

FRANCHISE AGREEMENT

THIS AGREEMENT made effective the _____ day of _____, _____.

BETWEEN:

FRANCHISOR
(the "Franchisor")

- and -

FRANCHISEE
(the "Franchisee")

- and -

GUARANTOR
the "Guarantor")

WHEREAS:

- A. The Franchisor has developed a system (the "System") for the operation of distinctive fast food restaurants for the preparation and sale of foods and other related products;
- B. The System is comprised of a variety of components, which includes but is not limited to unique methods of and procedures for food preparation and presentation, formulae and recipes proprietary to the Franchisor, specialized equipment for the timely and efficient production and preparation of food, unique premises design and décor elements, proprietary marks, unique food and merchandise products, training and staffing programs, and standards of quality and performance;
- C. The Franchisor carries on its business under the trade name and other proprietary identifying marks used in relation to and in connection with its business and is the owner of the trade mark(s);
- D. By utilizing its unique System, the Franchisor has established an excellent business reputation, and created a significant demand for its products;
- E. The Franchisee desires to acquire from the Franchisor a limited license to operate a restaurant utilizing the System, upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree that:

1. Definitions

"Franchised Business" means the fast food restaurant to be operated by the Franchisee under the trade name "_____" on the Premises (as hereinafter defined), pursuant to the provisions of this Agreement;

"Franchise Year" means thirteen (13) consecutive four-week periods, as the Franchisor may determine from time to time, provided that any change shall not increase the Franchisee's liability for any amounts payable under this Agreement;

"Gross Sales" means the aggregate amount of sales of all Products and all other receipts or receivables whatsoever from all business conducted upon or originating from the Premises, without deduction for uncollected or uncollectable credit accounts and without allowances for bad debts. Gross Sales shall include the amount of all sales assumed to have been lost by any interruption of business at the Premises,

to be determined on the basis of proceeds of any business interruption insurance paid or payable to the Franchisee or other occupiers of the Premises. Gross Sales shall not include:

- 16 any taxes imposed by federal, provincial or municipal taxing authorities directly on sales and collected from customers if such tax is added to the selling price and actually paid by the Franchisee to such taxing authority;
- 17 the amount of refunds or credit given in respect of any Products returned or exchanged by a customer for which a refund of all or part of the purchase price is made or for which a credit is given, provided that the selling price thereof was included in Gross Sales; and
- 18 the amount of any credit granted by the Franchisor to the Franchisee under any coupon redemption or similar promotion.

Each charge or sale upon instalment or credit shall be treated as a sale for the full sale price in the week during which such charge or sale was actually made, notwithstanding that the Franchisee may not have collected payment therefor during the week such charge or sale was actually made;

“Initial Term” means the ____ year term provided for hereinafter;

“Interest Rate” means a rate of interest equal to the lesser of __% per month (____% per annum) or the maximum rate of interest permitted by law;

“Manual” means, collectively, all books, recipes, pamphlets, bulletins, memoranda, operations manuals, notices or other publications or documents prepared by the Franchisor for use by its franchisees generally or for the Franchisee in particular, containing information, advice, standards, requirements, operating procedures, instructions or policies relating to the operation of the Franchisor’s franchised businesses, as may be amended from time to time;

“Marks” means the trade marks, trade names, logos and other related commercial symbols as set forth in Schedule “A” hereto, including the trade name , together with such other trade names, trade marks, symbols, logos, distinctive names, service marks, certification marks, designs, insignia or otherwise which may be designated by the Franchisor as part of the System from time to time, and not thereafter withdrawn;

“Monthly Period” means each four-week period into which a Franchise Year is divided;

“Premises” means the Premises at which the Franchised Business is to be located, as described in Schedule “B” hereto;

“Products” means all foods, beverages, wares, merchandise, supplies, accessories and items dispensed and sold, and all services performed at or from the Premises.

2. Grant of Franchise

Subject to the provisions of this Agreement, the Franchisor hereby grants to the Franchisee a non-exclusive right to operate the Franchised Business at the Premises, and a non-exclusive licence to use the System and Marks solely and exclusively in the operation thereof. Termination or expiration of this Agreement shall constitute a termination or expiration of the rights and licence granted herein.

3. Term

3.1 **Initial Term.** The term of this Agreement shall commence on the date hereof, and shall expire either on the _____ anniversary date hereof or on the expiration of the Franchisee's lease or sublease of the Premises, whichever date shall be the earlier, unless terminated earlier in accordance with the provisions of this Agreement.

3.2 **Renewal.** If throughout the Initial Term the Franchisee shall have fully complied with all of the terms and conditions of this Agreement and with the operating standards and criteria established by the Franchisor for the Franchised Business, the Franchisee shall have the option to renew this Agreement for one (1) renewal term. Such renewal term shall commence on the expiry of the Initial Term of this

Agreement and end on the earlier of the ____ anniversary thereof, or on the expiry of the Franchisee's lease or sublease of the Premises, unless terminated earlier in accordance with the terms and conditions of this Agreement. Such renewal shall not require any payment of a renewal franchise fee, but shall be subject to the Franchisee having complied with the following terms and conditions prior to the expiration of the Initial Term:

- (a) the Franchisee shall give the Franchisor ____ weeks' / months' written notice of his desire to exercise the renewal option herein provided for prior to the expiration of the Initial Term;
- (b) the Franchisee shall do or cause to be done all such things as the Franchisor may require to ensure that the Franchised Business satisfies the then current image, standards and specifications established by the Franchisor for new franchises in the System whether or not such image, standards or specifications reflect a material change in the System in effect during the Initial Term. Without limiting the generality of the foregoing, the Franchisee shall make such capital expenditures as required to refurbish and renovate the Premises and all fixtures, furnishings, equipment and signs therein or thereon in order to bring the Premises up to such standards and specifications;
- (c) the Franchisee shall provide the Franchisor with satisfactory evidence that the Franchisee is not in default of any provision of the lease or sublease for the Premises and that it has the right to remain in possession of the Premises for the renewal term hereunder;
- (d) the Franchisee shall reimburse the Franchisor for all reasonable legal fees and other costs and expenses incurred by it with respect to the Franchisee's exercise of the renewal option herein provided for; and
- (e) at the commencement of the renewal term, the Franchisee shall, at the option of the Franchisor, execute a new franchise agreement in the form then in current use by the Franchisor, notwithstanding that such new franchise agreement may contain different royalty rates and levels of contributions than those contained in this Agreement, and shall execute such further and other documents as are customarily required by the Franchisor in the granting of franchises. If the Franchisor elects not to execute such new franchise agreement, all of the provisions contained in the franchise agreement in effect immediately prior to the commencement of such renewal term shall remain in force during such renewal term. except for any further right of renewal.

4. Franchise Fee and Continuing Royalty

4.1 **Initial Fee.** In consideration of the Franchisor granting the Franchisee the franchise hereunder, the Franchisee shall pay to the Franchisor, forthwith upon the execution of this Agreement, an initial one-time non-refundable franchise fee in the amount of \$_____. The Franchisee shall not be entitled to a refund of any part of the initial franchise fee, regardless of the date of termination of this Agreement.

4.2 **Continuing Royalty.** The Franchisee shall pay to the Franchisor throughout the term of this Agreement a royalty of ____% of Gross Sales for each Monthly Period, such royalties to be payable in arrears on or before the _____ day of the month immediately following the expiry of the Monthly Period for which payment is being made, including the _____ day following the final Monthly Period of the term.

5. Advertising

5.1

- (a) The Franchisee shall, in each year of the Initial Term and any renewal term, spend on advertising and promotions an amount not less than ____% of Gross Sales in each Franchise Year and such amount as may be required to be expended for such purposes by the lease or sublease for the Premises.
- (b) The Franchisee shall have the right to conduct such advertising and promotions in respect of the Franchised Business as the Franchisee shall, in its reasonable discretion desire, provided that:

- (i) any such advertising and promotion shall be done in such a manner that will reflect favourably on the Franchisor, the Franchisee, and the Products and on the good name, good will and reputation thereof;
- (ii) prior to utilizing any advertising or promotions, the Franchisee shall submit the same to the Franchisor for its approval, which approval shall not be unreasonably withheld or unduly delayed;
- (iii) the Franchisee shall prominently display, at its expense, in and upon the Premises signs of such nature, form, colour, number, location and size and containing such promotional material as the Franchisor may direct or approve in writing from time to time.

5.2 The Franchisor may maintain and administer a general advertising fund (the "Fund") for such national, regional and other advertising programs as the Franchisor may deem necessary or appropriate, which programs the Franchisor shall direct in its sole discretion with respect to the creative concepts, materials, endorsement and media used therein, and the placement and allocation thereof. Upon the establishment of the Fund by the Franchisor, the Franchisor shall have the right to request the Franchisee to contribute to the Fund in each Franchise Year an amount equal to ____% of the Gross Sales for such Franchise Year. Any contributions to be made to the Fund shall be paid together with the royalty fees hereunder and shall be based upon Gross Sales for the preceding Monthly Period. The Fund shall be used to pay for media costs, advertising rates and commissions, market research costs, production costs, artwork, printing costs, and other costs relating to advertising and promotional programs undertaken by the Franchisor. The Franchisor reserves the right to place and develop such advertisements and promotions and to market the same as agent for and on behalf of the Franchisee, either directly or through one or more advertising agencies. The Fund shall not be used to defray any of the Franchisor's general operating expenses, except for such reasonable salaries, administrative costs and overhead (calculated on a fully allocated basis), if any, as the Franchisor may incur in activities demonstrably related to the administration or direction of the Fund and its advertising programs (including, without limitation, conducting market research). A statement of the operations of the Fund shall be prepared annually and shall be made available to the Franchisee upon request, the cost of such statement to be paid by the Fund.

The Franchisee acknowledges and agrees that the Fund is intended to maximize general public recognition and restaurant patronage for the benefit of all franchisees in the System and that the Franchisor undertakes no obligation in administering the Fund to ensure that any particular franchisee, including the Franchisee, benefits directly or pro rata from such advertising and promotion. Except as expressly provided in this paragraph, the Franchisor assumes no direct or indirect liability or obligation to the Franchisee with respect to the maintenance, direction or administration of the Fund.

THIS IS A 20-PAGE AGREEMENT.