees that:

10.2.1 No payment is due to Franchisee from any source for any claimed goodwill or other equity claimed by Franchisee based on Franchisee's operation or ownership of its MAUI WOWI Business, or otherwise; and

10.2.2 No fees, charges, Royalty Fees, Marketing Fees or other payments of any kind from Franchisee to Maui Wowi or its Affiliate are refundable wholly or partially, except as stated in **Section 4.2** above.

10.3 **Survival.** All of the provisions of this Agreement which by their terms or implication are to remain in force following the expiration or termination of this Agreement shall survive the termination or expiration of this Agreement.

11. PURCHASE OPTION

11.1 **Purchase Option.** Upon expiration or termination of this Agreement, Franchisee grants to Maui Wowi the right to acquire, in Maui Wowi's sole discretion, all or any part of Franchisee's inventory, equipment, Ka'anapali Carts, Event Concession Trailers, Fixed Kiosks, MAUI WOWI Products, MAUI WOWI Blends, signs and accessories and other personal property relating to the Business at the then existing fair market value as of the date of expiration or termination of this Agreement. If the fair market value is not agreed to by the parties, the fair market value will be established by an independent appraiser who, in turn, shall designate a third independent appraiser. The third appraiser's determination will be binding upon the parties. All expenses of the appraiser shall be paid for equally between Maui Wowi and Franchisee. No goodwill associated with the Business shall be considered in the valuation. If Franchisee is operating an Operating Unit at a Permanent Site, and Maui Wowi elects to exercise its option hereunder, the lease of the Permanent Site shall also be transferred to Maui Wowi. Maui Wowi must exercise its option within 30 days after the expiration or termination by giving written notice to Franchisee of its intent to exercise its option to purchase. Unless otherwise agreed by Franchisee, the purchase price as determined hereunder shall be paid in cash within 30 days after the notice of its election to exercise its option is sent by Maui Wowi to Franchisee. If Maui Wowi has not notified Franchisee of its election to exercise its option within the 30 day period following expiration or termination, it shall be conclusively presumed Maui Wowi elects not to exercise its option and Franchisee is then free to sell or transfer these assets to any person or entity on terms as Franchisee may so choose. Prior to any such sale, Franchisee must first take those steps required in Article 10 to remove all Trade Dress and Marks from any MAUI WOWI Operating Unit or equipment sold.

12. TRANSFERS OF THE FRANCHISE

12.1 **Transfer by Maui Wowi.** This Agreement and all rights hereunder are fully assignable and transferable by Maui Wowi, and if so assigned or transferred, shall be binding upon and inure to the benefit of Maui Wowi's successors and assigns.

12.2 **Transfer by Franchisee.** This Agreement is personal as to Franchisee, and is being entered into in reliance upon and in consideration of the qualifications and representations of Franchisee and Franchisee's present members, managers, partners, officers or directors, if Franchisee is a business entity. Therefore, neither this Agreement, nor any of its rights or privileges, nor any interest in Franchisee if it is a legal entity, shall be assigned, sold, transferred, or divided in any manner by Franchisee or anyone else unless the prior written approval of Maui Wowi is obtained. If Franchisee is transferring operating equipment and an ongoing business operation, said approval of Maui Wowi will not be unreasonably withheld, but shall be conditioned upon, among other things, that Franchisee is in good standing and the satisfaction of Maui Wowi with the character, business experience and credit rating of the proposed transferee and its members, managers, partners or officers and controlling stockholders, if it is a business entity. Franchisee shall not be allowed to transfer the rights contained in this Agreement without the accompanying operating equipment and ongoing business operation without Maui Wowi's advanced written permission, which may be granted or denied in Maui Wowi's sole discretion.

12.3 **Conditions to Transfer.** Upon any proposed transfer of the Business, Franchisee agrees to submit to Maui Wowi an application in the form specified by Maui Wowi for the proposed transferee. In determining the acceptability of the proposed transferee, Maui Wowi will consider, among other things, its then current standards for new franchise owners, including the net worth, creditworthiness, background, training, personality, reputation, and business experience of the proposed transferee. As a condition of Maui Wowi's approving the transfer of the Business, Franchisee shall pay to Maui Wowi a "Transfer Fee" equal to 25 percent of the then-current Initial Franchise Fee charged by Maui Wowi. In addition, if Maui Wowi identifies a buyer for Franchisee's Business, Franchisee shall pay to Maui Wowi a resale assistance fee of \$12,500.00 ("Resale Assistance Fee") to reimburse Maui Wowi for its reasonable legal, marketing, sales, accounting, credit and investigation expenses incurred as a result of the proposed transfer. The Transfer Fee and the Resale Assistance Fee are payable at the time of the approved transfer and are non-refundable. Prior to Maui Wowi approving of any proposed transfer, the following additional conditions shall be met:

12.3.1 Franchisee shall not be in default under this Agreement at the time Franchisee requests the right to transfer the franchise or at the time the Franchise is transferred. All accounts payable and other monetary obligations to Maui Wowi and its Affiliate shall be paid in full.

12.3.2 Franchisee shall agree to pay to have Franchisee's Operating Units refurbished under the refurbishment program as outlined in the Library of Operating Manuals and as modified by Maui Wowi periodically in Maui Wowi's discretion. Such modification must be completed within 45 days following the transfer, and the transferee may not begin to operate the MAUI WOWI Business at an Operating Unit until that Operating Unit is refurbished.

12.3.3 The terms and conditions of the proposed transfer, including all financial terms of the proposed transfer, shall be provided in writing to Maui Wowi at least 15 business days prior to the proposed effective date of the transfer, and approved in writing by Maui Wowi.

12.3.4 The transferee shall agree that all obligations of Franchisee in connection with the Business shall be assumed by the transferee.

12.3.5 The transferee shall have signed the then-current form of franchise agreement, which may contain terms that are significantly different than the terms set forth in this Agreement, and shall terminate at the end of the term of this Agreement.

12.3.6 The transferee shall pay a training fee of \$2,500.00 and complete Maui Wowi's on-site training program required of new franchise owners. Transferee is also responsible for all food, travel and lodging expenses of Maui Wowi for the two day on-site training.

12.3.7 Franchisee shall execute a general release in favor of Maui Wowi and its Affiliate of any claims it may have against Maui Wowi and its Affiliate, officers and directors relating to the Business, this Agreement, any agreement between Franchisee and Maui Wowi's Affiliate, and the franchise relationship between Maui Wowi and Franchisee.

12.4 **Maui Wowi's Assistance in Transfers.** Franchisee acknowledges and agrees that Maui Wowi assumes no responsibility, express or implied, to assist Franchisee in any way in selling or transferring Franchisee's MAUI WOWI Business, and that Maui Wowi may elect, in its sole discretion, to assist Franchisee or any other franchisee in the sale or transfer of a MAUI WOWI Business.

12.5 **Registration of Proposed Franchise Sale.** If Franchisee elects to attempt to sell its MAUI WOWI Business to an unaffiliated third party, Franchisee must first notify Maui Wowi in writing of its intention by completing the sales registration paperwork ("**Sales Registration Form**") as is required by Maui Wowi, in Maui Wowi's sole discretion, at least 45 days before Franchisee begins representing for sale its MAUI WOWI Business to unaffiliated third-parties ("**Sales Registration Period**"). Franchisee may seek a waiver or a reduction in the Sales Registration Period, which Maui Wowi may grant or deny in its sole discretion upon payment of a \$5,000.00 waiver fee.

12.6 **Transfer to an Entity.** If a proposed transfer only is among existing shareholders, partners, or members of a legal entity, or by an individual or partnership franchise owner to a corporation, limited liability company or other entity owned at least 60 percent by the pre-existing franchise owner or franchise owners, Maui Wowi shall not charge a Transfer Fee; nor shall Maui Wowi be entitled to exercise its right of first refusal. Each certificate evidencing an ownership of a legal entity shall have endorsed upon its face that assignment or transfer thereof is subject to the restrictions of this Agreement.

12.7 **Involuntary Transfers.** Involuntary transfers of this Agreement by Franchisee are not binding on Maui Wowi and are grounds for the termination of this Agreement. Franchisee agrees that using this Agreement as security for a loan, or otherwise encumbering this Agreement is prohibited, unless Maui Wowi specifically consents to any action in writing prior to the proposed transaction. Franchisee shall not grant a sub-franchise under this Agreement nor otherwise seek to license or permit others to use this Agreement or any of the rights derived by Franchisee under it. Any attempt to transfer this Agreement wholly or partially, or any material portion or property used by Franchisee in connection herewith, whether or not binding on Maui Wowi, shall be grounds for the termination of this Agreement, unless the transfer is authorized in writing by Maui Wowi.

12.8 **First Right of Refusal.**

12.8.1 Franchisee grants to Maui Wowi the right to acquire Franchisee's MAUI WOWI Business on the same terms and conditions specified in a bona fide written offer from a qualified third party, provided that Maui Wowi may substitute the cash equivalent for any portion of the purchase price to be paid by noncash consideration. Franchisee shall notify Maui Wowi in writing of the terms and conditions of each proposed sale, including: (i) the interest proposed to be transferred; (ii) the purchase price or other consideration; (iii) any financing terms being extended by Franchisee; (iv) the date of the proposed transfer; and (v) all other pertinent provisions of the proposed sale. In addition, a copy of any contract, agreement, memorandum of sale, deposit receipt, or letter of intent shall also be forwarded to Maui Wowi as soon as it is received by Franchisee. Following its receipt of all pertinent data and documents concerning the proposed transfer, including any additional data concerning the transaction requested by Maui Wowi from Franchisee, Maui Wowi shall have 30 days in which to advise Franchisee in writing of Maui Wowi's election to acquire the interest proposed to be transferred on the same terms and conditions agreed to by the prospective transferee. Should Maui Wowi elect to acquire the interest proposed to be transferred pursuant to its right of first refusal, Franchisee and Maui Wowi shall cooperate to consummate the transfer. The date for the completion of the transfer can be extended at Maui Wowi's option for up to 30 days beyond the date originally indicated for the completion of the transfer in order to allow the completion of the transaction in a manner more convenient to Maui Wowi. If Franchisee is an entity, then the above right of first refusal provisions shall apply to the sale, pledge, assignment, trade or transfer of ownership interests in the entity.

12.8.2 If Maui Wowi does not elect to purchase the interest proposed to be transferred, Franchisee may complete the proposed transfer on the terms and conditions set forth in its notice to Maui Wowi subject to Maui Wowi's right to approve the proposed transferee and the terms and conditions set forth under **Section 12.3** above. However, if there are any material changes in the terms and conditions of the proposed transfer after Franchisee notifies Maui Wowi of the proposed transfer, including any changes in the terms and conditions occurring after Maui Wowi notifies Franchisee of its election not to purchase the interest pursuant to its right of first refusal, and any of those changes are less favorable to Franchisee, Franchisee shall notify Maui Wowi of the changes in writing and Maui Wowi shall have an additional 10 days within which to elect to purchase the interest proposed to be transferred on the revised terms and conditions. If the proposed transfer is not completed for any reason after Maui Wowi elects not to purchase the interest being transferred, Maui Wowi's right of first refusal is reinstated as to any later proposed sales or transfers by Franchisee.

12.9 **Death or Disability.** Upon the death or incapacity of an individual Franchisee, or general partner of a Franchisee, the heirs or personal representative shall have the right to continue the Business, if, within 120 days of the death or incapacity (or any longer period required by the laws of the state where the franchise is located), the heirs appoint a representative to act for the heirs in all matters pertaining to Maui Wowi. The heirs or personal representative, instead of operating the franchise themselves under the procedures stated in this Agreement, may choose to transfer the Business. If such a decision is made, the transfer procedures set forth above will apply.

12.10 **Transfer by Court Order.** If a court of competent jurisdiction orders an individual Franchisee to transfer to his or her spouse all or any part of Franchisee's interest in the Business, or any of the Business assets, such an order shall constitute a transfer under the terms of this Agreement and shall cause the transferee to be subject to all of the terms and conditions concerning transfers set forth in this Agreement.

13. RELATIONSHIP OF THE PARTIES

13.1 **Independent Contractors.** Franchisee is an independent contractor. Nothing in this Agreement or in the franchise relationship constitutes Franchisee and Maui Wowi as partners or agents of, or joint venturers with each other. Neither party is liable for the debts, liabilities, taxes, duties, obligations, defaults, compliance, intentional acts, wages, negligence, errors or omissions of the other. The parties shall not hold themselves out by action or inaction contrary to this Section and shall indemnify each other for any liability, cost or expense including attorney fees, incurred by either of them for any act, omission, finding or result to the contrary. No employee of Franchisee shall be deemed an employee of Maui Wowi, and each employee shall be so notified. As used in this Agreement, Maui Wowi shall also mean Maui Wowi's predecessors and Affiliate, and Maui Wowi's officers, directors, shareholders, employees, agents or others with whose conduct Maui Wowi is chargeable. Neither party shall act or have the authority to act as the agent for the other, and neither Franchisee nor Maui Wowi shall guarantee the obligations of the other or in any way become obligated for the debts or expenses of the other unless otherwise agreed to in writing.

14. COVENANTS

14.1 **Non-Competition During Term.** Franchisee acknowledges that, in addition to the license of the Marks hereunder, Maui Wowi has also licensed commercially valuable information which comprises and is a part of the System, including proprietary processes, operations, marketing and related information and materials and that the value of this information derives not only from the time, effort and money which went into its compilation, but from the usage of the same by all franchisees of Maui Wowi using the Marks and System. Franchisee therefore agrees that other than the Business licensed in this Agreement, neither Franchisee, any Manager of the Business nor any of Franchisee's officers, directors, shareholders, partners, members or managers, nor any member of his, her or their immediate families, will during the term of this Agreement:

14.1.1 have any direct or indirect controlling interest as a disclosed or beneficial owner in a "Competitive Business" as defined below;

14.1.2 perform services as a director, officer, partner, manager, employee, consultant, representative, agent or otherwise for a Competitive Business; or

14.1.3 divert or attempt to divert any business related to, or any customer or account of the Business, Maui Wowi's business, any Affiliate's business, or any franchised Business of another franchisee licensed by Maui Wowi to use the Marks and System, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of Maui Wowi or another franchisee licensed by Maui Wowi to use the Marks and System, to any Competitive Business by any direct inducement or otherwise.

The term "**Competitive Business**" as used in this Agreement will mean any business offering, or granting franchises or licenses to others to offer, fruit beverages, espresso beverages or any other products or services offered by MAUI WOWI Businesses; however, Franchisee, its owners, members, partners, principals, and if an individual, members of his or her immediate family, will not be prohibited from owning securities in a Competitive Business if such securities are listed on a stock exchange or traded on the over-the-counter market and represent in the aggregate 2 percent or less of that class of securities issued and outstanding.

14.2 **Post-Termination Covenant Not to Compete.** Upon termination or expiration of this Agreement for any reason, Franchisee and its officers, directors, shareholders, or partners agree that, for two years commencing on the effective date of termination or expiration, or the date on which Franchisee ceases to conduct business, whichever is later, neither Franchisee, any Manager of the Business, nor Franchisee's officers, directors, shareholders, managers, members or partners will have any direct or indirect interest (through any immediate family member of Franchisee or its owners or otherwise) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent or in any other capacity in a Competitive Business, as defined above, located or operating (i) within a 5-mile radius of each of the Permanent Sites of Franchisee's Operating Units or within a 5-mile radius of the Permanent Site of any other franchised or company-owned MAUI WOWI Business; or (ii) at the same Event(s), wherever located, that Franchisee served through its former MAUI WOWI Business or at any other Events, wherever located, served by any franchised or company-owned MAUI WOWI Business. The restrictions of this Section will not be applicable to the

ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 2 percent or less of the number of shares of that class of securities issued and outstanding. Franchisee and its officers, directors, shareholders, managers, members or partners expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting those skills. Consequently, enforcement of the covenants made in this Section will not deprive them of their personal goodwill or ability to earn a living.

14.3 Post-Termination Restriction on Solicitation of Business or Employees. Upon termination or expiration of this Agreement for any reason, Franchisee and its officers, directors, shareholders, or partners agree that, for two years commencing on the effective date of termination or expiration, or the date on which Franchisee ceases to conduct business, whichever is later, neither Franchisee, any Manager of the Business, nor Franchisee's officers, directors, shareholders, managers, members or partners shall divert or attempt to divert any business related to, or any customer or account of the Business, Maui Wowi's business, any Affiliate's business, or any franchised Business of another franchisee licensed by Maui Wowi to use the Marks and System, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of Maui Wowi or another franchisee licensed by Maui Wowi to use the Marks and System, to any Competitive Business by any direct inducement or otherwise.

14.4 Confidentiality of Proprietary Information. Franchisee will treat all information it receives which comprises or is a part of the System licensed hereunder as proprietary and confidential and will not use this information in an unauthorized manner or disclose the same to any unauthorized person without first obtaining Maui Wowi's written consent. Franchisee acknowledges that the Marks and the System have valuable goodwill attached to them, that the protection and maintenance thereof is essential to Maui Wowi, and that any unauthorized use or disclosure of the Marks and System will result in irreparable harm to Maui Wowi.

14.5 Prohibition Against Reshipment. Franchisee shall not in any manner reship, transship, distribute or sell any MAUI WOWI Blends or MAUI WOWI Products or other items purchased from or through Maui Wowi or its Affiliate to any reseller of said items, including other MAUI WOWI franchisees or licensees. Franchisee shall sell items purchased from or through Maui Wowi and its Affiliate only to consumers using a MAUI WOWI Operating Unit pursuant to an Operating Unit Rider signed by Maui Wowi and Franchisee and only from or through Franchisee's MAUI WOWI Business.

14.6 Interpretation. ALL PARTIES TO THIS AGREEMENT ACKNOWLEDGE THAT THIS ARTICLE HAS BEEN FULLY NEGOTIATED AND HAS BEEN ENTERED INTO FREELY. If any provision of this Article shall be held to be invalid by any tribunal, the terms of said invalid provision shall be modified to the least possible extent to make the provision valid. This Article shall not be interpreted against either party as drafter.

14.7 Confidentiality Agreement. Maui Wowi reserves the right to require that Franchisee cause each of its officers, directors, partners, shareholders, managers, members, Managers, employees and, if Franchisee is an individual, immediate family members, to execute a Nondisclosure and Noncompetition Agreement containing the above restrictions in the form required by Maui Wowi.

15. DISPUTE RESOLUTION

15.1 Mediation. Except for controversies, disputes or claims related to or based on the Marks or the enforcement of covenants not to compete, which may immediately be brought in a court permitted in accordance with **Section 15.5** below, all controversies, disputes or claims (collectively "**Claims**" or individually a "**Claim**") between Maui Wowi, its officers, directors, shareholders, sales people, subsidiaries and Affiliate and their shareholders, officers, directors, agents, employees and attorneys (in their respective capacities) and Franchisee (and its owners and guarantors, if applicable) arising out of or related to: (i) this Agreement or any other agreement between the parties or any provision of the agreements; (ii) the relationship of the parties to this Agreement; (iii) the validity of this Agreement or any other agreement between the parties or any provision of the agreements; or (iv) any part of the System, shall first be submitted by the parties to non-binding mediation before the Judicial Arbitrator Group ("**JAG**") located in Denver, Colorado to be conducted at the offices of Maui Wowi or JAG in Denver, Colorado. The cost of the mediator shall be split equally among the parties with each party bearing its own costs related to the mediation, including attorneys' fees. The parties agree to in good faith attempt to resolve the Claim through mediation. If the parties are unable to resolve a Claim through mediation, then **Section 15.2** shall apply.

15.2 Arbitration. Except for controversies, disputes or claims related to or based on the Marks or the enforcement of covenants not to compete, if any Claim is not resolved by mediation, it shall be submitted for final and binding arbitration to the Denver, Colorado office of JAG on demand of either party. Such arbitration proceedings shall be conducted in Denver, Colorado, and shall be heard by one arbitrator in accordance with the then current Commercial

Arbitration Rules of JAG. The arbitrator shall be a resident of the State of Colorado and fluent in English. Any party to an arbitration proceeding may apply to the arbitrator for reasonable discovery from the other. In this Agreement, "reasonable discovery" means a party may submit no more than 10 interrogatories, including subparts, 25 requests for admission, 25 document requests, and three depositions per side of the dispute. The foregoing discovery rights and limitations shall control over any contradictory discovery rules of JAG, unless the parties agree otherwise.

15.3 **Scope of Arbitration.** The arbitrator shall have the right to award or include in the award any relief which he or she deems proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, and attorneys' fees and costs, in accordance with Section 16.4 of this Agreement, provided that the arbitrator shall not award exemplary or punitive damages. The award and decision of the arbitrator shall be conclusive and binding upon all parties to this Agreement and judgment upon the award may be entered in any court of competent jurisdiction. Each party waives any right to contest the validity or enforceability of such award. Maui Wowi and Franchisee agree that, in connection with any arbitration proceeding, each shall file any compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within 30 days after the date of the filing of the claim to which it relates. This provision shall continue in full force and effect following and notwithstanding the expiration or termination of this Agreement.

15.4 **Limitations on Proceedings.**

15.4.1 Maui Wowi and Franchisee agree that mediation and arbitration will be conducted on an individual basis only. Neither party shall commence any mediation or arbitration with a third party against the other, or join with any third party in any mediation or arbitration involving Maui Wowi and Franchisee. Further, neither Maui Wowi nor Franchisee shall attempt to consolidate or otherwise combine in any manner a mediation or arbitration proceeding involving Maui Wowi and Franchisee with another mediation or arbitration of any kind, nor shall Maui Wowi or Franchisee attempt to certify a class or participate as a party in a class action against the other.

15.4.2 The foregoing notwithstanding, in the event Franchisee controls, is controlled by, or is in active concert with another franchisee of Maui Wowi, or there is a guarantor of some or all of the Franchisee's obligations to Maui Wowi, then the joinder of those parties to any mediation or arbitration between Maui Wowi and Franchisee shall be permitted, and in all events, the joinder of an owner, director, officer, manager, partner or other representative or agent of Maui Wowi or Franchisee shall be permitted.

15.5 **Governing Law/Consent to Venue and Jurisdiction.** All Claims between Maui Wowi and Franchisee shall be governed by the Federal Arbitration Act ("FAA") and no procedural arbitration issues are to be resolved pursuant to any state statutes, regulations or common law. Except to the extent governed by the FAA, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 *et seq.*) or other federal law, this Agreement shall be interpreted under the laws of the state of Colorado and any dispute between the parties shall be governed by and determined in accordance with the substantive laws of the state of Colorado, which laws shall prevail if there is any conflict of law. Franchisee and Maui Wowi have negotiated regarding a forum in which to resolve any disputes which may arise between them and have agreed to select a forum in order to promote stability in their relationship. Therefore, if a claim is asserted in any legal proceeding involving Franchisee, its officers, directors, managers or partners (collectively, "Franchisee Affiliates") and Maui Wowi, its Affiliates and their respective officers, directors and sales employees (collectively, "Maui Wowi Affiliates"), the parties agree that the exclusive venue for disputes between them shall be in the state and federal courts of Colorado or the Denver, Colorado office of JAG and each party waives any objection they may have to the personal jurisdiction of or venue in the state and federal courts of Colorado or the Denver, Colorado office of JAG. Maui Wowi, Maui Wowi Affiliates, Franchisee and Franchisee Affiliates each waive their rights to a trial by jury.

15.6 **Injunctive Relief.** Notwithstanding the above mediation and arbitration provisions, Maui Wowi and Franchisee will each have the right in a proper case to seek injunctive relief and any damages incidental thereto from a court of competent jurisdiction. Franchisee agrees that Maui Wowi may obtain this injunctive relief, without posting a bond or bonds in excess of a total of \$1,000.00, but upon due notice, and Franchisee's sole remedy in the event of the entry of any injunctive relief will be the dissolution of the injunctive relief, if warranted, upon hearing duly had; however, all claims for damages by reason of the wrongful issuance of any such injunction are expressly waived by Franchisee. Any such action will be brought as provided in Section 15.4 above and the prevailing party shall be entitled to its costs and attorneys' fees.

15.7 **Limitations on Actions.** Except for payments owed by one party to the other, and unless prohibited by applicable law, any legal action or arbitration proceeding brought or instituted regarding any dispute based on or related to this Agreement or regarding any breach of the terms of this Agreement must be brought or instituted within a period of

two years from the date of discovery of the conduct or event that forms the basis of the legal action or proceeding or the applicable limitation on the period of time by which claims must be brought under applicable law, whichever is less.

15.8 Alternative Dispute Resolution. Without limiting any of the foregoing, Maui Wowi reserves the right, at any time, to create a dispute resolution program and related specifications, standards, procedures and rules for the implementation thereof to be administered by Maui Wowi or its designees for the benefit of all franchisees conducting business under the System. The standards, specifications, procedures and rules for the dispute resolution program shall be made part of the Library of Operating Manuals, and Franchisee shall comply with all the standards, specifications, procedures and rules in seeking resolution of any claims, controversies or disputes with or involving Maui Wowi or other franchisees, if applicable under the program. If Maui Wowi, in its sole discretion, makes the dispute resolution program mandatory, Franchisee, Franchisee's owners, and Maui Wowi agree to submit any claims, controversies or disputes arising out of or regarding this Agreement (and Attachments, Exhibits and Riders) or the relationship created by this Agreement for resolution in accordance with the dispute resolution program prior to, or in lieu of, seeking resolution of such claims, controversies or disputes in the manner described in this Article 15 (but the provisions of Section 15.6 concerning Maui Wowi's and Franchisee's right to seek relief in a court for certain actions including for injunctive or other extraordinary relief shall not be superseded or affected by this Section) or if such claim, controversy or dispute relates to another franchisee, Franchisee and Franchisee's owners agree to participate in the program and submit any such claims, controversies or disputes in accordance with the program's standards, specifications, procedures and rules, prior to seeking resolution of such claim by any other judicial or legally available means.

16. MISCELLANEOUS

16.1 Waiver. Waiver by Maui Wowi of any particular default by Franchisee shall not affect or impair Maui Wowi's rights regarding any later default by Franchisee or any of Maui Wowi's rights to declare the same or later acts a breach or default.

16.2 Modifications. No modification of any term of this Agreement shall be valid unless made in writing and executed by both Maui Wowi and Franchisee; however, the Library of Operating Manuals may be modified by Maui Wowi, and shall be fully enforceable against Franchisee.

16.3 Notices. All notices permitted or required under this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated (i) by personal delivery upon delivery by any courier or overnight delivery service upon written verification of receipt, (ii) by facsimile transmission when confirmed by facsimile transmission log or verification report, or (iii) by certified or registered mail, return receipt requested, five days after deposit in the mail, addressed, if to Maui Wowi, at the address set forth at the beginning of this Agreement, and, if to Franchisee, at the Principal Business Address, or at such other addresses as Maui Wowi or Franchisee may designate from time to time.

16.4 Attorneys' Fees and Costs.

16.4.1 Subject to Section 16.4.2 below, Franchisee shall reimburse Maui Wowi for its costs and expenses, including, without limitation, attorneys' fees, which Maui Wowi incurs in pursuit of its rights following a breach or event of default of or by Franchisee whether or not the pursuit of rights involves litigation or arbitration.

16.4.2 The prevailing party in any litigation or arbitration action arising out of, or related to, this Agreement (including an action to compel arbitration) is entitled to recover all of its reasonable costs and expenses incurred in the action, including reasonable accounting, expert witness, attorneys' and arbitrator's fees, and costs of collecting monies owed, in addition to all other amounts and damages awarded. If both parties are awarded a judgment in any dollar amount, the court or arbitrator, as applicable, shall determine the prevailing party taking into consideration the merits of the claims asserted by each party, the amount of the judgment received by each party, and the relative equities between the parties.

16.5 Headings; Construction. Headings used in this Agreement are for reference and convenience purposes only and are not to be used in construing the provisions of this Agreement. As used in this Agreement, the male or female gender shall include the other and the neuter. The singular shall include the plural and the plural shall include the singular as appropriate.

16.6 Beneficiaries. The parties intend to confer no benefit or right on any person or entity not a party to this Agreement and no third parties shall have any right or claims, benefit or right as a third party beneficiary under this Agreement or any provision hereof. Similarly, Franchisee is not entitled to claim any rights or benefits including those of

a third party beneficiary, under any contract, understanding or agreement between Maui Wowi and any other person or entities, unless that contract, understanding or agreement specifically refers to Franchisee by name or to a class which Franchisee belongs and specifically grants rights or benefits to Franchisee or to the concerned class.

16.7 **Entity Authority.** If Franchisee is an entity, the person or persons signing this Agreement for Franchisee warrant to Maui Wowi that he, she or they have the requisite corporate authority to sign this Agreement. At the request of Maui Wowi, the concerned entity signatory agrees to promptly provide Maui Wowi with a certified copy of the resolution or other document authorizing the execution of this Agreement and naming the officers or other positions of the entity who are authorized to sign this Agreement for the entity.

16.8 **Payments.** Maui Wowi may, in writing, unilaterally waive any obligation or requirement of Franchisee under this Agreement. No payment by Franchisee or receipt by Maui Wowi of any amount less than that required to be paid under this Agreement, or otherwise, to Maui Wowi or any person or entity affiliated with Maui Wowi, shall be deemed to be anything except payment on account, regardless of any endorsement to the contrary contained on any such payment or in any oral or written communication transmitted in connection therewith.

16.9 **Set Off.** Franchisee shall not be allowed to set off amounts owed to Maui Wowi for Royalty Fees, Marketing Fees, Product purchases, Operating Unit and other equipment purchases, fees or other amounts due hereunder, against any monies owed to Franchisee, nor shall Franchisee in any event withhold any amounts due to any alleged nonperformance by Maui Wowi hereunder, which right of set off is expressly waived by Franchisee. Maui Wowi shall be allowed to set off amounts owed to Franchisee against monies owed to Maui Wowi by Franchisee.

16.10 **Joint and Several Liability.** If two or more persons, corporations, partnerships or other entities or any combination thereof, sign this Agreement, the liability of each shall be joint and several. All shareholders of a corporation, members of a limited liability company, all parties of a general partnership and all members of any association or other unincorporated entity which constitute or comprise Franchisee hereunder, are jointly and severally liable for the performance of Franchisee hereunder.

16.11 **Successors In Interest.** This Agreement is binding upon the heirs, administrators, personal representatives, assigns and successors in interest to the parties to this Agreement.

16.12 **Integration.** The parties intend this Agreement and all attached Attachments, Exhibits and Riders to be the full and complete agreement between Maui Wowi and Franchisee and the entire integration of all their understandings of every nature concerning the matters contained in this Agreement or in any way related thereto, whether occurring before or contemporaneously with the execution of this Agreement. No agreements, representations, negotiations, promises, commitments, inducements, assurances, terms, conditions, or covenants of any nature exist between the parties except as specifically set forth in this Agreement, whether pertaining to this Agreement or to any future, further or additional rights of the parties. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing.

16.13 **Invalidity.** If any provision of this Agreement is held invalid by any tribunal in a final decision from which no appeal is or can be taken, such provision shall be deemed modified to eliminate the invalid element and, as so modified, such provision shall be deemed part of this Agreement as though originally included. The remaining provisions of this Agreement shall not be affected by such modifications.

16.14 **Cross-Default and Cross Termination Provisions.**

16.14.1 A default by Franchisee under this Agreement will be deemed a default of all agreements between Franchisee and Maui Wowi. A default by Franchisee under any other agreement between Franchisee and Maui Wowi will be deemed a default under this Agreement. A default by the guarantor(s) of this Agreement or any other agreement of guaranty, will be deemed a default of this Agreement.

16.14.2 If this Agreement is terminated as a result of a default by Franchisee, Maui Wowi may, at its option, elect to terminate any or all other agreements between Franchisee and Maui Wowi. If any other agreement between Franchisee and Maui Wowi is terminated as a result of a default by Franchisee, Maui Wowi may, at its option, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement between Franchisee and Maui Wowi will be grounds for termination of this Agreement and/or all agreements between Franchisee and Maui Wowi without additional notice or opportunity to cure.

16.15 **Acknowledgment.** BEFORE SIGNING THIS AGREEMENT, FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. FRANCHISEE REPRESENTS, COVENANTS, AGREES AND ACKNOWLEDGES THAT:

16.15.1 NEITHER MAUI WOWI NOR ITS AGENTS HAVE MADE ANY REPRESENTATIONS OR WARRANTIES CONCERNING FRANCHISEE'S SUCCESS AS A FRANCHISEE AND MAUI WOWI DISCLAIMS ANY WARRANTY OR REPRESENTATION AS TO THE POTENTIAL SUCCESS OF THE BUSINESS OPERATIONS UNDER THIS AGREEMENT.

16.15.2 THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED IN THIS AGREEMENT INVOLVES SUBSTANTIAL RISK AND DEPENDS UPON FRANCHISEE'S ABILITY AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS; AND

16.15.3 NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS STATED IN THIS DOCUMENT, IS BINDING ON MAUI WOWI IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

The parties have executed this Agreement to be made effective as of the ___ day of _____, 20__.

MAUI WOWI:

FRANCHISEE:

MAUI WOWI FRANCHISING, INC.

By: _____
Title: _____
Date: _____

_____ Individually
Print Name: _____
Date: _____

OR, if a corporation, partnership or other business entity:

_____ Company Name

By: _____
Title: _____
Date: _____