

## FRANCHISE DISCLOSURE DOCUMENT



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The franchises described in this disclosure document are for the establishment and operation of two types of restaurants that, under the name Tim Hortons, sell coffee and other non-alcoholic beverages, baked goods, soups, sandwiches, and related products. In addition, a limited number of restaurants, most of which will be existing Tim Hortons franchisees, may be offered the opportunity to supplement their restaurant's product mix by also selling selected Cold Stone Creamery products in addition to their Tim Hortons product offerings (each a "**Co-Branded Restaurant**").

The total investment necessary to begin operation of a Tim Hortons franchise (excluding real property) ranges from \$48,450 to \$1,018,200 for a Kiosk, and from \$546,800 to \$1,690,300 for a Standard Restaurant. This includes \$14,800 to \$624,800 for a Kiosk and \$357,000 to \$809,400 for a Standard Restaurant that must be paid to the franchisor or an affiliate, plus up to \$17,500 for each additional Tim Hortons Restaurant that you agree to develop under an Area Development Agreement.

The total investment necessary to begin operation of a Co-Branded Restaurant franchise (excluding real property) ranges from \$732,000 to \$1,661,400 for a newly-built Co-Branded Restaurant and from \$115,300 to \$195,100 for a Tim Hortons restaurant that is renovated to become a Co-Branded Restaurant. This includes \$505,500 to \$708,400 for a newly-built Co-Branded Restaurant and \$93,700 to \$200,100 for a Tim Hortons restaurant that is renovated to become a Co-Branded Restaurant that must be paid to the franchisor or an affiliate.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, you may contact Ms. Sarah Todman at 4150 Tuller Road, Suite 236, Dublin, Ohio 43017; telephone: (614) 791-4200.

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read your entire contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

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

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

The issuance date of this Franchise Disclosure Document is April 1, 2014, as amended December 19, 2014.

## STATE COVER PAGE

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

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

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

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

1. THE FRANCHISE AGREEMENT AND AREA DEVELOPMENT AGREEMENT PERMIT YOU TO LITIGATE ONLY IN THE COURT COVERING THE LOCATION AT WHICH WE HAVE OUR PRINCIPAL PLACE OF BUSINESS WHEN THE LITIGATION IS COMMENCED. CURRENTLY, THIS LOCATION IS DUBLIN, OHIO. OUT-OF-STATE LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO LITIGATE WITH US IN OHIO THAN IN YOUR HOME STATE.
2. THE FRANCHISE AGREEMENT AND AREA DEVELOPMENT AGREEMENT STATE THAT THE LAW OF OHIO GOVERNS THE AGREEMENTS, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

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

Effective Date: See next page for state effective dates.

### **STATE EFFECTIVE DATES**

The following states require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

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

<b>STATE</b>	<b>EFFECTIVE DATE</b>
California	December 19, 2014
Hawaii	
Illinois	December 19, 2014
Indiana	December 19, 2014
Maryland	December 19, 2014
Michigan	December 19, 2014
Minnesota	
New York	December 19, 2014
North Dakota	December 19, 2014
Rhode Island	December 19, 2014
South Dakota	December 19, 2014
Virginia	
Washington	December 19, 2014
Wisconsin	

In all other states, the effective date of this Franchise Disclosure Document is the Issuance Date of April 1, 2014, as amended December 19, 2014.

**FRANCHISE DISCLOSURE DOCUMENT**

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**TIM HORTONS USA INC.**

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

**The Franchisor**

In this disclosure document “**Tim Hortons**,” “**we**,” and “**us**,” refers to Tim Hortons USA Inc. (“THUSA”). “**You**,” and “**your**” refers to the person or entity who becomes a franchisee. If the franchisee is not an individual, “you” will refer to the franchisee entity and not the individual, unless otherwise noted.

THUSA was incorporated in Delaware in June, 2007. Our principal business address is 4150 Tuller Road, Suite 236, Dublin, Ohio 43017. We franchise restaurants that sell coffee and other non-alcoholic beverages, baked goods, soup, sandwiches, and related products through predecessor companies as described below. We first offered franchises for a brief period in the mid 1980s and, after discontinuing franchising activities for several years, we again began offering franchises in 1993. We do not conduct business under any other name and have not previously offered franchises in any other type of business.

**Our Parent and Predecessors**

We are a wholly-owned subsidiary of Tim Hortons Inc. (“THI”), whose principal business address in the United States is also the same as our address. THI is a wholly owned subsidiary of Restaurant Brands International Limited Partnership, a limited partnership organized under the laws of Ontario (“RBILP”). RBILP is a wholly owned subsidiary of Restaurant Brands International Inc., a corporation organized under the laws of Canada (“RBI”). The principal place of business of RBILP and RBI is 874 Sinclair Road, Oakville, Ontario L6K 2Y1, Canada.

The controlling shareholder of RBI is 3G Special Situations Fund II, L.P., a Cayman Islands limited partnership (“3G Special Situations Fund II”). 3G Special Situations Fund II’s general partner is 3G Special Situations Partners, Ltd., a Cayman Islands exempted company (“3G Special Situations GP”). 3G Special Situations GP is a wholly-owned subsidiary of 3G Capital Partners II, LP, a Cayman Islands limited partnership (“3G Capital L.P.”). 3G Capital L.P.’s general partner is 3G Capital Partners Ltd., a Cayman Islands exempted company (“3G Capital Ltd.”). 3G Special Situations Fund II, 3G Special Situations GP, 3G Capital, L.P. and 3G Capital Ltd. are all located at c/o 3G Capital, Inc., 600 Third Avenue, New York, NY 10016.

From July 1984 to January 2, 2006, our franchise activities were conducted by T.H.D. Donut (Delaware), Inc., a Delaware corporation. On January 2, 2006, T.H.D. Donut (Delaware), Inc. merged into The THD Group LLC and from that time through June 29, 2007, we conducted business as an Ohio limited liability company under the name The THD Group LLC. On June 30, 2007, The THD Group LLC merged with us, and since that time, we have conducted business as a Delaware corporation under the name Tim Hortons USA Inc. Except as otherwise noted, references in this disclosure document to “Tim Hortons,” “we,” or “us” will refer to (a) Tim Hortons USA Inc. from the period beginning June 30, 2007; (b) The THD Group LLC from

the period January 2, 2006 through June 29, 2007; and (c) T.H.D. Donut (Delaware), Inc. from the period July 1984 through January 1, 2006.

### **Our Affiliates**

Our affiliates, THD Coffee Co. and Fruition Manufacturing Limited, sell various products to our franchisees. Please see Item 8 for additional details.

Our affiliate, Tim Donut U.S. Limited, Inc. in many cases, either owns and leases, or will lease and then sublease, the premises from which most of our franchisees will operate their Tim Hortons restaurant. Our affiliate, Tim Fox Properties, LLC, which is a New York joint venture partnership between GLR Grand Island Holding, LLC and Tim Donut U.S. Limited, Inc., leases or subleases several restaurants in the state of New York to New York franchisees.

We also are an affiliate of The TDL Group Corp. (“**TDL**”). Since January 1965, TDL has sold franchises in Canada, which are similar to the franchises being offered by Tim Hortons in the United States. TDL does not offer franchises in any other line of business. As of November 30, 2014, TDL had 3,694 franchised restaurants and operated 14 company-owned restaurants in Canada.

On December 12, 2014, THI and Burger King Worldwide, Inc. (“**BKW**”) combined in a transaction in which each company became indirectly owned by RBI. As of a result, we became an affiliate of BKW which owns the Burger King® brand. Since 1954, Burger King Corporation (“**BKC**”), a subsidiary of BKW, has been operating and franchising the operation of Burger King quick-service hamburger restaurants in the United States. Of these BKC affiliates, only Burger King Europe GmbH (“**BK Europe**”) and BK AsiaPac, Pte. Ltd. (“**BK APac**”) offer franchises in portions of their respective countries or regions. As of November 30, 2014 there were 7,052 franchised and 52 company-owned Burger King restaurants in the United States.

Our affiliates’ principal places of business are: THD Coffee Co.: 60 Mushroom Boulevard, Rochester, New York 14623; Fruition Manufacturing Limited: 2379 Speers Road, Oakville, Ontario, Canada, L6L 2X9; Tim Donut U.S. Limited, Inc. and Tim Fox Properties, LLC: 4150 Tuller Road, Suite 236, Dublin, Ohio 43017; TDL: 874 Sinclair Road, Oakville, Ontario, Canada L6K 2Y1; BKW and BKC: 5505 Blue Lagoon Drive, Miami, Florida 33126; BK Europe: Zaehlerweg 10, Switzerland; and BK AsiaPac: 101 Thomson Road, #19-01/03 United Square, Singapore 307591.

Our agent for service of process is listed in Exhibit B.

### **The Franchise Offered**

This disclosure document describes franchises for restaurants under our traditional franchise program for restaurants operated by franchisees under a franchise agreement (“**Franchise Agreement**”), the current form of which is attached as Exhibit E.

We also offer franchises for restaurants to be operated under an operator agreement (“**Operator Agreement**”), but those franchises are offered under a separate disclosure



document. As of December 29, 2013, there were 151 Standard Restaurants and 64 Kiosks operated by non-employee independent operators (“**Operators**”) under an Operator Agreement. In our sole judgment, we may offer to some current and future Operators the option to acquire the assets of their Restaurant from the Restaurant owner (which, depending on the specific Restaurant may be us or one of our affiliates), and sign a Franchise Agreement with us for the Restaurant. We do not offer the right to operate under an Operator Agreement to those franchisees developing a Restaurant under an Area Development Agreement or if you will own or lease the property upon which the Restaurant is to be located.

If approved by us, you (individuals, partnerships, corporations, and the owners of partnerships and corporations will be referred to as “**you**”) will be offered a Franchise Agreement granting you the right to open one of the following two types of Restaurants:

1. **Standard Restaurant**: A Standard Restaurant is the typical Tim Hortons restaurant. It produces, merchandises, and sells a variety of baked goods, such as donuts, cookies, muffins, tarts, as well as coffee and other beverages. Most Standard Restaurants also offer a variety of soups, chili, and sandwiches. The Standard Restaurant generally ranges in size from 1,000 to 3,080 square feet, and contains a seating area for customers. The Standard Restaurant also typically includes a drive-thru facility.
2. **Kiosk**: The versatility of kiosks allows them to be installed in almost any type of location or area. There are generally three types of kiosks, namely, (i) a built-in kiosk; (ii) a full service cart; and (iii) a self-serve kiosk. Kiosks are generally located within another facility or institution such as retail stores, universities, gas stations, hospitals or airports. The built-in kiosk is designed to accommodate any product format but is best suited for a full menu line, including coffee, baked goods, soups, sandwiches, and chili. The dimensions of a built-in kiosk vary depending on the proposed location. The full service cart is modular and can be modified to suit the size, location and consumer demand of its location. It can accommodate one or more coffee stations and/or a limited menu. The self-serve kiosk is typically located within grocery stores and gas stations, offers coffee and a limited selection of baked goods, and occupies approximately six feet of counter space. In certain limited circumstances, kiosk owners may be required to supply kiosks with all necessary products or make arrangements to obtain their goods from a local franchisee.

Each type of Restaurant must be constructed and operated in accordance with our requirements and standards, such as interior and exterior appearance, specified equipment, equipment layout, interior and exterior accessories, identification schemes, products, and management, marketing and operational specifications (“**Tim Hortons System**”), and use trademarks, trade names, service marks, logos, emblems and indicia of origin, owned or licensed by us (“**Proprietary Marks**”), such as the name Tim Hortons, as well as such other proprietary marks as we may subsequently designate. A Restaurant which operates under the Tim Hortons System and uses our Proprietary Marks is referred to in this disclosure document as a

“**Restaurant**,” and unless we indicate otherwise, all references in this disclosure document to a “Restaurant” will refer to the two above-described types of restaurants.

If you wish to operate more than one Standard Restaurant or Kiosk within a defined Development Territory, we may agree to permit you to open additional Restaurants under an Area Development Agreement (“**Area Development Agreement**”), in the form attached as Exhibit V. Under an Area Development Agreement, you must make a commitment to sign separate Franchise Agreements for, and open, the number of Restaurants that we agree upon according to a Development Schedule.

All franchisees also will sign a Security Agreement in the form appearing at Exhibit K. In addition, at our request, which request may be made when you sign the Franchise Agreement or at any time during the term of your franchise, you must sign our then-current form of Deposit Account Control Agreement, the current form of which appears at Exhibit L. Both agreements are discussed in Item 10 of this disclosure document.

We are a member of the International Franchise Association (the “**IFA**”) and participate in the IFA’s VetFran Program, a program that provides financial incentives to veterans of the United States Armed Forces to encourage franchise ownership. In order to qualify and participate in our VetFran Program, a United States veteran must possess a DD Form 214 document, be new to the Tim Hortons System, own a majority interest in the franchised business, and otherwise meet the requirements of our VetFran Program (“**VetFran Participant**”). If you are a VetFran Participant, we will waive the initial franchise fee for your first Restaurant and will reduce your royalty rate by 2.5% for the first 12 months of your first Restaurant’s operation. VetFran Participants are required to sign the VetFran Addendum to the Franchise Agreement, which appears at Exhibit T to this disclosure document. We may modify or discontinue this Program at any time.

We have entered into an arrangement with Kahala Franchising, L.L.C. (“**Cold Stone**”) under which some franchised and company-owned Tim Hortons Restaurants and Cold Stone Creamery restaurants will each sell, in addition to their own System’s products, selected products of the other company. In nearly all instances, these outlets will be existing franchisees who will open a new franchised outlet that will sell both companies’ products. Detailed information about this supplemental product offering appears in the Cold Stone Addendum that is attached at Exhibit R.

Finally, we may occasionally permit a prospective franchisee to attend our initial training program in circumstances where neither we nor the prospective franchisee is obligated to sign a Franchise Agreement. If we do so, the prospective franchisee must sign a Letter of Intent, the current form of which is attached as Exhibit M, prior to attending training.

## **Competition**

The market for the goods and services offered by a Restaurant is well developed. Restaurants will compete with a wide variety of national and local businesses, including fast food restaurants, bakeries, coffee shops, and other similar types of stores. Restaurants typically

will be located as free-standing units, or in strip malls, or as Kiosks in another facility or institution such as shopping malls, schools, arenas, office buildings, hospitals, and airports.

### **Industry Specific Regulations**

You must comply with all local, state, and federal laws that apply to your Restaurant. A variety of regulations, laws, and ordinances govern the operation of a food service business. Examples include laws relating to food safety, health and sanitation codes, federal, state and local codes and ordinances covering EEOC, OSHA, discrimination, employment and wage and hour statutes, Family Medical Leave Act, federal and state immigration laws, environmental laws, including the discharge of waste, laws, rules and regulations concerning “Truth in Menu” (concerning menu item names and product labeling), laws, rules and regulations requiring nutritional information on menus and menu boards, laws, rules and regulations concerning nutritional claims, the federal Americans with Disabilities Act of 1990 (“ADA”) governing public accommodations, the Affordable Care Act, data protection (such as credit card protection under the U.S. Fair and Accurate Credit Transactions Act, or “FACTA”) and privacy laws. There may be other laws applicable to your business and we urge you to make further inquiries about these laws. In addition, the laws, rules and regulations which apply to businesses in general will affect you. We also require your compliance with all provisions of the USA Patriot Act and Executive Order 13224. Consult your lawyer about all of these laws, rules and regulations which may affect your business.

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

### **Chief Executive Officer of Restaurant Brands International Inc.: Daniel Schwartz**

In December 2014, Mr. Schwartz was appointed Chief Executive Officer of RBI. Since June 2013, he has also served as Chief Executive Officer of BKC and its parent holding company Burger King Holdings, Inc., both based in Miami, Florida. Mr. Schwartz served as Chief Operating Officer of BKC from April 2013 to June 2013, as Vice President, Chief Financial Officer of BKC from January 2011 to April 2013, and as BKC’s Deputy Chief Financial Officer from October 2010 until December 2010. Since June 2012 he has served on the Board of Directors of Carrols Restaurant Group, Inc., the parent company of Carrols, LLC, a Burger King franchisee located in Syracuse, New York. From January 2005 to October 2010, Mr. Schwartz held various positions of leadership for 3G Capital located in New York, New York.

### **Chief Financial Officer of Restaurant Brands International Inc.: Joshua A. Kobza**

In December 2014, Mr. Kobza was appointed Chief Financial Officer of RBI and THUSA’s Director. Since April 2013, he has also served as Chief Financial Officer of BKC. From June 2012 to December 2012, Mr. Kobza served as Director, Investor Relations for BKC and was promoted to Vice President, Global Finance of BKC in December, 2012. From January 2011 to June 2012, Mr. Kobza served as Senior Analyst for SIP Capital in Sao Paulo, Brazil. From July

2008 to December 2010, Mr. Kobza served as an analyst for The Blackstone Company in New York, NY.

Chief People and Information Officer of Restaurant Brands International Inc.: Heitor Goncalves

In December 2014, Mr. Goncalves was named Chief People and Information Officer of RBI and THUSA's Director. He has served as Vice President, Chief Information and Performance Officer of BKC since October 2010, and as BKC's Chief Information, Performance and People Officer since April 2013. From April 2010 to October 2010, Mr. Goncalves held various positions of leadership for 3G Capital located in Brussels, Belgium. From October 2004 to March 2010, Mr. Goncalves held various positions of leadership for Anheuser Busch-InBev, a consumer products company, located in Brussels, Belgium.

General Counsel of Restaurant Brands International Inc., Director of Tim Hortons USA Inc.: Jill Granat

In December 2014, Ms. Granat was named General Counsel of RBI and THUSA's Director. She has also served as BKC's Vice President and General Counsel since February 2011. Ms. Granat has served in various legal positions in the BKC Legal Department since joining BKC in 1998.

Brand President, Tim Hortons, Inc., Director of Tim Hortons USA Inc.: Eliás Díaz Sesé

Mr. Díaz Sesé was appointed as the Brand President of THI and THUSA's Director in December 2014. From January 2012 to December 2014 he was the President of BK AsiaPac, Pte. Ltd. located in Singapore. From August 2011 to December 2011 he was a Senior Vice President Continental Europe for Burger King Europe GmbH located in Zug, Switzerland. Between January 2011 and August 2011, Mr. Díaz Sesé served as a Vice President Franchise and Emerging Markets for Burger King Europe GmbH, located in Zug, Switzerland. From August 2008 to December 2010 he served as General Manager for Burger King's operations in Spain and Portugal.

Executive Vice President, Finance, Tim Hortons, Inc., Director of Tim Hortons USA Inc.: Sami Ahmed Siddiqui

Mr. Siddiqui was appointed the Executive Vice President, Finance of THI and THUSA's Director in December 2014. From July 2011 to December 2014 he served as the Treasurer of Burger King Corporation located in Miami, Florida. From July 2009 to July 2011 Mr. Siddiqui worked as an Analyst for The Blackstone Group, an investment firm located in New York, New York.

President, Tim Hortons U.S.: David Blackmore

Mr. Blackmore has served as our President since December 2014. He was previously TDL's Senior Vice President, Operations Excellence from September 2014 to December 2014. Mr. Blackmore was TDL's Senior Vice President, Ontario from October 2012 to September 2014. He was TDL's Senior Vice President, Training, Operations Standards from November 2010 to

October 2012. From April 2006 to November 2010, Mr. Blackmore was TDL's Vice President, Operations.

Vice President: Michelle P. Wettlaufer

Ms. Wettlaufer has been our and TDL's Vice President since November 2005. She has served in the role of Vice President, Corporate Finance since October 2012. She was our Vice President, Financial Planning and Analysis & Financial Operations from March 2011 to October 2012. Ms. Wettlaufer was our Vice President, Financial Reporting from November 2005 until February 2011.

Vice President, Treasurer: Michael J. Myskiw

Mr. Myskiw has been our Vice President since June 2007 and Treasurer since March 2011. He has been TDL's Vice President since November 2006 and its Treasurer since March 2013. He also has been THI's Vice President, Tax and Treasurer since March 2011.

Vice President: Glenn O. Hollis

Mr. Hollis has been our and TDL's Vice President, Brand Marketing since November 2007.

Vice President, U.S. Development: Felipe S. Austregesilo de Athayde

Mr. Austregesilo de Athayde was appointed our Vice President, U.S. Development, in December 2014. From July 2011 to December 2014 he served in various capacities for BKC. Mr. Austregesilo de Athayde initially served as a Senior Manager, Performance Analysis from July 2011 to February 2012, Senior Manager, Calendar Planning, from February 2012 to July 2012, a Director, Field Marketing (West Division) from July 2012 to April 2013 and most recently as a Vice President, U.S. Franchise Operations (West Division) from April 2013 to December 2014. From October 2010 to July 2011 he was employed by Visa Inc. in Miami, Florida as a Business Leader, Strategy (Latin America). From September 2008 to June 2010 Mr. Austregesilo de Athayde was an MBA student at Northwestern University Kellogg School of Management located in Evanston, Illinois.

Vice President, Operations, U.S.: Larry Mench

Mr. Mench has been our Vice President, Operations since March 2013. In January 2013, Mr. Mench was given additional responsibility managing Cold Stone operations, development and growth in the U.S. From November 2012 to March 2013, he was employed as an Operations Leadership representative for KBP Foods, LLC in Newport News, Virginia. He also was a Regional Manager at Five Guys Enterprises, LLC from January 2008 until January 2012, working in Cleveland, Ohio.

Senior Director, U.S. Finance: Mira Kipker

Ms. Kipker has been our Senior Director, U.S. Finance since March 2011. Ms. Kipker was our Director of Accounting from August 2005 to March 2011.

Senior Director, Development: Jeff Baldwin

Mr. Baldwin has been our Senior Director, Development since October 2012. He was our Development Director USA from October 2010 to October 2012. He was our Senior Real Estate Manager from April 2008 to October 2010.

Director, Marketing, U.S.: Katherine Jung

Ms. Jung has been our Director, Marketing, U.S. since April 2009.

Director, Franchise Development, U.S.: John Golaszewski

Mr. Golaszewski has been employed by us since 1996, serving as our Director, Franchise Development, U.S. since October 2012. He was our Director of Strategic Initiatives from January 2010 to October 2012 and our Director of Operations from October 2006 to December 2009.

Director, Operations Excellence: Craig Thompson

Mr. Thompson has been employed by TDL since 1996, serving as TDL's Director, Operations Excellence since March 2014. He was TDL's National Director, Training from May 2010 to February 2014. He was TDL's National Director, Training and Operations Services from April 2007 to April 2010.

Director of Business Development: Tim Bricault

Mr. Bricault has been our Director of Business Development since February 2013. From October 2012 to February 2013 he was our Director of Operations. He was employed by us as a Senior District Manager from December 2010 to October 2012, and as a District Manager from May 2005 to December 2010.

Director of Business Development & New Business Development: Daniel Edwards

Mr. Edwards has been our Director of Business Development & New Business Development since July 2014. From December 2012 to June 2014 he was our National Director of New Market Entry. He was Director of New Business Development – Eastern U.S. from June 2010 to December 2012. He was an Executive Director for Trusthouse Services Group, Inc. from March 2009 to June 2010 working in Sassamansville, Pennsylvania.

Director of Business Development: Ian Mader

Mr. Mader has been our Director of Business Development since February 2013. From April 2007 to February 2013, he was our Director of Operations.

Director of Business Development: Steve McLaine

Mr. McLaine has been our Director of Business Development since February 2013. From October 2012 to February 2013 he was our Director of Operations. From May 2007 to October 2012, he was employed by us as a District Manager.

**ITEM 3**  
**LITIGATION**

**Pending**

The TDL Group Corp. v. DXStorm.com Inc., and Zoran Popovic, Ontario Superior Court of Justice, Court File No. 07-CV-327262. This action was commenced in February 2007 by our Canadian affiliate, The TDL Group Corp. The dispute involves claims associated with a pilot project with DXStorm.com Inc. and its principal Zoran Popovic for stored value card services. Upon the termination of the pilot project, the Defendants alleged that TDL was obligated to continue with a full roll out of the stored value card project with them. At the same time, the Defendants delayed the termination of the pilot project, contrary to TDL's instructions. TDL seeks, among other things, declarations that TDL was entitled to terminate the pilot project and any further negotiations. TDL claims damages in the amount of \$12 million dollars. In April, 2007, Defendant DXStorm.com Inc. filed a counterclaim against TDL and a TDL employee involved in the project alleging, among other things, breach of contract, misappropriation of intellectual property, and failure to act in good faith by not proceeding with the project. Defendant has requested Cdn. \$67 million dollars in damages. Mediation occurred on February 18, 2011, however no settlement was reached. TDL's motion for partial summary judgment of Defendant's counterclaims was heard on August 7-10, 2012 and on December 6<sup>th</sup>, 2012. A decision on the motion was rendered on March 12, 2013 in which TDL was partially successful, leaving one claim remaining against TDL for failure to act in good faith by not proceeding with the project. The Court awarded costs to TDL in the amount of \$250,000.00 on December 24, 2013. The Defendants are appealing these decisions. TDL believes that the counterclaim is without merit, and will vigorously defend against it. We are not a party to this litigation.

Five Sumket Corp. v. The TDL Group Corp., Court of Queen's Bench of Alberta, Court File No. 1303 11168. This action was commenced in August 2013. The dispute involves claims arising from the purchase by TDL of six Canadian restaurants from its former franchisee, Five Sumket Corp. ("Sumket"). Sumket alleges that TDL did not pay all the consideration it promised for this transaction and that it is owed approximately \$259,000.00 plus interest and punitive damages. TDL answered and filed its counterclaim on October 24, 2013 denying the allegations of Sumket's complaint and alleging its own claims for breach of contract arising from the Offer to Purchase Agreement totaling over \$375,000.00. The case is in its initial phase and no trial has been set at this time.

## Concluded

Alan Arsenault, Maria Ann Arsenault, Alan Arsenault Holdings Ltd., and MRMA Holdings Ltd. v. The TDL Group Corp., Court of Queen's Bench of Alberta, Court File No. 1101-07947. This action was commenced on June 6, 2011. The Statement of Claim pertained to two (2) Calgary restaurants where the franchisees alleged that TDL acted in bad faith and breached its duties of fair dealing under the Alberta Franchises Act by: (1) granting franchises to others that have the effect of cannibalizing their sales; (2) requiring the Plaintiffs to renovate without adequately sharing the expense; and (3) conducting an audit of the Plaintiffs' restaurants beyond TDL's contractual rights. Plaintiffs requested: (a) an injunction to prevent TDL from terminating the franchise agreements and taking possession of the locations; (b) relief from forfeiture if necessary; (c) a declaration that the franchisees are not bound by the restriction on resale proceeds; (d) damages for breach of contract in the amount of Cdn. \$10,000,000.00; (e) punitive damages in the amount of Cdn. \$200,000.00 per Plaintiff; and (f) a declaration that the transfer provisions in the franchise agreement are void for unconscionability or alternatively TDL's rights in those provisions must be exercised in a reasonable way to allow the Plaintiffs to realize an appropriate return. Plaintiffs dismissed their claims on August 17, 2012 after the parties settled the action. The parties have agreed that Plaintiff Maria Arsenault will own and operate the restaurants at issue for two years and Alan Arsenault will no longer be involved in the Tim Hortons business. After that two year period, Ms. Arsenault or her corporate entity will cease operations of the restaurants and another party will operate the restaurants pursuant to a four year Operator Agreement between Ms. Arsenault and/or her corporate entity, and that party. We were not a party to this litigation.

The TDL Group Ltd., The TDL Group and The TDL Group No. 2 v. 1178426 Ontario Ltd. and Tracy Knowles a/k/a Tracey Cooke. Ontario Superior Court of Justice Court File No. 02-CV-232404CM2. Our Canadian affiliates commenced this action in July 2002 against a former franchisee and the franchisee's guarantor, seeking collection of past due debts in excess of Cdn. \$500,000. Defendants denied the claim and filed a counterclaim that alleged breach of contract, the tort of intimidation, and breach of plaintiffs' duty of good faith, and sought Cdn. \$1,000,000 in actual damages and Cdn. \$1,000,000 in punitive damages, as well as pre-judgment interest and costs. In April 2007, the parties settled the action. TDL paid Cdn. \$250,000 to the defendants, with no admission of liability, and the defendant transferred its ownership interest in the store equipment, furniture, fixtures, signage and inventory to TDL. We were not a party to this litigation.

1301541 Ontario Inc. and The TDL Group Corp., and Tim Hortons Inc. Ontario Superior Court of Justice. Court File No. CV-08-00365343-0000. This action was commenced on October 30, 2008 against our Canadian affiliate the TDL Group Corp. and its (and our) parent, Tim Hortons Inc., in the Ontario Superior Court of Justice by 1301541 Ontario Inc., a franchisee of the TDL Group Corp. The plaintiff alleges, generally, that in January 2003, defendants required plaintiff to convert its restaurant to accommodate the "Always Fresh" baking system that was then being introduced into the Canadian franchise system and, since the conversion, plaintiff's profits have declined. The plaintiff also alleges that the TDL Group Corp. has opened other Tim Hortons restaurants near plaintiff's restaurant, and that these other restaurants have caused a reduction in plaintiff's restaurant's sales. Plaintiff's Statement of Claim includes



allegations of negligent misrepresentation, breach of the duty of good faith and fair dealing under common law and under the Arthur Wishart Act (Ontario), and unjust enrichment. Plaintiff sought damages of approximately Cdn. \$4.2 million, plus interest and costs. The action was dismissed on December 13, 2010 after the parties agreed that TDL Group Corp. would receive possession of and purchase plaintiff's formerly franchised restaurant. We were not a party to this litigation.

**Franchisor Initiated Litigation Involving the Franchise Relationship in the Last Fiscal Year**

None.

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

**ITEM 4  
BANKRUPTCY**

No bankruptcy information is required to be disclosed in this Item.

**ITEM 5  
INITIAL FEES**

The initial franchise fee for each type of Restaurant is as follows:

<u>Restaurant Type</u>	<u>Amount of Initial Franchise Fee</u>
Standard Restaurant .....	\$35,000
Kiosk .....	\$5,000 - \$35,000

If you will operate under an Area Development Agreement, you must sign our Area Development Agreement and you must pay a fee (the “**Area Development Fee**”) equal to 50% of the initial franchise fees for the total number and types of Restaurants you agree to develop. The Area Development Fee is fully earned when paid and it is not refundable under any circumstances. However, when a franchise agreement is executed, we will credit you one-half of the initial franchise fee which would otherwise be payable for each Restaurant you open under the Area Development Agreement, but the total of all credits will not exceed the total amount of the Area Development Fee.

As described in Item 1, if you are a VetFran Participant, we will waive the initial franchise fee for your first Restaurant. VetFran Participants are required to sign the VetFran Addendum to the Franchise Agreement, which appears in Exhibit T to this disclosure document.

Other than as described above, we generally do not waive or reduce the initial franchise fee for a Standard Restaurant. However, under rare and extraordinary circumstances, which probably do not apply to you, we may waive or reduce the initial franchise fee for a Standard Restaurant. In 2013, we did not waive or reduce the initial franchise fee for any Standard Restaurant. The initial franchise fee and agreement term for a Kiosk will depend on its size,

location and the number of Kiosks that you agree to develop. In 2013, initial franchise fees for Kiosks ranged from \$1,000 to \$35,000.

If we or our affiliate will own the property upon which the Restaurant is located, the initial franchise fee is payable in cash when you sign a Franchise Agreement, unless we approve otherwise. If you or your affiliate will own or lease the Restaurant location and will construct the Restaurant, we will require you to pay the initial franchise fee before your Restaurant's equipment delivery date. The initial franchise fee is not refundable for Kiosks or for Restaurants developed under an Area Development Agreement. It is not refundable for Standard Restaurants, except in the following two limited circumstances:

- (1) The initial franchise fee is partially refundable for Standard Restaurants if we terminate the Franchise Agreement during the initial training program because you or one of your principals fails to successfully complete the entire training program. We will make that determination if we conclude that you or your principal do not appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the Tim Hortons System or the Franchise Agreement, but have made a good faith effort (as determined by us in our sole judgment) to successfully complete the training program. In such event, we will refund 50% of your initial franchise fee within 30 days of the termination of the Franchise Agreement, on the condition that you sign our then-current form of general release in favor of us and our affiliates. We will keep the remainder of the initial franchisee fee for our expenses. Once you successfully complete the initial training program, the initial franchise fee for a Standard Restaurant is not refundable. Item 11 of this disclosure document describes our initial training program.
- (2) The initial franchise fee is partially refundable for Standard Restaurants developed on property you lease or own if we terminate the Franchise Agreement because you are unable, despite best efforts (as determined by us in our sole judgment), to obtain possession, construct and open a Restaurant to our specifications at the approved location within the timeframe required under your Franchise Agreement due to bona fide circumstances beyond your control, such as default by an unaffiliated landlord or seller or inability to obtain necessary entitlements, approvals, and zoning classification. In such event, we may refund up to 50% of your initial Franchise Fee without interest within 30 days of the termination of the Franchise Agreement, on the condition that you sign our then-current form of general release in favor of us and our affiliates. We will keep the remainder of the initial franchisee fee for our expenses.

Prospective franchisees who sign a Letter of Intent must pay us a non-refundable application fee of \$5,000. If we and the prospective franchisee subsequently sign a Franchise Agreement, we will credit the application fee towards any equipment purchases and, if any balance remains, to the first payments due to us (or an affiliate) under the Franchise Agreement or the lease/sublease.

If you construct a Restaurant on real estate that you own or lease, you must pay us or our affiliates for any building components or fixtures that you order through us and you must use our designated and approved third party design architect to prepare the initial design drawings for your Restaurant. Further, we or our affiliate may provide management and assistance through the site development process, and if we agree to provide this assistance, we may charge a development and assistance fee that ranges from \$0 to \$50,000. These services may include assistance with site selection, site acquisition, permitting, zoning, construction management and other related development services. You are solely responsible for obtaining all approvals and permits necessary to construct and operate the Restaurant and for conforming your Restaurant on real estate that you own or lease to all codes and ordinances, including the Americans with Disabilities Act (“ADA”) as well as to all lease requirements, title restrictions and encumbrances.

In addition to the initial franchise fee, it is likely that you will make additional payments to us prior to opening a Restaurant for some or all of the items listed in the following summary of the items (including an estimated range of their cost) that must be acquired by a Restaurant prior to its opening. We, and our affiliate TDL, are currently the only approved source of the items listed in the following table:

<u>EXPENSE CATEGORY</u>	<u>STANDARD RESTAURANT</u>	<u>KIOSK</u> <sup>1/</sup>
Bakery Equipment	\$45,200 to \$60,500	\$100 to \$46,700
Display Equipment	\$56,700 to \$106,500	\$2,900 to \$81,100
Restaurant Fixtures	\$32,900 to \$95,000	\$1,600 to \$62,200
Signage	\$42,600 to \$72,200	\$1,500 to \$53,700
Refrigeration	\$27,700 to \$56,200	\$0 to \$41,600
Restaurant Equipment <sup>2/</sup>	\$69,300 to \$138,200	\$100 to \$80,300
Seating	\$2,400 to \$22,300	\$0 to \$19,300
Installation	\$28,400 to \$40,300	\$0 to \$30,700

<u>EXPENSE CATEGORY</u>	<u>STANDARD RESTAURANT</u>	<u>KIOSK</u> <sup>1/</sup>
Delivery	\$13,800 to \$22,200	\$3,100 to \$16,200
<b>Total</b> <sup>3/</sup>	\$319,000 to <u>\$613,400</u>	\$9,300 to <u>\$431,800</u>

Notes

- 1/ Kiosks can range in size from carts to satellite locations with seating and production facilities. Self-serve kiosks are limited to small areas inside multiple locations of large retailers, and the estimated pre-opening payments to us or an affiliate will be appreciably lower.
- 2/ Included in the above-listed Restaurant Equipment expense category is equipment which permits you to dispense soft-drink beverages. We or our affiliate purchase this equipment from Pepsi. We and our affiliate use this equipment in our respective Restaurants. We also sell the equipment to our franchisees for their Restaurants.
- 3/ These estimates include a commercially reasonable mark-up on all categories of expenses.

The estimates appearing in the table do not include any sales tax that may be imposed by any taxing authority. Most transactions will require the payment of a sales tax whose rates vary among states, but generally range from 5.5% to 8.875%. For franchisees who purchase new Restaurants, the sales tax is added to the price of equipment. For franchisees who purchase existing Restaurants, the applicable state's tax law may require a sales tax payment on the portion of the purchase price attributable to the equipment purchase.

In addition, when you sign your Franchise Agreement, we will collect from you a grand opening fee of (i) \$3,000 for a Standard Restaurant that is on property owned or leased by us; (ii) \$6,000 (or \$3,000 for a Restaurant in the Buffalo Designated Marketing Area) if you will own or lease the property upon which the Restaurant is located; (iii) \$500 to \$1,500 for a Kiosk on property that we own or lease, depending on size of the Kiosk; or (iv) \$3,000 for a Kiosk if it is situated on property that you own or lease. We will use the grand opening fee to pay your vendors (or reimburse you for payments which you make directly to the vendors) for expenses (up to the amount of the deposit) related to your Restaurant's required opening promotional activities. Please refer to Item 11 for further details. Franchisees that purchase Restaurants that have been previously owned will not be required to deposit any funds for opening promotional activities.

\* \* \*

Unless you are constructing a Restaurant on real estate that you own or lease, we or one of our affiliates will offer to construct all leasehold improvements. In all instances, we or our affiliate or a designated supplier will supply all the items listed on the above table. The cost will be site specific and will depend upon the square footage of the Restaurant, the existing condition of the Restaurant premises, and your choice of items to be supplied. The cost of leasehold improvements may be reflected in the rent for the Restaurant premises. If you are constructing a Restaurant on real estate that you own or lease, unless we approve otherwise in writing, you will be required to purchase all leasehold improvements and building components from a designated and/or approved supplier.

Unless you are constructing a Restaurant on real estate that you own or lease, we or one of our affiliates will lease the Restaurant premises directly to you, or lease the Restaurant premises from the landlord and then sublease the premises to you.

Finally, there may be occasional circumstances where, as part of your initial development costs, we may require an additional payment from you of up to \$100,000 because of certain special features of your proposed Restaurant location.

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**ITEM 6**  
**OTHER FEES**

(1) Type of Fee <sup>1/</sup>	(2) Amount	(3) Due Date	(4) Remarks
Royalty	4½% - 6% of Gross Sales or more under limited circumstances <sup>2</sup>	Thursday of each week on the prior week's Gross Sales, <sup>3/</sup> but we have the right to change the day on which the royalty payment is due.	See Note 2
Advertising Contributions <sup>4/</sup>	4% of Gross Sales	10th day of each month on the prior month's Gross Sales	See Note 4
Audit by Tim Hortons	Costs of audit plus interest	As incurred	See Note 5
Additional training	Cost to attend additional training such as transportation, food, and lodging, as well as a materials fee. The materials fee will not exceed \$500.00	As incurred	See Note 6
Transfer fee	5% of the full purchase price	Prior to transfer	See Note 7
Indemnification	Will vary with circumstances	As incurred	See Note 8
Securities offering by you	\$25,000.00	At the time offering materials are submitted to us for review	See Note 9
Maintaining Restaurant premises in good repair	Varies	Reimburse us or pay directly to suppliers	See Note 10
Refurbishing Restaurant	Varies	As incurred	See Note 11

(1) Type of Fee <sup>1/</sup>	(2) Amount	(3) Due Date	(4) Remarks
Lease for Restaurant premises	Varies, but typically 8½% of Gross Sales	10th day of each month on the prior month's Gross Sales	See Note 12
Reorganization of your business	Our reasonable legal and administrative expenses incurred in processing changes resulting from the reorganization of your business structure	When invoiced by us	
Nestle Milano Espresso Machine Equipment and Maintenance Fee	\$165.00	10th day of each month	You will enter into a Dispenser Loan Agreement for the required Nestle Milano Espresso machine with Nestle Professional Vitality ("NPV"). Each month you will pay us or TDL the \$165.00 fee (consisting of \$75.00 per month for use of the equipment and \$90.00 per month for maintenance and service of the machine by NPV), which amount we will in turn pay to NPV.
Real estate and personal property taxes <sup>14/</sup>	Varies	10th day of each month or when due	See Note 13
Insurance	Varies	As incurred	See Note 14
Utilities	Varies	As incurred	See Note 14
CAM	Varies	As incurred	See Note 15
Smart Store charges	Varies	As incurred	See Note 16
Approving Suppliers Requested by You	Varies	On Demand	See Note 17

Notes:

<sup>1/</sup> All fees payable to us are non-refundable. These fees are uniformly imposed by us; however, we may, in our sole discretion, waive or modify a one-time fee (for example, a transfer fee) or may waive or reduce an ongoing fee (for example, royalty or advertising contributions) for a defined period of time. (Please also see Item 11 for discussion of our temporary Relief Program.)

- 2/ The royalty is typically 4½%, although in certain circumstances it could be as much as 6%. In varying these fees, we take into account many factors, such as your prior experience in operating a number of food service outlets, their financial condition, ability to obtain suitable sites, and real estate holdings. Generally, if you lease or sublease the real estate from us, the royalty will typically be 4½%. However, if you do not lease or sublease the real estate from us, the royalty will be 6%, unless you are in an emerging market, in which case your royalty could be reduced to an amount below 6% based upon your Restaurant's sales for the first 24 months of a Standard Restaurant's operations, and to 3% for the first 12 months of your Kiosk's operations. VetFran Participants receive a royalty reduction of 2.5% for their first Restaurant's first 12 months of operation.
- 3/ Gross Sales means the total amount (but not including taxes collected from customers and remitted to the taxing authority) of all sales of all products and services of every kind and character and all other income of every kind and nature related to the Restaurant, for cash, on credit, or for any other consideration, and regardless of collection with respect to credit or other consideration, and all proceeds received from any business interruption insurance with respect to the Restaurant. Gross Sales will not include an exchange of products or services between different Restaurants owned by you where the exchange is made solely for the convenient operation of the businesses and is not the completion of a sale on or from the Restaurant premises. You may deduct customer refunds from the computation of Gross Sales if the original selling price was previously reported as Gross Sales.
- 4/ Please see Item 11 for details about your advertising contribution. We will contribute to the System advertising fund on the same basis as franchisees.
- 5/ Interest is payable if you understate Gross Sales. Interest also is payable on overdue payments. Interest is payable from the date the payment was due until it was paid, at the rate of 5% over the prime rate charged by the Huntington National Bank, or the maximum amount permitted by law, whichever is less. In addition, if an audit is required because you failed to furnish any required material, or if the Gross Sales understatement for any period is greater than 2% of Gross Sales for such period, you also must reimburse us for the cost of the audit.
- 6/ Please see Item 11 for details about training.
- 7/ The full purchase price reflects all consideration that the buyer pays to the seller for the Restaurant. No transfer fee is charged if the transfer is from a sole proprietorship or partnership to a corporation in which the sole proprietor or the partners own all of the outstanding stock, or for a transfer in the event of your death or disability, or for securities offerings as described in the Franchise Agreement. The new transferee also must pay for any required training.
- 8/ You must reimburse us, and our directors, employees, shareholders, and agents, for all losses, costs, and expenses incurred as a result of any claims arising directly or indirectly



from your operation of the Restaurant, as well as costs, including attorneys' fees, of defending against them.

- 9/ If you are a corporate franchisee, you must obtain our approval prior to offering securities for sale. All offerings are subject to our right of first refusal.
- 10/ You must pay for the operation, maintenance, and repair of the exterior and interior of the Restaurant premises, including annual painting, and maintain and repair fixtures, furnishings, equipment, signs, and décor, and all common operating costs where there are multiple tenants.
- 11/ We may require you to refurbish the Restaurant premises after the 5th anniversary of your franchise agreement and before the expiration of your initial term. If so, your refurbishing expense will not exceed 3% of the aggregate Gross Sales of the Restaurant over the immediately preceding five years, whether the Restaurant was owned and operated by you or a predecessor during all or part of that five year period. If you wish to renew the franchise agreement at the expiration of its initial term, you will be required, at your expense, to renovate the Restaurant as we may reasonably require to reflect the then-current standards and image of the Tim Hortons System. This work must be completed within 4 months after the receipt of written notice from us requiring such work.
- 12/ Except with respect to Kiosks located at institutional sites and for Restaurants in other circumstances, such as for Restaurants developed under an Area Development Agreement or if we expressly approve you to develop and own your own Restaurant premises, you must lease or sublease the Restaurant premises from us or an affiliate. Your rent usually will be 8½% of Gross Sales. Please see Item 10 for details. For Kiosks, we may charge as much as 13% rent on a gross basis.
- 13/ If you lease or sublease your Restaurant premises from us or an affiliate, the lessor/sublessor will pay the appropriate tax authority as the real estate tax bill becomes due and immediately invoice you for the full amount of taxes and assessments paid. The billed amount will be posted to your portal account and collected within 30 days of posting. Personal property tax is payable by you when due.
- 14/ If you lease or sublease your Restaurant premises from us or an affiliate, you may be required to pay these expenses to us and the lessor/sublessor will remit these payments to the insurer or utility.
- 15/ If you lease or sublease your Restaurant premises from us or an affiliate, you must pay CAM (or Common Area Maintenance) charges, such as, for example, common area insurance, landscaping, parking lot and common area maintenance, common area lighting and waste removal. If there is a head landlord, we will remit these payments to the head landlord.

16/ Please refer to Item 8 and Item 11 under the subheading “Computer Systems” for additional information.

17/ You must pay our reasonable expenses in evaluating any new suppliers you request. Please refer to Item 8 for details.

**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

1. Standard Restaurant

<b>Type of Expenditures</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Initial Franchise Fee <sup>1/</sup>	\$35,000	Lump Sum	When you sign the Franchise Agreement,	Tim Hortons
Real Estate Taxes, Personal Property Taxes and CAM Charges <sup>2/</sup>	\$1,000 to \$16,000	As Arranged	Monthly	Tim Hortons, TDL, or other lessor or sublessor
Equipment <sup>3/</sup>	\$319,000 to \$613,400	As Arranged	Prior to Opening, or if you are building the Restaurant, before your Restaurant’s equipment order date.	Tim Hortons, TDL and other suppliers
Real Estate <sup>4/</sup>	See Note 4	See Note 4	See Note 4	Lessor or sublessor or Property Seller
Planning and Development and Design Costs <sup>5/</sup>	\$20,000 to \$80,000	As Arranged	Prior to Opening, design costs owed to us are due before your Restaurant’s equipment order date	Tim Hortons, TDL, Government Agencies, and approved service providers
Site Development Costs <sup>6/</sup>	\$100,000 to \$250,000	As Arranged	As Arranged	Contractors

<b>Type of Expenditures</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Building Costs <sup>7/</sup>	\$25,000 to \$450,000	As Arranged	As Arranged/ Prior to your Restaurant's equipment order date	Contractors and Tim Hortons
Training <sup>8/</sup>	\$4,800 to \$6,400	As Arranged	As Arranged	Suppliers of transportation, food, and lodging
Start-up Supplies and Initial Inventory <sup>9/</sup>	\$15,000 to \$22,000	As Arranged	As Incurred	Suppliers
Professional and License Fees <sup>10/</sup>	\$1,500 to \$10,000	As Arranged	As Incurred	Attorneys, Accountants, government agencies
Development Assistance Fees <sup>11/</sup>	\$0 to \$50,000	As Incurred	Prior to your Restaurant's equipment order date	Tim Hortons
Insurance <sup>12/</sup>	\$2,500 to \$21,500	As Arranged	Annually	Tim Hortons, Insurers or Lessor/Sublessor
Initial Advertising and Promotion <sup>13/</sup>	\$3,000 to \$6,000	Lump Sum	When you sign the Franchise Agreement	Tim Hortons
Security Deposits <sup>14/</sup>	\$0 to \$10,000	As Arranged	As Incurred	Utilities, Lessor
Special Restaurant Development Expense <sup>15/</sup>	\$0 to \$100,000	Lump Sum	Prior to Opening, or if you are building the Restaurant, before your Restaurant's equipment order date	Tim Hortons
Additional Funds <sup>16/</sup>	\$20,000		During the first three months of operation	Various
<b>TOTAL</b>	<b>\$546,800, to \$1,690,300</b>			

Footnotes follow all tables.

## 2. Kiosk

<b>Type of Expenditures</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Initial Franchise Fee <sup>1/</sup>	\$5,000 to \$35,000	Lump Sum	When you sign the Franchise Agreement	Tim Hortons
Real Estate Taxes, Personal Property Taxes and CAM Charges <sup>2/</sup>	\$1,000 to \$15,000	As Arranged	Monthly	Tim Hortons, TDL, or other lessor or sublessor
Equipment <sup>3/</sup>	\$9,300 to \$431,800	As Arranged	As Arranged. If you are building the Restaurant, before your Restaurant's equipment order date.	Tim Hortons, TDL, and other suppliers
Real Estate <sup>4/</sup>	See Note 4	See Note 4	See Note 4	Lessor or sublessor or Property Seller
Planning and Development and Design Costs <sup>5/</sup>	0 to \$50,000	As Arranged	Prior to Opening, designed costs are due before your Restaurant's equipment order date	Tim Hortons, TDL, and approved service providers
Site Development Costs <sup>6/</sup>	0 to \$50,000	As Arranged	As Arranged	Contractors
Building Costs <sup>7/</sup>	\$10,000 to \$200,000	As Arranged	As Arranged/ Prior to your Restaurant's equipment delivery date	Contractors and Tim Hortons
Training <sup>8/</sup>	\$0 to \$6,400	As Arranged	As Incurred	Suppliers of transportation, food and lodging
Start-up Supplies and Initial Inventory <sup>9/</sup>	\$1,000 to \$22,000	As Arranged	As Incurred	Suppliers

<b>Type of Expenditures</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Professional and License Fees <sup>10/</sup>	\$1,500 to \$10,000	As Arranged	As Incurred	Attorneys, Accountants, government agencies
Development Assistance Fees <sup>11/</sup>	\$0 to \$50,000	As Incurred	Prior to your Restaurant's equipment order date	Tim Hortons
Insurance <sup>12/</sup>	\$150 to \$15,000	As Arranged	Annually	Insurers or Lessor/Sublessor
Initial Advertising and Promotion <sup>13/</sup>	\$500 to \$3,000	Lump Sum	When you sign the Franchise Agreement	Tim Hortons
Security Deposits <sup>14/</sup>	\$0 to \$10,000	As Arranged	As Incurred	Utilities, Lessor
Special Restaurant Development Expense <sup>15/</sup>	\$0 to \$100,000	Lump Sum	Prior to Opening, or if you are building the Restaurant, before your Restaurant's equipment order date.	Tim Hortons
Additional Funds <sup>16/</sup>	\$20,000		During the first three months of operation	Various
<b>TOTAL</b>	<b>\$48,550 to \$1,018,200</b>			

Notes:

1/ Please see Item 5 for details about this expense. The initial fee is partially refundable under two limited circumstances described in Item 5: (i) should we determine during training that you are unable to properly fulfill and discharge the demands and responsibilities required by the Tim Hortons System or the Franchise Agreement; and (ii) in certain instances when you own or lease the property and are developing your own Restaurant, and, due to no fault of your own, the Restaurant never opens for business. No initial fee is required for the first Restaurant owned by a VetFran Participant. See Items 1 and 5 for details.

If you sign an Area Development Agreement with us, then you must pay us a nonrefundable Area Development Fee when you sign the Area Development Agreement.

The Area Development Fee will equal 50% of the initial franchise fees for the total number and types of Restaurants you agree to develop. The initial franchise fee for each Restaurant you open pursuant to an Area Development Agreement will range from \$5,000 for Kiosks and \$35,000 for Standard Restaurants, and it must be paid when you sign the Franchise Agreement. When a franchise agreement is executed under your Area Development Agreement, we will credit you one-half of the initial franchise fee which would otherwise be payable for each Restaurant you open, but the total of all credits will not exceed the total amount of the Area Development Fee.

- 2/ Please see Item 6 for details about lease and/or sublease expenses. In addition, real estate taxes, personal property taxes and CAM charges will vary considerably, depending on the Restaurant's location.
- 3/ Equipment must conform to our specifications, which vary among Restaurant types. This expense covers items such as ovens, appliances, utensils and racks, and, for Restaurants with drive-thru facilities, communications equipment. This estimate excludes sales tax. Please refer to Item 5 for details.

In late 2014, we anticipate that we may start the roll-out of a new POS system, which may require the purchase of additional equipment for your Restaurant totaling \$8,000 to \$20,000. The amount and type of equipment you will purchase will depend on the existing POS system in your Restaurant. If you are purchasing an older, existing Restaurant with a legacy system, your equipment replacement costs will be on the high end of this estimate. If you are purchasing a new restaurant with our new standardized Tim Hortons POS system, your cost to purchase and install that system could range from \$20,000 to \$27,000. This would replace the current estimated Quick Service Technologies POS system equipment costs included in the above range estimated in the amount of \$8,000 to \$32,000.

- 4/ Real Estate costs vary considerably according to the type of Restaurant, real estate values in your area, your real estate interest (leasehold or ownership), location, size of the site, code requirements and other factors, including labor, as well as whether you or your landlord develop the Restaurant. Factors that typically affect your real estate costs include your cost to negotiate your lease (or buy the property), fair market lease values and lease terms in your area, how the costs to renovate or develop the land, building and other site improvements are allocated between landlord and tenant and interest costs, among others. Lease terms are individually negotiated and may vary materially from one location or transaction to another. Because of the numerous variables that affect the value of a particular piece of real estate, this initial investment table does not reflect the potential cost of real estate.
- 5/ These costs are only applicable if you are developing and will own or lease the property upon which the Restaurant premises are located. This estimate includes, among other items, architectural, engineering and design fees, as well as zoning and planning costs and building, health and fire permits. These estimates do not include extraordinary costs

due to extensive redesign, permitting, variances, environmental issues, legal obstacles, etc.

- 6/ These costs are only applicable if you are developing and will own or lease the property upon which the Restaurant premises are located. This estimate includes the costs to develop the land and other site improvements, including exterior landscaping, electrical and water hookup, paving, sidewalks, lighting, etc. Some local governments may charge an additional amount for utility connections to offset their costs for maintaining water and sewer plants; these amounts are not included in the estimate provided. Costs can be higher if extensive storm water retention and landscaping is required or soil problems or other environmental issues are encountered. These ranges do not include unusual offsite costs including costs to bring utilities to the property for hookup or government imposed “impact fees”. Some local governments may also require a performance bond, which is not included in the above estimate.
- 7/ These costs are only applicable if you are developing and will own or lease the property upon which the Restaurant premises are located. Building Costs include the cost to construct a building’s shell structure prepped for installation of equipment. These costs only apply if you are building the Restaurant yourself. Building costs will vary by geographic region. Building costs for Kiosks can vary widely depending on kiosk type, physical location within a larger structure, and the size of the leased space. Adding a drive thru to any building type will increase the Building Costs. The costs estimated here are based on our experience and do not include metropolitan or unique development areas or special municipal building and zoning requirements that may present extraordinary acquisition costs.
- 8/ The estimated cost for training refers to costs incurred while attending the initial training program. Please see Item 11 for details about this expense.
- 9/ This estimate will cover our recommended opening inventory of food items, packaging, cleaning, uniforms and other supplies.
- 10/ These costs cover legal and accounting fees, and various licenses and permits such as occupancy and business licenses. \$7,000 dollars of this range is estimated to provide legal advice and services you may need if you are (with our approval) negotiating the purchase or lease of the Restaurant premises without assistance from us or our affiliates. This does not include legal fees for services provided in conjunction with processing and preparing necessary immigration documentation for non-U.S. citizens.
- 11/ These costs are only applicable if you are developing and will own or lease the property upon which the Restaurant premises is located. We may provide management and assistance through the site development process, for which we may charge you a Development Assistance Fee. The extent of services we will provide and the amount of the Development Assistance Fee you will incur are subject to our mutual agreement.

- 12/ This estimate is for the first year's insurance premium. If you lease or sublease your Restaurant premises from us or one of our affiliates, you may be required to pay these insurance expenses to us, and we will remit these payments to the insurer or head landlord. If you own or lease the Restaurant premises from a third party, you must pay these expenses directly to the insurer or landlord pursuant to your lease.
- 13/ Please see Items 5 and 11 for details about this expense.
- 14/ Security deposits may be required by the landlord, utilities, and suppliers.
- 15/ Please see Item 5 for details about this expense.
- 16/ You will need capital to support on-going expenses, such as cash float, payroll, utilities, and telephone service, to the extent that these costs are not covered by Gross Sales. New businesses often generate a negative cash flow. We estimate that the amount will be sufficient to cover on-going expenses in excess of Gross Sales for the first three months. This amount is an estimate, and we cannot guarantee that you will not have additional expenses starting your business. Your costs will depend on factors such as your management skill, experience and business acumen, economic conditions, the local market for your business, competition and the performance of your Restaurant. We relied on internal financial records in estimating your needs for additional funds.

Except as otherwise noted, all monies payable to us or our affiliates are non-refundable.

## **ITEM 8**

### **RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

Except with respect to Kiosks located at institutional sites and for Restaurants in other circumstances, such as if you are developing a Restaurant under an Area Development Agreement or if you have express approval to do otherwise, you must lease or sublease the Restaurant premises from us or an affiliate. For subleases, we or our affiliate will usually charge, as rent, an amount in excess of the amount which we are obligated to pay to the landlord as lessee. For leases, we or our affiliate will usually charge you a rent which will be based upon our receiving a competitive rate of return on our investment.

You must operate your Restaurant in strict conformance with our standards and operating procedures. These standards and operating procedures are described in the Tim Hortons Confidential Operations Manual (“**Manual**”). The Manual consists of, collectively, all manuals, guides, bulletins, memoranda, notices, audio or video and on-line training materials, computer media, or other publications, documents, or electronic communications (i.e., Internet or e-mail) that provide information, advice, standards, requirements, operating procedures, instructions, or policies relating to the operation of the Restaurant. We may, in writing, revise the Manual, or any portion of it, at any time in our sole discretion. The Manual covers nearly all aspects of your Restaurant's operations, such as:

1. The fixtures, furnishings, equipment, decor, and other items installed at the Restaurant;



2. The paper goods, materials, signs, supplies used by the Restaurant;
3. The products and services sold by the Restaurant;
4. The ingredients and/or other specifications for the products made or sold by the Restaurant, such as donuts, toppings, fillings, frostings, flavorings, coffee, tea, chocolate, dairy products, soft drinks, soups, sandwiches, bagels and assorted bakery items; and
5. The recipes, manner of preparation, and storage of products.

Our standards and operating procedures may vary among Restaurant types.

To the extent permitted by applicable law, we have established maximum prices, based on an analysis of the market and to facilitate advertising and competitive strategies.

Unless we permit you to do otherwise, you must purchase or lease all products, fixtures, furnishings, building components, equipment, decor, signs, paper goods, supplies, services, menu ingredients, and other items installed in, used, or sold by the Restaurant (“**Items**”) solely from suppliers who either have been designated or approved by us. For any Item, we have the right in our sole discretion to designate ourselves, our affiliates and/or a third party as the sole supplier for such Item. All or a significant percentage of the Items used or sold by your Restaurant may be restricted to a single designated supplier. To the extent we do not designate the supplier, you must purchase or lease an Item solely from suppliers who demonstrate, to our continuing reasonable satisfaction, the ability to meet our reasonable standards and specifications for such Items; who possess adequate quality controls and capacity to supply your needs promptly and reliably; and who we have previously approved in the Manual or otherwise in writing and not subsequently disapproved. If you are a Kiosk franchisee, you may be required to purchase some finished bakery products from another Tim Hortons System franchisee. As used in this disclosure document, the term “**suppliers**” includes manufacturers, distributors and wholesalers. We will derive commissions and/or revenues from your purchase of Items from us, our affiliates and/or other designated suppliers.

If you want to purchase any Items for which we have not designated a single supplier from other suppliers who are not currently approved by us, you must submit a written request for such approval to us, together with such evidence of conformity with our specifications as we may reasonably require, or you may ask the supplier to do so. We have the right to inspect and evaluate the supplier’s facilities and products to be supplied, and you must pay, in advance, all of our estimated reasonable expenses of doing so, with a final payment adjustment made after completion of the inspection and evaluation. We also will conduct laboratory testing of product samples, and test market products in existing Restaurants. Suppliers also must provide us with the detailed formula and preparation instructions for any food products, as well as detailed specifications for any packaging materials, such as paper or cardboard specifications. Suppliers must also provide us with evidence of satisfactory insurance coverage for product liability, including naming us as an additional insured under their insurance coverage. We generally decide whether to approve a supplier within six months after receipt of a written request. When

approving suppliers, we consider their financial condition, technical ability, reputation, references, nutritional information and their ability to provide goods or services consistently and in a timely manner to a large number of Restaurants and/or whether approval will undermine special pricing benefits available to other Restaurants from existing suppliers. We may revoke our approval at any time if we determine, in our sole discretion, that the supplier no longer meets Tim Hortons' then-current System standards and criteria for approving new suppliers. This determination may be made if the supplier is not competitive, is unable to supply products in a consistent and reliable manner, or the products supplied are of inconsistent or inadequate quality. Upon receipt of written notice of such revocation, you must immediately cease purchasing from any disapproved supplier.

Unless you have express approval to do otherwise, we estimate that the purchases from approved suppliers will represent approximately 100% of your total purchases and leases in establishing your Restaurant and 95% of your total purchases and leases in the continuing operation of the Restaurant, and that purchases in accordance with our specifications where no approved suppliers have been identified will represent approximately 0% of your total purchases and leases in establishing your Restaurant and 5% of your total purchases and leases in the continuing operation of the Restaurant.

As of the date of this disclosure document, we and TDL currently have an arrangement with two third party distributors under which the two distributors provide the benefits of a warehousing and distribution system for all Restaurants. We purchase certain paper products, uniforms and food products ("**Selected Goods**") from TDL and from other affiliated and non-affiliated suppliers and then sell these Items to The SYGMA Network, Inc. and/or its parent Sysco Corporation. TDL also purchases certain goods -- such as smallwares -- ("**Articles**") from non-affiliated suppliers and then sells these Articles to N. Wasserstrom & Sons, Inc. and Parts Town. SYGMA, Wasserstrom, and Parts Town, in turn, sell these Selected Goods and Articles to the Restaurants. As of the date of this disclosure document, SYGMA, Wasserstrom, and Parts Town were the only entities authorized by us to distribute Selected Goods and Articles to the Restaurants. We, TDL, and any affiliates from whom we or TDL may purchase Selected Goods or Articles will derive revenue from sales of Selected Goods and Articles to SYGMA, Wasserstrom, and/or Parts Town.

As of the date of this disclosure document, you must install Nestle Milano espresso machines in your Restaurant. Franchisees will enter into a Dispenser Loan Agreement for the Milano equipment directly with Nestle Professional Vitality ("**NPV**"). The monthly cost for each Milano machine is \$165.00 plus applicable taxes, comprised of \$75.00 per month for use of the equipment and \$90.00 per month for maintenance and service of the machine by NPV. The monthly charges will be paid to us or TDL and we or TDL will in turn pay those amounts to NPV.

We have developed a technology strategy, which we refer to as "Smart Store," that seeks to integrate a package of computer and electronic financial and operations programs and services that are used by Restaurants. These programs and services include point-of-sale (POS) systems, computer equipment, computer software, credit card processing equipment and stored value gift card equipment. Franchisees are obligated to secure these programs and services, and use the

unaffiliated third-party vendors that we designate to provide certain on-going maintenance, service and support for these programs and services, except as expressly set forth below in connection with the descriptions of said programs and services. These programs and services include:

1. A gift card program under which customers can purchase, use and reload stored value cards at Restaurants. The program is mandatory for all new franchisees, and voluntary for existing Restaurants, although existing Restaurants are strongly encouraged to participate in the gift card program. The designated service provider is ValueLink LLC d/b/a First Data Prepaid Services. You must sign a contract with them as well as the Tim Card Addendum with us. You will also sign an amendment to the Tim Card Addendum if you sell Cold Stone products at your location. Copies of these documents are attached at Exhibit J and within the Cold Stone Addendum at Exhibit R. Your fees will vary depending on the amount of sales and number of transactions. The fee schedule appears in the schedule attached to the agreement. We estimate that your monthly fees to ValueLink will range from \$30 to \$350.
2. An online web-based communication portal and e-mail system known as the "TimZone." TimZone portal access is free of charge for all individuals you designate. All individuals classified as Restaurant owners will have free TimZone e-mail access and also will each be given access for two free manager e-mail accounts. You must pay us or our designee a monthly license fee of \$2 per Restaurant for each additional manager account for access to TimZone e-mail access. TimZone allows us, among other things, to advise (via e-mail or portal) about future promotions and other information related to the System and/or of interest to franchisees, and allows you to, among other things, transmit sales data to us and to send you invoices and EFT notices.
3. Technology Infrastructure and Credit Equipment service, support and maintenance, including (a) Internet Security/Support (\$118.50 per month); (b) Restaurant Technology Package including a black box (\$23.16 per month); (c) training content and support (\$35 per month); (d) Equipment Warranty for non Digital Menu Board Restaurants (\$15.75 per month); and (e) Credit card equipment support (\$6 per month). All of the services will be provided by us or an affiliate, and all fees are paid to us or an affiliate. If we do not require you to purchase the standard Technology Infrastructure and Credit Equipment service support and maintenance package, we may require you to purchase a Timsown Technology Support Services with no Technology package at a cost of \$8.33 per month.
4. Credit card processing services. The current designated vendor for these services is Chase Paymentech Solutions. It will charge fees for processing services, which fees will vary depending upon the amount of sales, the number of transactions processed, and the type of credit or debit card processed. We estimate that the fees will range from approximately \$400 to \$3,000 per month.

5. The current designated vendor of our POS system is Quickservice Technologies. The first year of service with Quickservice Technologies is included in the initial cost of the POS system, after which you will be required to enter into a service and maintenance contract with Quickservice Technologies at an estimated fee of approximately \$250 per month. The fee is based on the number of registers in the Restaurant. Quickservice Technologies also offers additional optional service contracts to franchisees. In 2014, we may choose to change our designated POS system to implement one standardized POS system for all of our franchisees and Operators. Currently, we anticipate that we will approve one designated hardware vendor, one separate software vendor, and a separate support services vendor. For existing Restaurants, when the new POS system is implemented, there will be new equipment costs currently estimated to range from \$8,000 to \$20,000 (depending on the age and type of existing POS system in your Restaurant). For new Restaurants, we estimate the equipment cost to be \$20,000 to \$27,000. We also estimate the new standardized POS system will require an annual license fee, currently estimated to be \$1,200 to \$1,250 per year, and a monthly support fee, currently estimated at \$250 per Restaurant per month.
6. Financial management software known as Clearview, which is offered by Quick Service Software Inc. This software ties into the Quickservice Technologies POS system and allows sales data to be exported into financial reporting software. The fee of \$900 per year is paid directly to the vendor.
7. Restaurants with drive-thru facilities are required to enter into a service contract for the headsets and communication systems used in the drive thru's operations, once the one-year warranty on this equipment expires. The designated vendor is HM Electronics, Inc., and the estimated annual cost for this contract ranges from \$850 to \$1,100. Restaurants with drive-thru facilities are also required to purchase and install a drive-thru timer which must be connected to the Smart Store network for the purposes of transmitting drive-thru times to the TAPP/AF Reporting. The drive-thru timer is included in the equipment for your Restaurant (see Item 5 and Item 7).
8. Guest WiFi Services. This service allows our guests to access the internet while visiting the Restaurant. The current designated vendor for guest WiFi service is Datavalet. The monthly fee for the service is \$28.50. The term of the initial contract is for a period of 12 months. You will have the option to pay Datavalet for the required hardware upfront at a cost of \$790 or pay an additional monthly fee of \$24.76 over a period of 36 months.

All fees for these programs are payable in United States Dollars. We reserve the right to cancel or modify any of the above-described programs as well as substitute other designated suppliers and vendors at any time.

Please refer to Item 11 under the heading "Computer Systems" for additional details about required purchases of computer and communications devices.

You must purchase all of your (a) 2.5 oz. regular coffee pouches from our affiliate, THD Coffee Co., which does business under the name Maidstone Coffee; (b) some donut fillings, fondants, and glazes from our affiliate Fruition Manufacturing Limited; and (c) donuts, croissants, danishes and baguettes from Maidstone Bakeries Co., a third party entity to which we and TDL have licensed certain intellectual property, including various proprietary recipes, in return for which a license fee is paid from revenues received from product sales.

None of our officers owns an interest in any companies that are vendors or suppliers to our franchisees.

We reserve the right to cancel or modify the above-described arrangements with SYGMA and/or Sysco Corporation, N. Wasserstrom, Parts Town, THD Coffee Co., Fruition Manufacturing Limited, NPV and Maidstone Bakeries Co. at any time.

For the fiscal year ended December 29, 2013, we had revenues of \$53,145,292, of which amount \$26,538,139, or 49.9%, represented franchisees' and Operators' purchases or leases from us (including \$9,246,260 in equipment leases). Our affiliate Tim Donut U.S. Limited, Inc. had revenues of \$38,058,847 from leases and subleases with franchisees; our affiliate Fruition Manufacturing Limited had revenues of \$757,454 from franchisee and Operator purchases, and our affiliate THD Coffee Co. had revenues of \$13,499,315 from product purchases from franchisees and Operators. Both we and our affiliates incurred expenses in connection with these revenues such as payments to head landlords for premises subleased to franchisees, and products purchased for resale to franchisees and Operators.

We purchase beverage dispensing equipment from Pepsi and then resell it to you as part of your opening equipment purchases. We require that all Restaurants serve fountain-dispensed soft drinks (or approved Pepsi bottled or canned soft drinks or beverages) marketed by Pepsi, and not serve any other brand of fountain-dispensed soft drinks. Pepsi provides marketing support funds based on aggregate Restaurant usage. These funds are used to develop and implement marketing programs for the benefit of all Restaurants, and may be used to encourage the use of Pepsi products.

Except as described above (and in Item 5 with respect to your pre-opening purchases), as of December 29, 2013, neither Tim Hortons nor any affiliate is an exclusive supplier of any product or Item used or sold by the Restaurant, and you have the right to purchase them from any approved supplier or, for those products for which no approved supplier exists, from any supplier whose Items or products meet the minimum standards established by us. You also may enter into contracts directly with any such suppliers for this purpose. We or TDL occasionally receive rebates from suppliers. Any amount received which is attributable to purchases by Restaurants (franchised, company-owned, and affiliate-owned) is contributed by us or TDL to our system-wide advertising fund. During our most recently concluded fiscal year which ended on December 29, 2013, we or TDL received approximately \$1,813,423 in U.S. funds as rebates from suppliers based upon purchases by United States Restaurants, and contributed these amounts to the system-wide advertising fund.

We have negotiated purchase arrangements with suppliers. In doing so, we seek to promote the overall interests of our franchise system and our interest as the franchisor. Products covered by these arrangements include food products such as mixes, fills, frozen bakery products; and packaging such as paper cups, lids, and cartons. No franchisee is required to purchase from suppliers with whom we have negotiated purchase arrangements, unless we have designated the supplier as the only source for the Item.

We do not have purchasing or distribution cooperatives.

The insurance you obtain for the Restaurant must conform to our minimum standards for coverage and amount, which are described in the Manual or otherwise in writing (and which may be changed by us from time to time in our sole discretion), and be provided by insurers acceptable to us.

All advertising and promotion by you must be in such media and of such type and format as we may approve, must be conducted in a dignified manner, and must conform to such standards and requirements as we may specify. Please see Item 11 under the heading “Advertising” for information about the procedure to obtain our approval for advertising and promotional materials prepared by you.

You may construct your own Restaurant with our prior written approval. If you are approved to construct your own Restaurant, we have the right to approve the specifications and layouts for the Restaurant, and we may specify requirements for dimensions, design, image, interior layout, decor, equipment, and color scheme. Your plans must reflect the requirements of any federal, state, or local law, code, or regulation, including those arising under the Americans with Disabilities Act (“ADA”) or similar rules governing public accommodations for persons with disabilities. You must prepare a site survey and your construction plans and specifications for the Restaurant’s site and make sure that they comply with the ADA and similar rules, other applicable ordinances, building codes, permit requirements, and lease requirements and restrictions. We must review and approve all final plans and specifications before you begin constructing the Restaurant and all revised or “as built” plans and specifications during construction. Our review is only to ensure your compliance with our design requirements. We may inspect the Restaurant during its development.

We consider a variety of factors when determining whether to renew or grant additional franchises. Among the factors we consider is compliance with the requirements described above.

## **ITEM 9** **FRANCHISEE’S OBLIGATIONS**

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

**Obligation**

**Section in Agreement**

**Disclosure Document Item**

<b><u>Obligation</u></b>	<b><u>Section in Agreement</u></b>	<b><u>Disclosure Document Item</u></b>
a. Site selection and acquisition/lease	§ 1.00 of the Franchise Agreement; Art. 3 and Exhibit A of the Area Development Agreement	Items 10 and 11
b. Pre-opening purchases/leases	§ 5.05, 5.06 and 5.07 of the Franchise Agreement	Items 5, 7, and 8
c. Site development and other pre-opening requirements	§ 1.02 and 5.01 of the Franchise Agreement	Items 7, 8, and 11
d. Initial and ongoing training	§ 3.01, 5.01 - 5.03 of the Franchise Agreement; ¶4 of the Addendum for Institutional Kiosks; ¶¶3,5 and 6 of the Addendum for Non-Institutional Kiosks; 9.01 of the Area Development Agreement	Item 11
e. Opening	§ 1.02 and 5.02 of the Franchise Agreement; 7.01 of the Area Development Agreement	Item 11
f. Fees	§ 4.00-4.05, 8.00, 8.03, 8.04 and 11.02g of the Franchise Agreement; § 3, 4 and 7 of the Lease Agreement; § 2 and 8 of the Sublease Agreement; ¶4 and 9 of the Addendum for Non-Institutional Kiosks; ¶8 and 11 of the Addendum for Institutional Kiosks; 6.01 of the Area Development Agreement	Items 5, 6, 7, and 10
g. Compliance with standards and policies/Operating Manual	§ 3.04, 5.00-5.14, 7.00 and 7.02 of the Franchise Agreement; Art. 10 of the Area Development Agreement	Items 8, 11, 14 and 15

<b><u>Obligation</u></b>	<b><u>Section in Agreement</u></b>	<b><u>Disclosure Document Item</u></b>
h. Trademarks and proprietary information	§ 6.00-6.05, 7.00-7.04 and 18.04 of the Franchise Agreement; Art. 11, 12; 14, and Exhibit C of the Area Development Agreement	Items 13 and 14
i. Restrictions on products/services offered	§ 5.04 - 5.07 and 5.14 of the Franchise Agreement; § 5 of the Lease Agreement; § 19 of the Sublease Agreement; ¶7 and 8 of the Addendum for Non-Institutional Kiosks; ¶6 and 7 of the Addendum for Institutional Kiosks; Art. 3 of the Area Development Agreement	Items 8 and 16
j. Warranty and customer service requirements	§ 5.02 of the Franchise Agreement;	Not applicable
k. Territorial development and sales quotas	Art. 7 of the Area Development Agreement	Item 12
l. Ongoing product/service purchases	§ 5.05, 5.06, and 5.07 of the Franchise Agreement; ¶8 of the Addendum for Non-Institutional Kiosks; ¶7 of the Addendum for Institutional Kiosks	Items 8 and 16
m. Maintenance, appearance and remodeling requirements	§ 2.01, 3.05, 5.00, 5.07-5.10 and 5.12-5.13 of the Franchise Agreement; § 9, 10, 11, 18 and 19 of the Lease Agreement; § 6(b) and 8 of the Sublease;	Items 6, 8, and 11
n. Insurance	§ 10.00-10.05 of the Franchise Agreement; § 14 of the Lease Agreement; § 7 of the Sublease;	Items 6, 7, and 8



<b><u>Obligation</u></b>	<b><u>Section in Agreement</u></b>	<b><u>Disclosure Document Item</u></b>
o. Advertising	§ 4.02 and 8.00-8.06 of the Franchise Agreement; § 37 of the Lease Agreement; ¶8 of the Addendum for Institutional Kiosks; ¶9 of the Addendum for Non-Institutional Kiosks; 8.02 of the Area Development Agreement	Items 6, 7, and 11
p. Indemnification	§ 16.00-16.02 and Attachment A of the Franchise Agreement; § 7(b) and 16 of the Lease Agreement; § 6(b) and 7 of the Sublease Agreement; Guarantee of Lease Agreement; Guarantee of Sublease Agreement; 10.03 of the Area Development Agreement	Item 6
q. Owner's participation/management/staffing	§ 5.02 and 13.00 of the Franchise Agreement; 10.06 of the Area Development Agreement	Item 15
r. Records/reports	§ 9.00-9.09 of the Franchise Agreement; § 52-55 of the Lease Agreement; § 3 of the Sublease Agreement; §§ 3; ¶9 of the Addendum for Institutional Kiosks; ¶10 of the Addendum for Non-Institutional Kiosks; 10.04 of the Area Development Agreement	Item 6
s. Inspection/audits	§ 3.05, 5.10, 5.11, 9.01, 9.04, 9.06 and 9.07 of the Franchise Agreement; § 11, 38, 54 and 55 of the Lease Agreement;	Items 6 and 11

<b><u>Obligation</u></b>	<b><u>Section in Agreement</u></b>	<b><u>Disclosure Document Item</u></b>
t. Transfer	§ 11.00-11.10 of the Franchise Agreement; § 40 of the Lease Agreement; § 13 of the Sublease; ¶ 10 of the Addendum for Institutional Kiosks; Art. 13 of the Area Development Agreement	Item 17
u. Renewal	§ 2.01 of the Franchise Agreement; § 2 of the Lease Agreement; § 15 of the Sublease Agreement	Item 17
v. Post-termination obligations	§ 7.01, 9.02, 9.07, 12.03 and 13.02 of the Franchise Agreement; Art. 17 of the Area Development Agreement	Item 17
w. Non-competition covenants	§ 13.01 and 13.02 of the Franchise Agreement; ¶13-15 of the Addendum for Institutional Kiosks; Art. 12 of the Area Development Agreement	Item 17
x. Dispute resolution	Art. 17 of the Franchise Agreement; Art. 19 of the Area Development Agreement	Item 17
y. Taxes/permits	§ 15.00-15.01 of the Franchise Agreement; § 4(b), 6, 7 and 10 of the Lease Agreement; § 5(b), 7, 8, and 11 of the Sublease Agreement; 4.02, 10.01, 10.02, 19.19 of the Area Development Agreement	Not applicable

Unless otherwise stated, references in the table to the Franchise Agreement, Lease, and Sublease apply to both types of Restaurants.

## **ITEM 10** **FINANCING**

Unless you will own or lease from a third party the property we approve for your Restaurant, you will lease/sublease your Restaurant premises location from us or an affiliate. The terms of any specific lease or sublease will be site-specific. If we construct the leasehold improvements and install all necessary fixtures, furnishings, signs, and equipment, the rent may reflect the cost of leasehold improvements.

The standard forms of lease and sublease are attached as Exhibits H and I to this disclosure document.

### **SECURITY AGREEMENT AND DEPOSIT ACCOUNT CONTROL AGREEMENT**

The Security Agreement places a security interest on the assets comprising the equipment package, as well as all other assets, in connection with the monies owed and/or obligations assumed under agreements you sign with us or our affiliates such as, for example, the Franchise Agreement, any lease or sublease, a promissory note, or an asset purchase agreement. You are not permitted to sell, transfer, or otherwise dispose of any asset which is covered by the security interest without the prior written consent of the secured party. You must sign all documents necessary to perfect and maintain a security interest in these assets. You will be in default of the Security Agreement if you do not fulfill your obligations under the lease or sublease, or Franchise Agreement, or if either the lease or sublease or Franchise Agreement is terminated. In the event of default, the secured party may exercise all rights under the Uniform Commercial Code of the relevant state and any other applicable law as well as other remedies specified in the Security Agreement. We also may require you to sign, either at the time you sign the Franchise Agreement or at a later date of our choosing during the term of the franchise, our then-current form of Deposit Account Control Agreement. This Agreement is intended to enable the secured parties to perfect their security interest in your bank accounts. Please refer to the copies of the Security Agreement, and the form of the Deposit Account Control Agreement as of the date of this disclosure document, at Exhibits K and L for complete details.

### **OTHER FINANCING**

We have arranged with an unaffiliated lender, Western Equipment Finance, Inc. (“WEF”), to offer a Restaurant financing program to qualified borrowers. Financing may be extended by a loan. Under this program, qualified prospective franchisees may be able to finance a portion (i.e., 70% to 80%) of the purchase price of the equipment, furniture, trade fixtures, and signs (collectively, “**Collateral**”) required for the Restaurant, including some soft costs such as freight, installation, training and sales tax. For those loans approved by WEF, we will guarantee the loan with WEF, subject to a maximum guarantee limit for the entire Tim Hortons System.

The typical term of the loan or lease will be 5 or 7 years, fully amortized. Usually, the loan will carry a fixed interest rate equal to 600 basis points over the 30 day average of the 2 year Interest Rate Swap rate as reported by the United States Federal Reserve on the day of your loan

closing. You may prepay your loan in full, subject to a variable prepayment fee equal to a percentage of the outstanding principal balance of the loan.

In connection with the loan, WEF will take a security interest as a first lien on the Collateral. Should you default, WEF may accelerate amounts owed by you together with interest from the date of the default at the rate of 1.5% month. In the event of any litigation arising out of the loan, the non-prevailing party must pay the reasonable attorneys' fees and expenses of the prevailing party. Your default may be considered a cross-default under the Franchise Agreement for failure to pay a third-party debt.

In addition, you and your principal shareholders, members or partners must personally guarantee the loan obligations. Guarantors of the loan waive notice of any amendment or extension, waive any requirement that WEF enforce its rights against the debtor or the Collateral before enforcing the guaranty, and waive diligence, notice of acceptance, promptness and any other defenses available to a guarantor or surety.

No franchisee is obligated to obtain financing from WEF or from any other source. A copy of the relevant loan documents is attached as Exhibit W. We do not receive any payment or other consideration from WEF or any other lender for placing or referring franchisees for financing.

#### **LIMITATION ON FRANCHISEE FINANCING**

As a general rule, unless you are financing your Restaurant purchase through WEF, the aggregate amount of all debt related to the establishment or operation of the Restaurant, excluding non past-due amounts owed to trade creditors, must not exceed 70% of fair market value of the Restaurant's assets.

Neither Tim Hortons nor any affiliate offers financing or arranges for financing from other sources. We do not guarantee your notes, leases, or obligations to third parties.

We reserve the right to enter into financing arrangements with franchisees on terms more favorable than those described in this Item 10.

#### **U.S. Small Business Administration (SBA) FINANCING**

Franchisees of the Tim Hortons system are eligible for expedited and streamlined SBA loan application processing through the SBA's Franchise Registry Program ([www.franchiseregistry.com](http://www.franchiseregistry.com)). Each financing application is unique and before your application for financing is approved, the lender and/or SBA must consider and evaluate a number of factors such as your general eligibility, creditworthiness and proposed use of proceeds. There is no guaranty that you will qualify for an SBA loan.

**ITEM 11**  
**FRANCHISOR ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING**

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

**Pre-Opening Obligations**

1. Area Development Agreement: If you sign an Area Development Agreement with us, then, under the Area Development Agreement, we will:

Designate your Development Territory, the number and types of Restaurants you will open, and the Development Schedule setting the timetable you will follow for opening the Restaurants, based on our mutual agreement. (Area Development Agreement, Section 3.01 and 7.01) You and we will decide on your Development Territory together, considering factors such as the general locations and neighborhoods and proximity to customers in the Development Territory we are considering; traffic patterns in the Development Territory; co-tenant attractiveness in the sites available in the Development Territory; size of the available spaces in the Development Territory; age and condition of the buildings in which the Restaurants might be situated in the Development Territory being considered; the availability of locations and necessary zoning in the Development Territory; and, the location of competitors in the Development Territory. In deciding on the number of Restaurants and the Development Schedule for opening them, you and we will consider factors such as the potential total number of Restaurants in the Development Territory; how aggressive the opening schedule should be; your experience, if any, in the industry; your experience in franchising; and, the capital commitment you are able and willing to make. If you and we do not agree on the Development Territory, the number of Restaurants to be opened and the Development Schedule, then you and we will not sign an Area Development Agreement.

2. Tim Hortons will train you and those of your employees or Designated Managers whom Tim Hortons selects. (Franchise Agreement, Section 3.01; Addendum for Non-Institutional Kiosk, ¶¶ 5 and 6; Addendum for Institutional Kiosk, ¶¶ 4 and 5).

3. Tim Hortons will provide franchisees opening their first Restaurant with up to 10 calendar days of on-site pre-opening and opening assistance, without charge. The timing, nature, and duration of such assistance will be at Tim Hortons' sole discretion. Tim Hortons will not be obligated to provide any pre-opening and opening assistance under the Franchise Agreement to you if you or one of your affiliates is a franchisee of an existing Restaurant or if you do not receive training under Franchise Agreement Section 3.01 (Franchise Agreement, Section 3.02.)

4. Tim Hortons will lend you a copy of the Manual. The Manual will remain our sole property. (Franchise Agreement, Section 3.04.)

5. If you lease the Restaurant premises from anyone other than us or our affiliate or an entity that you are affiliated with, the final terms of your lease must meet the needs of a

Restaurant in our system and are subject to our review. You agree to deliver a copy of your lease to us for our review and approval at least 10 business days before you sign it. You must also provide us with a copy of your executed lease for the Restaurant premises within 10 days after it is fully executed. We have no liability to you regarding the terms or negotiation of the lease you sign directly with a landlord or sublandlord. You agree that any lease for the Restaurant premises must include provisions to protect our interests as a Franchisor in the property, including that the landlord will provide us notices, will allow us to enter the premises to make alterations and remove property that we are entitled to remove, and that the landlord shall not object to you assigning us rights to the Restaurant premises upon your eviction, termination, your failure to renew, or if the Restaurant should cease to operate. (Franchise Agreement, Section 5.12)

6. If you own or lease your Restaurant premises directly from an entity affiliated with you, you or your affiliated entity that owns the property must execute our Lease Option Agreement (attached at Exhibit U). In the Lease Option Agreement you agree that if the Franchise Agreement is terminated or transferred, we (or our affiliate or assignee) will have the option to lease the Restaurant premises from you or your affiliated entity (as applicable). (Lease Option Agreement, at Section 2.) Your affiliated entity, if applicable, will also provide the same rights afforded to us within any lease or sublease for the Restaurant premises as explained in the paragraph above. (Lease Option Agreement, at Section 1.)

### **Continuing Obligations**

1. Tim Hortons will make available additional training programs, as it deems necessary and appropriate during the term of the Franchise Agreement. (Franchise Agreement, Section 3.01.)

2. Tim Hortons will provide such ongoing advisory assistance to you concerning the marketing, merchandising, and general business operations of the Restaurant as Tim Hortons deems appropriate. (Franchise Agreement, Section 3.03.)

3. Tim Hortons may, from time to time, in its sole discretion, revise the Manual to incorporate changes. (Franchise Agreement, Section 3.04.)

4. Tim Hortons will conduct, when and as frequently as it deems advisable, inspections of your Restaurant and evaluations of your management and operations, in order to assist you and to maintain Tim Hortons' System standards of quality, appearance, and service. (Franchise Agreement, Section 3.05.)

### **Site Selection**

It is Tim Hortons' current practice not to execute a Franchise Agreement until a site has been selected and approved. There are two ways in which sites are selected: 1) we may identify and select a site; or 2) if you are approved to own or lease a Restaurant's premises and to construct a Restaurant yourself, you will propose your own site for our approval.

For those sites that we identify and select on our own, we generally lease or sublease the premises to you. We offer a franchisee a particular site once it has been identified and is in

planning and development. In such a case, we construct, equip, and furnish the Restaurant for you. We also conform the Restaurant premises to local ordinance and building codes and obtain any required permits. You are responsible for all costs to remodel and re-decorate the Restaurant premises. We assist with renovations that occur at the time of the expiration of the initial term of your Franchise Agreement, which may include covering a portion of the construction costs.

If you have been approved to own or lease a Restaurant's premises and to construct a Restaurant yourself, you are responsible for selecting the site, subject to our written approval. If you identify a potential site for your Restaurant, you must apply for approval of that site by submitting to us information and materials that we reasonably require. We will approve or disapprove locations in our discretion and may consider any factors, which may include general location and neighborhood; traffic patterns; accessibility; visibility; demographics; anticipated land acquisition and construction costs; and existing restaurants in the area. The timeframe for approval of the proposed site varies but we generally approve or disapprove a site within 60 days of application. You should not enter into any binding commitments with property owners or vendors until we have approved your proposed site. You must construct, equip and furnish the Restaurant at the approved site in accordance with our approved plans and specifications and purchase equipment through approved suppliers. We typically assist with these purchases and either deliver or arrange for the delivery of the equipment to you. You must conform the premises to local ordinance and building codes and obtain any required permits. We may agree with you to provide services and assistance with construction, installation of equipment and furnishing the Restaurant or with obtaining required permits. If we agree that we will provide these services, you will be responsible for Development Assistance Fees. You are responsible for remodeling and re-decorating the Restaurant premises in accordance with our specifications. You bear all costs to renovate your Restaurant at the time of the expiration of the initial term of your Franchise Agreement.

If we are developing the Restaurant and you are leasing or subleasing the site from us, the estimated elapsed time between the execution of the Franchise Agreement and the opening of a Restaurant is 1 day to 16 weeks depending upon many factors, such as the length of time needed to complete construction of the Restaurant, for you to complete the training program, and to return to us the executed documents and closing funds. If you or your affiliate has our approval to lease or own the property upon which the Franchised Business Premises are located and you are developing and/or constructing the Restaurant yourself, the estimated elapsed time between the execution of the Franchise Agreement the opening of a Restaurant may be 9 weeks to 18 months, depending upon the speed at which you obtain property rights and construct the Restaurant premises, the need for training, and return to us of the executed documents and closing funds. Tim Hortons' offer or approval of any site is not a guarantee or assurance that the Restaurant will be profitable or successful. Should we approve a site that you identify, we rely heavily on your knowledge of the local market in selecting the proposed site. You are encouraged to evaluate the potential site before entering into a Franchise Agreement and you must conduct your own investigations and use your own business judgment about any potential site.

The Franchise Agreement will specify the date on which a Franchisee must open its Restaurant for business.

## Training Program

Except for the franchisees described in the next sentence, all franchisees must attend and satisfactorily complete Tim Hortons' initial training program before they may open their Restaurant. Franchisees of a Kiosk will only receive training if they are new to the System. Training for a Standard Restaurant or a full-serve Kiosk typically includes approximately 50 days over a period of approximately 7 to 9 weeks, and is held at TDL's principal offices in Oakville, Ontario, Canada, or at such other location selected by Tim Hortons, as well as at a Restaurant located in the United States. Training for Kiosks offering a limited menu ("**Limited-Menu Kiosks**") lasts from approximately 10 to 23 days, depending on your employee's employment responsibilities, and also is conducted in Oakville. Prior to attending our training program you must complete a standard level first aid course at your cost. We recommend first aid programs offered through your local Red Cross (U.S.) or St. John Ambulance Service (Canada). You must provide us with a copy of your certificate prior to attending our training program. Our initial training program begins on Monday of each week, and is typically provided immediately prior to your Restaurant opening. Tim Hortons will provide you with training, instructors, a training manual, and other materials without charge. You will be responsible for any and all other expenses incurred in attending the initial training program, including the cost of lodging, travel, and living expenses. The consequence of your failure to successfully complete the initial training program to our satisfaction is that you will not be permitted to be a Tim Hortons franchisee and we will have the right to terminate the Franchise Agreement for Standard Restaurants if you or your principal fail to successfully complete the initial training program. That will happen if at any time during the initial training program, we conclude (in our sole judgment) that you or your principal do not appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the Tim Hortons System or the Franchise Agreement.

### Initial Training Program for a Standard Restaurant and full-serve Kiosk

The initial training program is designed to develop the skills necessary to properly operate the Restaurant. The subjects covered during the initial training program include, among other things, preparation and service of coffee, tea and other beverages, donuts and other bakery items, soups, sandwiches and other menu items, accounting methods and recordkeeping, purchasing, sales, inventory, employee relations, customer service, and managerial training.

The location of all classroom instruction is our training center in Oakville, Ontario, Canada which is operated by our affiliate, TDL.

The location of the first phase of the on-the-job training will be in Oakville, Ontario in a fully operational Restaurant, and in conjunction with the classroom training. The final two weeks of the on-the-job training will occur at a Restaurant located in the United States.

Instructional materials consist of the production manual, various online training modules, and subject-specific written materials prepared especially for the initial training program.

An overview of the training program is as follows:



## TRAINING PROGRAM

<u>Classroom Training</u>		<u>On-the-Job Training</u>		
<u>Subject</u>	<u>Hours</u>	<u>Subject</u>	<u>Hours</u>	<u>Location</u>
Welcome to Tim Hortons (orientation)	8.0	Front of House Service	16.0	Oakville, Ontario
Servsafe	16.0	Guest Services Shadow/Guest Satisfaction	8.0	Oakville, Ontario
Art of Coffee & Tea	9.0	Drive Thru	8.0	Oakville, Ontario
Hospitality and Owning the Guest Experience	7.5	Equipment Maintenance	8.0	
Always Fresh Theory	7.5	Always Fresh Baking (Test Kitchen)	16.0	Oakville, Ontario
Clearview	7.5	Evolution of Baking	8.0	Oakville, Ontario
Restaurant Management Fundamentals	8.0	Always Fresh Baking (Restaurant)	24.0	Oakville, Ontario
Cash Management/Books	8.0	Prepared Foods	32.0	Oakville, Ontario
Loss Prevention	8.0	In-Restaurant Experience	48.0	Oakville, Ontario
Maximizing Profitability	8.0			
Floor Management	7.5			
Team Leadership/Motivating Gen X & Gen Y and adults	7.5			
Retention and Hiring for Success	8.0			
Employment Legislation	8.0			
Case Study	4.0			
<b>TOTAL CLASSROOM TRAINING</b>	<b>122.5</b>	<b>TOTAL ON-THE-JOB TRAINING</b>	<b>168</b>	

Initial Training for Limited-Menu Kiosks

The training program focuses on customer service and familiarity with the Tim Hortons System. The location of both the classroom and on-the-job training is the training facility in Oakville, Ontario, Canada that is used for the Standard Restaurant training.

Instructional materials for Limited-Menu Kiosks consists of training manuals and online content.

An overview of this training program is as follows:

<u>Classroom Training</u>		<u>On-the-Job Training</u>		
<u>Subject</u>	<u>Hours</u>	<u>Subject</u>	<u>Hours</u>	<u>Location</u>
Welcome to Tim Hortons (orientation)	8.0	Front of House Service	16.0	Oakville, Ontario
Servsafe	16.0	Guest Services Shadow/Guest Satisfaction	5.0	Oakville, Ontario
Art of Coffee & Tea	9.0	Drive Thru	8.0	Oakville, Ontario
Hospitality and Owning the Guest Experience	7.5	Equipment Maintenance	8.0	Oakville, Ontario
Always Fresh Theory	7.5	Always Fresh Baking (Test Kitchen)	16.0	Oakville, Ontario
		Always Fresh Baking (Restaurant)	24.0	Oakville, Ontario
		Prepared Foods	32.0	Oakville, Ontario
<b>TOTAL CLASSROOM TRAINING</b>	<b>48</b>	<b>TOTAL ON-THE-JOB TRAINING</b>	<b>109</b>	

As previously indicated in the subheading “Pre-Opening Obligations” to this disclosure document, we will provide to franchisees who require training under Section 3.01 of the Franchise Agreement and do not themselves or through an affiliate currently have an existing Restaurant, with up to 10 calendar days of on-site pre-opening and opening assistance. The timing, nature, and duration of the assistance will be at our sole discretion.

During the term of the Franchise Agreement, you (or a principal of a partnership or corporate franchisee, or, if you are operating a Kiosk, you may appoint a designated manager) must attend and complete additional training programs as required by us and at the time(s) and location(s) selected by us. At any additional training program which you are required to attend,

Tim Hortons will provide the training, instructors, training manuals, and other materials as we deem appropriate, without charge to you, except for a materials fee which will not exceed \$500 per year. You will be responsible for any and all other expenses incurred in attending additional training programs such as the cost of travel, lodging, and living expenses.

All training programs presently are under the supervision of Mr. Craig Thompson. Mr. Thompson's background is described in Item 2 of this disclosure document. Some specific subjects are taught by employees of Tim Hortons and its affiliate TDL, who have daily management responsibility in the subject being taught.

## **Advertising**

Franchisees must make monthly contributions for advertising at the rate of 4% of the Gross Sales of the Restaurant. These contributions are paid to our current system fund, The Tim's National Advertising Program, Inc. ("TNAP"), although we have the right, in the future, to either discontinue any System fund or substitute a different fund in place of TNAP. TNAP is a not-for-profit corporation established on December 15, 1997 under the laws of the State of Ohio. We and our Affiliate also contribute to TNAP, each month, on the same basis and in the same amounts as franchisees operating under a Franchise Agreement and under an Operator Agreement contribute, for each Restaurant owned and operated as a company-owned or affiliate-owned Restaurant. (Franchise Agreement Section 8.01).

For Kiosks which are located in "captured traffic" locations such as offices, hospitals, airports, colleges, grocery stores, gas and convenience stores and the like, including those in arenas and sports stadiums that operate only during events, and for those Restaurants located in an emerging market, we may refund up to 3% of the advertising fund contribution for you to locally market the Restaurant directly. In that case the Franchisee's records pertaining to their local advertising expenditures are subject to our review and audit.

TNAP is directed, maintained and administered by us as follows:

1. We direct all advertising and promotional programs, with sole discretion over the creative concepts, materials and media used in these programs, and their placement and allocation. TNAP is intended to maximize general public recognition, acceptance and use of the Tim Hortons System and Proprietary Marks. We are not obligated, in administering TNAP, to make expenditures for you which are equivalent or proportionate to your contribution, or to ensure that you benefit directly or pro-rata from expenditures by TNAP. TNAP is not a trust fund, and we have no fiduciary responsibility to you in connection with the collection or use of TNAP monies or any other aspect of TNAP's operations. (Franchise Agreement Section 8.02.b.)

2. All contributions to TNAP and any earnings thereon, are used exclusively to meet any and all costs of maintaining, administering, directing, conducting and developing advertising, marketing, public relations, and/or promotional programs and materials, and any other activities and related investments and/or initiatives including, for example, capital investments, which Tim Hortons believes will enhance the image of the Tim Hortons System, such as the cost of preparing and conducting advertising campaigns with various media including

the Internet, preparing direct mail advertising, market research, employing advertising and/or public relations agencies to assist therein, purchasing promotional items, conducting and administering product introductions, and providing promotional and other marketing materials and services. The advertising and promotional programs are prepared primarily by an outside advertising agency. (Franchise Agreement Section 8.02.a.)

3. All sums paid to TNAP are accounted for separately from our other monies, and are not to be used to defray any of our expenses, except for such reasonable costs and overhead, if any, as may be incurred in activities reasonably related to the administration or direction of TNAP and advertising programs, such as, amongst other things, the cost of personnel for creating and implementing advertising, promotional, and marketing programs. The funds held by TNAP and any earnings thereon do not otherwise inure to our benefit. We maintain separate accounts for TNAP. We prepare audited financial statements for TNAP; a copy of which will be made available to each Franchisee upon request, the cost of such statements to be paid by TNAP. If there is a surplus in TNAP at the end of the year, expenditures during the next year will be made first from funds contributed during the previous year. We have the right to terminate TNAP at any time in our sole discretion but, if we do so, any monies in TNAP at the time of termination will be expended or returned to the contributors (Franchise Agreement Section 8.02.c., d., e.)

4. Though the coverage of the advertising, marketing, publications and promotional programs is currently local in scope, we have the right to allocate your contributions in TNAP as between local, regional and national advertising and promotion. We also have the right to modify such allocation from time to time in our sole discretion.

5. We have the power to terminate TNAP without naming a successor entity.

During our fiscal year ending December 29, 2013, expenditures by the TNAP were made in the following manner: 56% for media placement; 38% for production of promotional and advertising materials; and 6% for administrative expenses. In 2013, neither Tim Hortons nor any of our affiliates received any payment from TNAP. Included in the foregoing percentages are payments by TNAP to the Tim Hortons Advertising and Promotion Fund (Canada) Inc. (“THAP”) totaling \$2,430,884 in relation to products and services provided by THAP to TNAP. No TNAP monies, or any other advertising funds, were used for soliciting the sales of franchises during the fiscal year ending December 29, 2013.

All local advertising and promotion conducted by you must appear in such media and be of such type and format as we may approve, must be conducted in a dignified manner, over the time frame established by us, and must conform to the standards and requirements described in the Manual or otherwise in writing. You must submit samples of all advertising and promotional plans and materials to us prior to their use, and may not commence use of the materials unless and until we had furnished written notice to you authorizing such use. We have the right at any time after you start using any advertising or promotional plans and materials to prohibit further use, effective upon your receipt of written notice from us.

Immediately preceding and following the opening of the Restaurant, all franchisees of newly opened Restaurants must conduct an advertising and promotion program, the form and content of which must be approved by us in advance. Minimum expenditures are as follows: \$3,000 for a Standard Restaurant that is on property owned or leased by us to you and \$6,000 (or \$3,000 for a Restaurant in the Buffalo Designated Marketing Area) if you will own or lease the property upon which the Restaurant is located; \$500 to \$1,500 for a Kiosk (depending on size) on property that we own or lease and \$3,000 for a Kiosk if it is situated on property that you own or lease. Expenditures for your opening promotional campaign are not counted or credited towards your monthly system advertising fund contributions. When you sign the Franchise Agreement, we will collect from you the minimum required expenditure for your Restaurant type. We will pay your vendors directly (or reimburse you for your prior payment to them), for your expenditures from, and up to the limit of, your deposit when we receive appropriate documentation for the expense. We may, at our option, elect to contribute to the amount that you are required to spend on your initial advertising campaign. We do not contribute any amount to Restaurants that are being developed in the Buffalo Designated Marketing Area. Franchisees who take over operations of an existing open Restaurant are not required to engage in an opening promotional campaign.

You must participate in and furnish information to our market information system in order to assist us in planning, conducting, and evaluating regional and national advertising and promotional programs. You must, at your expense, install and maintain in good working order the equipment specified by us to enable us to electronically gather all relevant information, including Clearview software and other “Smart Store” technologies. You must pay all initial and ongoing internet and VPN charges incurred in participating in our market information program. Please see Item 8 and the information under the subheading “Computer Systems” in this Item 11 for additional information.

Any Internet websites, e-mail addresses, or other means of electronic advertising or commerce created and/or operated by or on behalf of us are considered as advertising and may be paid for by TNAP or a regional or other advertising program as we determine. You must obtain our prior written approval before you may register, create, and/or operate any Internet websites or Internet domain name or other address which contains any reference to the Tim Hortons System, any Proprietary Mark, or the Franchised Business. We may withhold our approval, even without good cause, and, even if we do approve, we may subsequently withdraw it, in which event you must stop operating the website. We also may require you to establish and/or operate your website as part of any other website which we may prescribe and/or establish electronic links to other websites as we may prescribe. Any website which you are authorized to establish or operate must conform to our standards and specifications for electronic advertising and commerce including, without limitation, those in relation to the use and display of the Proprietary Marks and any copyrighted materials.

The Franchise Agreement does not require you to join any local or regional advertising cooperative.

### **Computer Systems**

At our request, you must purchase or lease at your expense, and subsequently maintain, such telecommunications systems, computer hardware and software, required dedicated telephone and power lines, modem(s), printer(s), and other computer-related accessories or peripheral equipment such as point-of-sale, credit or debit verification, automatic bank transfer or depository, information storage and/or retrieval transmission systems, as we specify. They will be used for, among other functions, web-based employee training, recording sales, processing credit and debit card transactions, and other recordkeeping and central functions. If requested, you must help us connect your computer systems with our computer systems so that we can retrieve and use, for any purpose, the data and information from your computer systems. Because of the need for compatibility between interconnected computer systems, you must strictly comply with our standards and specifications for all item(s) associated with your computer systems. You also must keep your computer systems in good maintenance and repair and, at your expense, promptly install such additions, changes, modifications, substitutions, and/or replacements to your computer hardware, software, telephone and power lines, and other computer-related facilities as we direct. All Restaurants must use a point-of-sale register; all new Restaurants must use the Quickservice Technologies System. This system records all sales transactions, performs various analyses, and creates reports on sales. This system may be purchased from any Franchisor-authorized vendor (currently Quickservice Technologies). Prices vary among retailers. You must secure or maintain a maintenance contract on your computer systems. In 2014, we may choose to change our designated POS system to implement one standardized Tim Hortons POS system with all of our franchisees and Operator, which utilizes Micros software. When this POS system is available, it must be purchased from a vendor we authorize (currently, it is anticipated that we will have a designated hardware vendor, a designated software vendor, and a designated support services vendor).

You must provide your customers with the option of paying for products by credit card. To do so, you will need to enter into a bank merchant agreement with a credit card service provider or providers designated by us (currently, Chase Paymentech Solutions) and to purchase the equipment necessary to authorize and process credit card purchases. We have also established a stored value gift card program called Tim Card which you must participate in. You will acquire the necessary hardware and software and must enter into service contracts with our designated supplier of stored value gift card processing services (currently, ValueLink, LLC). Both Chase Paymentech Solutions and ValueLink, LLC will charge a fee for processing services, which fees will vary depending upon the amount of sales, the number of transactions processed, and the type of credit card or stored value gift card processed. We also have the right to require franchisees to accept debit cards and other non-cash systems. To the extent that we require you to do so, you must acquire at your expense, all necessary hardware and software to do so. Please refer to Item 8 for details about these arrangements and the estimated fees and expenses associated with them.

Franchisees of Restaurants containing a drive-thru also will receive, as part of the equipment package that must be purchased from us or one of our affiliates (as described in Item 5), a wireless communications system that consists of antennas, vehicle detection board, speakers, menu board, battery and battery chargers. The system also includes software that enables a customer to place an order from the outside menu board that is communicated to the staff inside the drive-thru who will prepare the order, as well as a drive thru timer. We require

you to secure and maintain a maintenance contract on this communications equipment. Please see Item 8 for details about these arrangements and the estimated fees associated with them.

In summary, we estimate that the cost of purchasing or leasing the required hardware and software described above will range from \$11,000 to \$35,000; in addition, we estimate that the cost of purchasing or leasing all of the optional hardware and software described above will range from \$500 to \$7,000 on an annual basis. If you are required to retrofit or replace the existing POS system in an existing Restaurant to our new standardized POS system, these estimates will increase as follows: for existing Restaurants, we estimate the new equipment costs will range from \$8,000 to \$20,000 (depending on the age and type of existing POS system in your Restaurant). There will also be an annual license fee, currently estimated at \$1,200 to \$1,250 per year per Restaurant.

We estimate that the annual cost of optional or required maintenance, updating, upgrading or support services will range from \$4,400 to \$7,200, exclusive of credit card processing fees, which fees will vary depending upon the amount of sales, the number of transactions processed, and the type of credit card processed. Please refer to Item 8 for details about estimated credit card processing fees. For existing Restaurants, when the POS system changes to our standardized POS system, there will be a monthly support fee we currently estimate to be \$250 per Restaurant per month.

Except as described above, neither we nor any of our affiliates, nor does any other third party have an obligation to provide ongoing maintenance, repairs, upgrades or updates of your computer hardware or software.

### **Manual**

A copy of the table of contents to the Manual provided to franchisees as of December 29, 2013 is attached as Exhibit C. There are a total of 1438 pages in the Manual.

### **Temporary Relief Program**

In developing markets where sales volumes may initially be low, but not for Restaurants franchised under an Area Development Agreement, we may in our sole judgment provide financial relief to our franchisees in the form of temporarily reduced royalties and rent. We may also temporarily assist our franchisees with other costs associated with operating their businesses, such as food, inventory, supplies and labor. We refer to all of this assistance as “**Relief**”.

The amount and types of Relief we may elect (but are not required) to provide depends on operational metrics we establish and may modify from time to time. For example, the amount and type of Relief may depend on how efficiently the franchisee operates the Restaurant, as measured by the amount by which the Restaurant’s percentage of Gross Sales devoted to food and paper costs and/or labor costs are less than a predetermined percentage of Gross Sales that we may establish (and from time to time modify). The amount of Relief which we may provide to a franchisee is reviewed and adjusted based upon the franchisee’s achievement of the

operational metrics we establish. For instance, if the franchisee's food and paper costs and/or labor costs exceed the percentage of the Restaurant's Gross Sales established by us, the Relief will be reduced or may be eliminated entirely. A monthly profit and loss statement must be furnished to us by the franchisee after the end of each month as a condition to receiving any Relief.

We alone determine, in our sole judgment, whether to provide Relief to any franchisee and, if so, the amount and duration of such Relief. Relief is intended to be temporary in nature. We in no way waive our right to require reimbursement for the costs of food, inventory, supplies or labor provided by us or to collect full rent and royalties in accordance with the terms of the Franchise Agreement by virtue of our providing Relief. We may reduce or cease entirely providing Relief at any time to any or all franchisees in any or all markets, regardless of the performance of any or all Restaurants. In the event that you qualify for Relief, you will be required to acknowledge in writing the temporary and discretionary and terminable-at-our will nature of the Relief.

## **ITEM 12** **TERRITORY**

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

Tim Hortons or any affiliate may establish, and/or otherwise authorize others to establish, at any location other than your Restaurant's premises, regardless of its proximity to your Restaurant or its financial impact on your Restaurant, and/or otherwise authorize others to establish, other franchised, licensed or company-owned or affiliate-owned outlets under the same or different Proprietary Marks and/or under the same or different system, including the Tim Hortons System (regardless of whether it may compete with your location), as well as sell or distribute, or license others to sell or distribute, at retail or wholesale, any products or services under any proprietary marks, including the Proprietary Marks, at or from any location, regardless of its proximity to your Restaurant or its financial impact on your Restaurant, or by means of telephone, television, mail order, catalogue, and/or computerized or other electronic remote entry ordering systems, including, without limitation, the Internet.

Your Restaurant location must be approved by us, and will be identified in the Franchise Agreement. You may not relocate the Restaurant without our prior written consent.

We will exercise our best efforts to resolve any conflicts which arise in our System concerning our distribution activities, or involving territory, customers, or support. If you have a conflict, you should contact our General Counsel, Jill Sutton, for her independent review and decision. Conflict issues will be addressed on a case-by-case basis.

Our office at 4150 Tuller Road, Suite 236, Dublin, Ohio 43017 handles the activities of both types of Restaurant, regardless of who owns or operates the Restaurants. Training facilities for both types of Restaurant are maintained in Oakville, Ontario, Canada.



The Franchise Agreement does not provide you with any options, rights of first refusal, or similar rights to acquire additional franchises.

As explained in Item 1, our affiliates BKC, BK Europe, and BK APac each franchise the operation of and/or operate Burger King restaurants. The principal business address of BKC is 5505 Blue Lagoon Drive, Miami, Florida 33126. The principal business address of BK Europe is Zaehlerweg 10, Zug, Switzerland. The principal business address of BK APac is 101 Thomson Road, #19-01/03 United Square, Singapore 307591. Burger King's restaurants and Tim Hortons Restaurants currently offer significantly different menus but they do also offer some similar goods and they may offer similar goods or services in the future. For example, both offer breakfast items, lunch sandwiches, and beverages. Except as explained below, we will not grant you a territory, and there may be Burger King restaurants located in the same market as Tim Hortons Restaurants. These Burger King restaurants could be company owned, franchised or both. To the extent there is a conflict between you and us caused by a Burger King restaurant or between a Tim Hortons franchisee and a Burger King franchisee, our management team will attempt to resolve the conflict after taking into account the specific facts of each situation and what is in the best interests of the affected system or systems. However, we are not responsible from resolving conflicts between or among Tim Hortons franchisees, or between or among a Tim Hortons franchisee and a Burger King franchisee.

Except as previously described in this Item 12 and in Item 1 and Exhibit R, neither we nor any of our affiliates has established or presently intends to establish other franchises or company-owned or affiliate owned outlets which sell similar products or services under a different trade name or trademark. However, we and our affiliates have retained the right to do so in the future.

There are no restrictions on customers to whom you may sell, but all sales must be made at your Restaurant premises. You may not sell any goods or services from or to any location other than your Restaurant premises.

### **Area Development**

If you and we sign an Area Development Agreement, we will grant you a geographic area (the "**Development Territory**") and you will be obligated to develop, own and operate franchised Restaurants within the Development Territory. Your Development Territory will be set forth on Exhibit A to your Area Development Agreement. Your right to develop and operate each franchised Restaurant within the Development Territory will be limited to the Franchised Business Premises that we approve for each Restaurant.

You will have the right and obligation to open and operate in your Development Territory the number of Restaurants on the development schedule in your Area Development Agreement (the "**Development Schedule**"). You must comply with the timetable on the Development Schedule. Under the Development Schedule, you and we will sign a Franchise Agreement for each Restaurant that you develop. You may not operate more than the number of Restaurants on the Development Schedule without first obtaining our written consent.

Within the Development Territory, neither we nor any of our affiliates will operate or grant a franchise for the types of standard or non-standard Restaurants (as defined in the Area Development Agreement) which you will develop, as long as you are not in default under the Area Development Agreement and all other related agreements, except for the rights we reserve that are described below. These restrictions will terminate immediately following the expiration or termination of the Area Development Agreement for any reason.





Within the Development Territory, we and our affiliates will have the right to operate, grant franchises for, or enter into any other agreements granting rights to own, develop, or operate Restaurants at captive sites, including at or within an airport, university, hospital, military base, sporting arena, conference center or corporate office building.




We and our affiliates may have, and may later acquire or develop, rights and property that are not granted to you or may not be designated as part of the Tim Hortons System. The Area Development Agreement does not create any form of franchise or license with respect to those rights, all of which remain our property. We reserve those rights and all rights not expressly granted in the Area Development Agreement. We or our affiliates may own, operate or authorize others to own or operate any other form of similar or competitive business anywhere, including within your Development Territory and engage in or authorize others to conduct at any location any form of business including any type of product or service not offered under the Proprietary Marks. Without limiting the generality of this paragraph, we and our affiliates may sell within and outside your Development Territory through any methods of retail or wholesale distribution channels other than a dedicated Restaurant, including, for example, sales through retail outlets such as supermarkets, grocery stores, mass merchandisers and club or warehouse stores, through the World Wide Web and other forms of electronic commerce; “800” or similar toll-free telephone numbers; mail order; catalogues; direct marketing campaigns, including mail and phone solicitations; and television sales, including “infomercials”. We are not required to provide any compensation to you for sales made in your Development Territory. We may also broadly solicit the sales of franchises, and such solicitation will occur within your Development Territory.


### **ITEM 13** **TRADEMARKS**

Franchisees operating under a Franchise Agreement and under an Operator Agreement have the non-exclusive right and license to use the Proprietary Marks in connection with the operation of the Restaurant at the Restaurant premises, but only in the manner authorized and permitted by us.

We own the following trademarks which are registered on the Principal Register of the United States Patent and Trademark Office:

Mark	Registration Number	Registration Date
<i>Tim Hortons</i>	1,690,691	June 2, 1992
TIM HORTONS	2,025,251	December 24, 1996
TIMBITS	2,026,723	December 31, 1996
ROLL UP THE RIM TO WIN	2,145,676	March 24, 1998
GREAT COFFEE EVERY TIME	2,314,620	February 1, 2000
	2,457,618	June 5, 2001
	2,433,796	March 6, 2001
TIM'S OWN	2,527,878	January 8, 2002
	2,863,213	July 13, 2004
	3,198,138	January 16, 2007
TIM CARD	3,441,669	June 3, 2008

Mark	Registration Number	Registration Date
RRROLL IT! OWN IT!	3,638,972	June 16, 2009
RRROLL UP THE RIM TO WIN	3,701,071	October 27, 2009
	3,701,070	October 27, 2009
TIM'S TAKE TEN	3,711,275	November 17, 2009
BAGEL B.E.L.T.	3,790,700	May 18, 2010
TIMSHOP	3,911,585	January 25, 2011
	4,065,879	December 6, 2011
	4,069,662	December 13, 2011
IT'S WHO YOU ARE THAT MAKES US WHO WE ARE	4,135,752	May 1, 2012
WHERE QUALITY MEETS VALUE	4,297,259	March 5, 2013

Mark	Registration Number	Registration Date
	4,415,127	October 8, 2013
WHERE QUALITY MEETS VALUE	4,455,613	December 24, 2013

We have timely filed all required affidavits and renewals.

There are no agreements currently in effect which limit our right to use or license the use of the Proprietary Marks which are in any manner material to you.

There are no currently effective determinations of the Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, or any pending opposition or cancellation proceeding, or any pending material litigation, involving the Proprietary Marks which is relevant to their use by you.

There are no infringing uses actually known to us that could materially affect your use of the Proprietary Marks in this state or elsewhere. You must promptly notify us of any suspected unauthorized use of, or challenge to the validity of, the Proprietary Marks or any challenge to our ownership of, or right to use or license others to use, the Proprietary Marks. We will have the right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. We have the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. We will defend you against any third-party claim, suit, or demand arising out of your use of the Proprietary Marks. If we, in our sole discretion, determine that you have used the Proprietary Marks in a manner authorized by the Franchise Agreement, the cost of such defense, including the cost of any judgment or settlement, will be borne by us. If we, in our sole discretion, determine that you have not used the Proprietary Marks in a manner authorized by the Franchise Agreement, the cost of such defense, including the cost of any judgment or settlement, will be borne by you. In the event of any litigation relating to your use of the Proprietary Marks, you must execute any and all documents and do such acts as may, in our opinion, be necessary to carry out such defense or prosecution, including, but not limited to, becoming a nominal party in any legal action. Except to the extent that such litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of the Franchise Agreement, we will reimburse you for your out-of-pocket litigation costs in doing such acts.

We may require you to use different proprietary marks to identify your business and the products and services you offer, if the Proprietary Marks can no longer be used, or if we, in our

sole discretion, determine that substitution of different proprietary marks will be beneficial to the Tim Hortons System. In such circumstances, the use of the substituted proprietary marks will be governed by the terms of the Franchise Agreement. We will assume your cost of modifying your signs and advertising materials to conform to the new Proprietary Marks, but no other substitution costs.

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

Tim Hortons does not own any rights in or to any patents or copyright registrations that are material to the franchise. However, we claim copyright protection over the Manuals, our other forms and materials, and our trademarks that contain design elements. We also claim proprietary rights in the confidential information and trade secrets contained in the Manuals.

#### **Confidential Information**

We will lend you a copy of the Manual (which may be in a written or electronic format, or a combination of the two formats) during the term of the Franchise Agreement, and you must conduct your business in the manner specified in the Manual. The Manual describes our standards and procedures, among other things, for operating a Restaurant, including recipes for our food products. We may from time to time revise the Manual, and you must comply with each modification. You must keep your copy of the Manual up-to-date, and in the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by us will prevail.

You must at all times treat the Manual and the information contained in it as confidential, and use all reasonable efforts to maintain such information as secret and confidential. In addition, any and all information, trade secrets, knowledge, and know-how including drawings, materials, equipment, recipes, construction, operating information, and other data which we designate as secret or confidential, also must be kept confidential by you, except information which you can demonstrate came to your attention prior to its disclosure by us to you, or which, at or after disclosure, had become or later becomes a part of the public domain, through publication or communication by others who were lawfully in possession of such information and were under no obligation to maintain its confidentiality. You may divulge confidential information only to those of your employees with a need-to-know in order to operate the Restaurant. You must not, without our prior written consent, copy or reproduce the Manual or any other confidential information, in whole or in part, or otherwise make them available to any unauthorized person or source.

You must require any employee who may have access to any confidential information to maintain the confidentiality of the information received and to execute a covenant to do so. The covenant must be in a form satisfactory to us, including specific identification of Tim Hortons as a third-party beneficiary of the covenant with an independent right to enforce it.

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

You (and your shareholders, members, or partners if you are a corporation, limited liability company, or partnership), must (i) faithfully, honestly, and diligently perform your duties in connection with, and devote your entire working time, labor, skill, and best efforts to, operating your Restaurant; and (ii) reside in the United States at a location no farther than 30 miles from your Restaurant. You cannot delegate this responsibility except in very special circumstances and subject to our prior approval, such as if you are a large corporation or if you execute an Area Development Agreement. If you are an Institutional Kiosk franchisee, your manager must be fully trained by us and act in the same manner as described above.

You must obtain covenants from certain individuals associated with you. These covenants will concern the maintenance of the confidentiality of information about the Tim Hortons System, and an agreement not to compete with a Restaurant or any other business operated under the Tim Hortons System using the Proprietary Marks.

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

You must use the Restaurant premises solely for the operation of the Restaurant.

You must operate the Restaurant in strict conformity with our standards and must not operate in any manner which reflects adversely on the Proprietary Marks or the Tim Hortons System.

You must sell only those products and services that have been approved by us and which have been prepared using the recipes and ingredients we specify. You must sell all of the products and services that we require in the Manual or otherwise in writing as being part of the Tim Hortons System. You are not permitted to sell any product or service that we have not authorized in writing.

Item 8 of the disclosure document contains a description of certain restrictions and controls over the purchase of items which may be used in or sold by the Restaurant, as well as the locations from which they may be sold.

Except as described above, Tim Hortons does not impose any other restrictions in the Franchise Agreement or otherwise as to the goods and services which you may offer or as to the customers to whom you may sell.

**ITEM 17**  
**RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

The following table lists certain important provisions of the Franchise Agreement and Addenda. You should read these provisions in the Agreement and Addenda attached to this disclosure document as Exhibits E, F, G, J, K, and L.

<u>Provision</u>	<u>Section in Franchise Agreement</u>	<u>Summary</u>
a. Length of the franchise term	§ 2.00 Addendum for Non-Institutional Kiosk, ¶2 Addendum for Institutional Kiosk, ¶2	Typically, all Restaurants have an initial term that commences when the Franchise Agreement is signed by you and us, and expires 10 years, less one day, after your Restaurant opens for business, except for Kiosks, whose terms can vary to provide a term of 5 years less 1 day if the Kiosk is designed to provide a limited-menu offering, without a drive thru, and/or non-exclusive seating.
b. Renewal or extension of the term	§ 2.01 - 2.04	Your renewal right gives you the opportunity to continue to be a franchisee in our System after your initial term expires. All Standard Restaurants may be renewed for 2 renewal terms of 5 years each, subject to contractual pre-requisites described in c. below. One of these pre-requisites is to sign our then-current form of franchise agreement, and this new agreement will likely contain materially different terms and conditions than the original contract. In addition to this contractual pre-requisite, if you lease or sublease your Restaurant premises from us or our affiliate, you may renew only if we or our affiliate have chosen to extend the term of the lease or sublease to cover the entire term of the renewal period.



<u>Provision</u>	<u>Section in Franchise Agreement</u>	<u>Summary</u>
		Renewals for Kiosks vary depending upon size, menu and location.
c. Requirements for you to renew or extend	§ 2.01, 2.02	Notice, satisfaction of monetary obligations, compliance with Franchise Agreement, execute new Franchise Agreement, and others.
d. Termination by you	Not applicable	Not applicable
e. Termination by us without cause	Not applicable	Not applicable
f. Termination by us with cause	§ 12.00, 12.01, 12.02,	Some defaults can be cured while others cannot.
g. “Cause” defined – curable defaults	§ 12.02	All breaches of Franchise Agreement which are not specifically listed as being non-curable can be cured.
h. “Cause” defined – non-curable defaults	§ 12.00, 12.01	Conduct by you will permit us to terminate without any opportunity by you to cure, such as, for example, bankruptcy, conviction of a felony, abandonment of business, disclosure of confidential information and material, understatement of Gross Sales, criminal or other improper conduct, non-payment of any amount due to us or any affiliate under the Franchise Agreement, Lease/Sublease, Promissory Note, or any other agreement or obligation, non-payment to your creditors, misappropriation of monies, use of unapproved products or suppliers, and others. See Note 1.
i. Your obligations on termination/ nonrenewal	§ 12.03	Obligations include ceasing to operate the business, complete de-identification and cessation of use of Tim Hortons System and Proprietary Marks; payment of amounts due; assignment of any interest in any

<u>Provision</u>	<u>Section in Franchise Agreement</u>	<u>Summary</u>
		lease for the Restaurant premises, or, if applicable, leasing the premises to us and others.
j. Assignment of contract by us	§ 11.00	No restriction on our right to transfer.
k. “Transfer” by you – definition	§ 11.01, 11.02	Includes transfer of interest in the Franchise Agreement, Franchisee, or all or substantially all of the assets of the Restaurant.
l. Our approval of transfer by you	§ 11.01; 11.02 Addendum for Institutional Kiosks, ¶10	We have the right to approve transfers where transfers are permitted. No transfer is permitted for an Institutional Kiosk.
m. Conditions for our approval of transfer	§ 11.02	Includes non-default of any provision of the Franchise Agreement, payment of money owed, sign general release, transferee qualifications, including, among others, absence of any competing business interests (including those of immediate family members, i.e., spouse and children), sign new agreement or assignment of old agreement, payment of transfer fee, and refurbishment of the premises, our approval of the sales price, and providing information specified by us to the buyer and us to assist in making an informed evaluation of your business and the terms of the proposed transfer. There are further restrictions on sales made within the first five years of the initial term of the Franchise Agreement.
n. Our right of first refusal to acquire your business	§ 11.04	We can match any offer by a third party.

<u>Provision</u>	<u>Section in Franchise Agreement</u>	<u>Summary</u>
o. Our option to purchase your business	§ 12.03	Upon expiration or termination, we can buy certain assets and receive an assignment of your lease.
p. Your death or disability	§ 11.05	Interest must be transferred to an approved transferee within six months except that this does not apply for the franchise agreement for Institutional Kiosks.
q. Non-competition covenants during the term of the franchise	§ 13.01 Addendum for Institutional Kiosks, ¶14	Except for Institutional Kiosks, prohibits franchisees (and their immediate family members) from diverting customers, owning or having any association or relationship with any business that is the same or similar, or offers products or services which are the same or similar, to a Restaurant (collectively, “ <b>Similar Business</b> ”), and employing or seeking to employ persons already employed by us or by any of our franchisees. Franchisees of Institutional Kiosks (and their immediate family members) are prohibited from owning or having any association or relationship with any business or enterprise whose sales of coffee and/or donuts and/or muffins and/or Timbits or similar items (either alone or in any combination) constitute 50% or more of that business or enterprise’s gross annual sales (“ <b>Competing Business</b> ”).
r. Non-competition covenants after the franchise is terminated or expires	§ 13.02 Addendum for Institutional Kiosks, ¶15	Except for Institutional Kiosks, includes a one-year prohibition on involvement with a Similar Business which is located (i) at the Restaurant premises; (ii) within a two-mile radius of the Restaurant premises; or (iii) within a two-mile radius of any other Restaurant operated by us or

<u>Provision</u>	<u>Section in Franchise Agreement</u>	<u>Summary</u>
		any of our franchisees at the time you signed the Franchise Agreement. For franchisees of Institutional Kiosks, the one-year prohibition applies to a Competing Business, except for the sale of generic non-branded products such as coffee, donuts, muffins, and other baked goods from locations described in the Addendum for Institutional Kiosks.
s. Modification of the agreement	§ 18.02	Must be in writing and, except as otherwise specified in the Franchise Agreement, signed by both parties.
t. Integration/merger clause	§ 18.02	Only the terms of the Franchise Agreement and all agreements signed with it are binding (subject to state law). Any representations or promises outside of the disclosure document and Franchise Agreement may not be enforceable.
u. Dispute resolution by arbitration or mediation	Not applicable	Not applicable
v. Choice of forum	§ 17.04	The jurisdiction where we have our principal place of business when the proceeding begins; currently, Dublin, Ohio
w. Choice of law	§ 17.00	Generally, Ohio. See Note 2.

### Notes

1. Termination upon bankruptcy may not be enforceable under federal bankruptcy law 11 U.S.C. Section 101 *et seq.*

2. In addition to the provisions noted in the preceding tables, the Franchise Agreement and Area Development Agreement contain a number of provisions that may affect your and our legal rights in the event of a dispute between us, such as a mutual waiver of a jury trial, a mutual waiver of punitive or exemplary damages, and a reduced time frame within which either of us may initiate proceedings against the other. See Franchise Agreement Sections 17.02

and 17.03 and Area Development Agreement Section 19.16. We recommend that you carefully review all of these provisions, and the entire contracts, with a lawyer.

**APPLICABLE STATE LAW MAY REQUIRE ADDITIONAL DISCLOSURES RELATED TO THE INFORMATION IN THIS DISCLOSURE DOCUMENT. THESE ADDITIONAL DISCLOSURES, IF ANY, APPEAR IN AN ADDENDUM TO THIS DISCLOSURE DOCUMENT (SEE EXHIBIT Q).**

**ITEM 18**  
**PUBLIC FIGURES**

Tim Hortons does not use any public figure to promote its franchise.

**ITEM 19**  
**FINANCIAL PERFORMANCE REPRESENTATIONS**

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

The following table describes the average Gross Sales in 2013 for all franchised Standard Restaurants that were open and operating for at least one year as of December 29, 2013:

		<b>Number of Restaurants Above Average</b>	<b>Number of Restaurants Under Average</b>	<b>Highest Reported Result</b>	<b>Lowest Reported Result</b>
<b>State</b>	<b>Average Gross Sales</b>				
Indiana	\$585,328	One Restaurant Reporting		\$585,328	
Kentucky	\$763,422	1	1	\$805,254	\$721,589
Maine	\$877,773	12	10	\$1,806,164	\$459,551
Michigan	\$1,003,245	84	78	\$2,261,063	\$281,286
New York	\$1,410,555	67	72	\$2,668,962	\$341,630
Ohio	\$973,736	61	57	\$2,072,490	\$473,675
Pennsylvania	\$949,775	6	6	\$1,320,526	\$673,286
Virginia	\$697,037	One Restaurant Reporting		\$697,037	
West Virginia	\$986,808	2	3	\$1,220,068	\$741,907

Notes:

1. The table reflects the results of 462 franchised Standard Restaurants (which includes Restaurants operating under a Franchise Agreement and under an Operator Agreement), or 53.9% of all franchised Restaurants. The remaining franchised Restaurants were not included because they opened or closed after January 1, 2013 (37) or they were not Standard Restaurants (358).
2. In preparing this table, we relied on the data contained in the unaudited reports submitted to us by our franchisees and Operators.
3. As of December 29, 2013, 58.3% of the Tim Hortons System operated a Standard Restaurant, including 58.2% of franchised Restaurants and 100% of Tim Hortons owned Restaurants.
4. 100% of the Standard Restaurants in Indiana met or exceeded the Indiana Average Gross Sales of \$585,328; 50% of the Standard Restaurants in Kentucky exceeded the Kentucky Average Gross Sales of \$763,422; 55% of the Standard Restaurants in Maine exceeded the Maine Average Gross Sales of \$877,773; 52% of the Standard Restaurants in Michigan exceeded the Michigan Average Gross Sales of \$1,003,245; 48% of the Standard Restaurants in New York exceeded the New York Average Gross Sales of \$1,410,555; 52% of the Standard Restaurants in Ohio exceeded the Ohio Average Gross Sales of \$949,775; 50% of the Standard Restaurants in Pennsylvania exceeded the Pennsylvania Average Gross Sales of \$949,775; 100% of the Standard Restaurants in Virginia met or exceeded the Virginia Average Gross Sales of \$697,037; 40% of the Standard Restaurants in West Virginia exceeded the West Virginia Average Gross Sales of \$986,808.
5. The information appearing in this table reflects the aggregate Gross Sales results of individual Standard Restaurants. It should not be considered as the actual or probable sales results that will be realized by any franchisee or Restaurant. We do not represent that any franchisee or Restaurant can expect to obtain the results presented in the table. Actual results vary from Restaurant to Restaurant and we cannot estimate the results of any specific Restaurant. A new franchisee's Restaurant results are likely to differ from those of established Restaurants. We recommend that you make your own independent investigation to determine whether or not your Restaurant may be profitable, and consult with your attorney and other advisors before signing any franchise agreement.
6. The information contained in the table should not be relied upon as representative of the Gross Sales of a Restaurant other than a Standard Restaurant.
7. Substantiation for the data presented in this table will be made available to all prospective franchisees upon reasonable request.
8. Other than the preceding financial performance representation, we do not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are

purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Jill Sutton, our General Counsel, in writing at Tim Hortons USA Inc., 4150 Tuller Road, Suite 236, Dublin, Ohio 43017, the Federal Trade Commission, and the appropriate state regulatory agencies.

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**ITEM 20**  
**OUTLETS AND FRANCHISEE INFORMATION**

*Table No. 1*

**Systemwide Outlet Summary**  
**For years 2011-2013**

<b>Outlet Type</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
Franchised	2011	598	706	+108
	2012	706	800	+94
	2013	800	857	+57
Company- Owned	2011	4	8	+4
	2012	8	4	-4
	2013	4	2	-2
Total Outlets	2011	602	714	+112
	2012	714	804	+90
	2013	804	859	+55

*Table No. 2*

**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)**  
**For years 2011 to 2013**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
Maine	2011	1
	2012	1
	2013	2
Michigan	2011	5
	2012	7
	2013	4
New York	2011	3
	2012	6
	2013	8
Ohio	2011	0
	2012	4
	2013	7



State	Year	Number of Transfers
Pennsylvania	2011	1
	2012	2
	2013	0
All Other States	2011	0
	2012	0
	2013	0
Total	2011	10
	2012	20
	2013	21

*Table No. 3*

**Status of Franchised Outlets  
For years 2011 to 2013**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
California	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	3	0	0	0	0	3
Delaware	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	0	0	0	0	0	1
Florida	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	1	0	0	0	0	2
Indiana	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
Kentucky	2011	3	0	0	0	0	0	3
	2012	3	1	0	0	0	0	4
	2013	4	0	0	0	0	0	4
Maine	2011	26	3	0	0	1	0	28
	2012	28	4	1	0	1	0	30

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
	2013	30	3	6	0	1	0	26
Maryland	2011	0	2	0	0	0	0	2
	2012	2	0	0	0	0	0	2
	2013	2	0	0	0	0	0	2
Michigan	2011	138	23	0	0	0	0	161
	2012	161	43	1	0	2	0	201
	2013	201	29	2	0	0	0	228
New Jersey	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	1	0	0	0	0	2
New York	2011	287	70	1	0	1	0	335
	2012	355	34	6	0	0	0	383
	2013	383	33	10	0	1	0	405
North Dakota	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	2	0	0	0	0	2
Ohio	2011	114	16	0	0	9	0	121
	2012	121	18	0	0	2	0	137
	2013	137	9	4	0	2	0	140
Pennsylvania	2011	22	7	1	0	0	0	28
	2012	28	4	0	0	0	0	32
	2013	32	3	1	0	0	0	34
Virginia	2011	1	1	0	0	0	0	2
	2012	2	0	0	0	0	0	2
	2013	2	0	0	0	0	0	2
West Virginia	2011	6	0	0	0	1	0	5
	2012	5	0	0	0	0	0	5
	2013	5	1	1	0	0	0	5
Totals	2011	598	122	2	0	12	0	706
	2012	706	107	8	0	5	0	800
	2013	800	85	24	0	4	0	857

*Table No. 4*

**Status of Company-Owned Outlets  
For years 2011 to 2013**

<b>State</b>	<b>Year</b>	<b>Outlets at Start of the Year</b>	<b>Outlets Opened</b>	<b>Outlets Reacquired From Franchisee</b>	<b>Outlets Closed</b>	<b>Outlets Sold to Franchisee</b>	<b>Outlets at End of the Year</b>
Maine	2011	3	0	1	0	3	1
	2012	1	0	1	1	1	0
	2013	0	0	0	0	0	0
New York	2011	1	0	0	0	1	0
	2012	0	0	0	0	0	0
	2013	0	0	0	0	0	0
Ohio	2011	0	0	6	0	0	6
	2012	6	1	0	0	5	2
	2013	2	0	1	0	2	1
West Virginia	2011	0	0	1	0	0	1
	2012	1	0	0	0	0	1
	2013	1	0	0	0	1	0
Pennsylvania	2011	0	0	0	0	0	0
	2012	0	1	0	0	0	1
	2013	1	0	0	0	0	1
All Other States	2011	0	0	0	0	0	0
	2012	0	0	0	0	0	0
	2013	0	0	0	0	0	0
Totals	2011	4	0	8	0	4	8
	2012	8	2	1	1	6	4
	2013	4	0	1	0	3	2

*Table No. 5*

**Projected Openings As Of December 29, 2013**

<b>State</b>	<b>Franchise Agreements Signed But Outlet Not Opened</b>	<b>Projected New Franchised Outlet In The Next Fiscal Year</b>	<b>Projected New Company-Owned Outlet In The Next Year</b>
Michigan	1	18	0
Arizona	1	1	0
Maine	0	1	0
New York	3	18	0
Ohio	0	10	0
Pennsylvania	0	1	0
West Virginia	1	3	0
Minnesota	0	2	0
New Jersey	0	2	0
All Other States	0	0	0
<b>Total</b>	<b>6</b>	<b>56</b>	<b>0</b>

Notes to all tables:

1. Our fiscal year-end is the Sunday closest to December 31.
2. States not listed in any Table had no activity during the relevant time frame.
3. The information contained in these Item 20 Tables (except for Table 4) pertains to Restaurants operating under a Franchise Agreement and under an Operator Agreement.
4. The regulations governing the manner in which events recorded in Table 4 are calculated result in inconsistencies in the numbers for Michigan and Ohio between the totals and the recorded events.

\* \* \*

The name, Restaurant address, and telephone number of all of our current franchisees operating under a Franchise Agreement or under an Operator Agreement as of March 26, 2014 appear at Exhibit O. The name and last known home address and telephone number of every franchisee operating under a Franchise Agreement or under an Operator Agreement who has had an agreement terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement or under an Operator Agreement from December 31, 2012 to December 29, 2013, or who has not communicated with us within 10 weeks of the date of this disclosure document appear at Exhibit P.

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

No franchisees operating under a Franchise Agreement or under an Operator Agreement have signed a confidentiality clause in a franchise agreement, settlement or other contract within the last three years that would restrict their ability to speak openly about their experience with Tim Hortons.

As of the date of this disclosure document, there are no Tim Hortons franchisee associations in existence regardless of whether or not they use our trademark.

## **ITEM 21** **FINANCIAL STATEMENTS**

Attached to this disclosure document as Exhibit D are the audited consolidated balance sheets and the related consolidated statements of operations, stockholders equity, and comprehensive income and cash flows of our parent, Tim Hortons Inc., and its subsidiaries at December 29, 2013, December 30, 2012 and January 1, 2012 and the results of their operations and their cash flows for each of the years ended December 29, 2013, December 30, 2012 and January 1, 2012. Tim Hortons Inc. has absolutely and unconditionally guaranteed to assume our duties and obligations under the Franchise Agreement. The Tim Hortons Inc. Guarantee of Performance also appears at Exhibit D.

These financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America, and are expressed in Canadian Dollars. As of March 26, 2014, \$1 Canadian Dollar equaled \$0.8986 United States Dollars.

On December 12, 2014, THI and BKW combined in a transaction in which each company became indirectly owned by RBI. In this transaction, certain affiliates of THI incurred financing debt of approximately \$9.00 billion. This debt is guaranteed by a number of the debtors' affiliates, including THI. Because the debt is not a liability of THI that would be required to be shown on THI's balance sheet or statement of operations, the guaranty has no effect on THI's net worth or income at this time.

## **ITEM 22** **CONTRACTS**

The following agreements are attached to this disclosure document:

<u>Exhibit No.</u>	<u>Type of Agreement</u>
E	Standard Restaurant Franchise Agreement
F	Addendum for Non-Institutional Kiosk
G	Addendum for Institutional Kiosk
H	Standard Form Lease
I	Standard Form Sublease
J	Tim Card Addendum and Participation Agreement

K	Security Agreement
L	Deposit Account Control Agreement
M	Letter of Intent
N	Compliance Certification
R	Cold Stone Addendum which includes, among other Exhibits, copies of a Franchise Agreement Amendment
T	VetFran Addendum to the Franchise Agreement
U	Lease Option Agreement
V	Area Development Agreement
W	WEF Loan Documents

**ITEM 23**  
**RECEIPTS**

The Receipts are attached as the last pages of this Franchise Disclosure Document.

**EXHIBIT A**  
**LIST OF ADMINISTRATORS**

We intend to register this disclosure document as a “franchise” in some or all of the following states, in accordance with the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following is the state administrators responsible for the review, registration, and oversight of franchises in that state:

**CALIFORNIA**

Department of Business Oversight  
320 West Fourth Street, Suite 750  
Los Angeles, California 90013-2344  
(213) 876-7500  
Toll Free: (866) 275-2677

**HAWAII**

Commissioner of Securities of the State of  
Hawaii  
Department of Commerce & Consumer  
Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
(808) 586-2722

**ILLINOIS**

Franchise Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-4465

**INDIANA**

Indiana Secretary of State  
Franchise Section  
302 West Washington Street, Room E-111  
Indianapolis, Indiana 46204  
(317) 232-6681

**MARYLAND**

Office of the Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202  
(410) 576- 6360

**MICHIGAN**

Consumer Protection Division  
Franchise Section  
Attn: Katharyn A. Barron  
670 G. Mennen Williams Building  
Lansing, Michigan 48913  
(517) 373-7117

**MINNESOTA**

Commissioner of Commerce  
Department of Commerce  
85 7<sup>th</sup> Place East  
Suite 500  
St. Paul, Minnesota 55101  
(651) 296-4026

**NEW YORK**

Bureau of Investor Protection and  
Securities  
New York State Department of Law  
23rd Floor  
120 Broadway  
New York, New York 10271  
(212) 416-8211

## NORTH DAKOTA

North Dakota Securities Department  
600 Boulevard Avenue, State Capitol  
Fifth Floor, Dept. 414  
Bismarck, North Dakota 58505-0510  
(701) 328-4712

## RHODE ISLAND

Department of Business Regulation  
Securities Division  
Bldg. 69, First Floor  
John O. Pastore Center  
1511 Pontiac Avenue  
Cranston, Rhode Island 02920  
(401) 462-9527

## SOUTH DAKOTA

Department of Labor and Regulation  
Division of Securities  
445 East Capitol Avenue  
Pierre, SD 57501  
(605) 773-4823

## VIRGINIA

Director, Securities and Retail Franchising  
Division  
State Corporation Commission  
1300 East Main Street, 9<sup>th</sup> Floor  
Richmond, Virginia 23219  
(804) 371-9051

## WASHINGTON

Department of Financial Institutions  
Securities Division - 3rd Floor  
150 Israel Road, S.W.  
Tumwater, Washington 98501  
(360) 902-8760

## WISCONSIN

Office of the Commissioner of Securities  
345 West Washington Avenue  
Fourth Floor  
Madison, Wisconsin 53703  
(608) 261-9555



**EXHIBIT B**  
**AGENTS FOR SERVICE OF PROCESS**

We intend to register this disclosure document as a “franchise” in some or all of the following states, in accordance with the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in those states:

**CALIFORNIA**

Department of Business Oversight  
320 West Fourth Street, Suite 750  
Los Angeles, California 90013-2344  
(213) 576-7500  
Toll Free: (866) 276-2677

**HAWAII**

Commissioner of Securities of the State of  
Hawaii  
Department of Commerce & Consumer  
Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
(808) 586-2722

**ILLINOIS**

Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-4465

**INDIANA**

Indiana Secretary of State  
201 State House  
Indianapolis, Indiana 46204  
(317) 232-6681

**MARYLAND**

Maryland Securities Commissioner  
200 St. Paul Place  
Baltimore, Maryland 21202-2020  
(410) 576- 6360

**MICHIGAN**

Michigan Department of Commerce  
Corporations and Securities Bureau  
6546 Mercantile Way  
P. O. Box 30222  
Lansing, Michigan 48910  
(517) 373-7117

**MINNESOTA**

The Commissioner of Commerce  
85 7th Place East  
Suite 500  
St. Paul, Minnesota 55101  
(651) 296-4026

**NEW YORK**

New York State Department of State  
Division of Corporations  
41 State Street  
Second Floor  
Albany, New York 12231

NORTH DAKOTA

North Dakota Securities Commissioner  
600 Boulevard Avenue, State Capitol  
Fifth Floor  
Bismarck, North Dakota 58505-0510

RHODE ISLAND

Director of Department of Business  
Regulation  
Department of Business Regulation  
Securities Division  
Bldg. 69, First Floor  
John O. Pastore Center  
1511 Pontiac Avenue  
Cranston, Rhode Island 02920  
(401) 462-9527

SOUTH DAKOTA

Department of Labor and Regulation  
Division of Securities  
445 East Capitol Avenue  
Pierre, SD 57501  
(605) 773-4823

VIRGINIA

Clerk of the State Corporation Commission  
1300 East Main Street, 1<sup>st</sup> Floor  
Richmond, Virginia 23219  
(804) 371-9733

WASHINGTON

Director of Department of Financial  
Institutions  
Securities Division - 3rd Floor  
150 Israel Road, S.W.  
Tumwater, Washington 98501  
(360) 902-8760

WISCONSIN

Commissioner of Securities  
345 West Washington Avenue  
Fourth Floor  
Madison, Wisconsin 53703  
(608) 261-9555

## EXHIBIT C - TABLE OF CONTENTS TO MANUAL

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TOTAL	1438

**EXHIBIT D**  
**FINANCIAL STATEMENTS**

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*Item 8. Financial Statements and Supplementary Data*

**Management's Statement of Responsibility for Financial Statements**

Management is responsible for preparation of the Consolidated Financial Statements and other related financial information included in this Annual Report. The Consolidated Financial Statements have been prepared in conformity with accounting principles generally accepted in the United States, incorporating management's reasonable estimates and judgments, where applicable.

**TIM HORTONS INC. AND SUBSIDIARIES**  
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**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF OPERATIONS**  
(in thousands of Canadian dollars, except share and per share data)

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Revenues</b>			
Sales (note 21)	\$ 2,265,884	\$ 2,225,659	\$ 2,012,170
Franchise revenues			
Rents and royalties	821,221	780,992	733,217
Franchise fees	168,428	113,853	107,579
	989,649	894,845	840,796
<b>Total revenues</b>	<b>3,255,533</b>	<b>3,120,504</b>	<b>2,852,966</b>
<b>Costs and expenses</b>			
Cost of sales (note 21)	1,972,903	1,957,338	1,772,375
Operating expenses	321,836	284,321	256,676
Franchise fee costs	162,605	116,644	104,884
General and administrative expenses	159,523	163,885	165,598
Equity (income) (note 11)	(15,170)	(14,693)	(14,354)
Corporate reorganization expenses (note 2)	11,761	18,874	—
De-branding costs (note 3)	19,016	—	—
Asset impairment	2,889	(372)	372
Other (income), net	(925)	(18)	(2,060)
<b>Total costs and expenses, net</b>	<b>2,634,438</b>	<b>2,525,979</b>	<b>2,283,491</b>
<b>Operating income</b>	<b>621,095</b>	<b>594,525</b>	<b>569,475</b>
Interest (expense)	(39,078)	(33,709)	(30,000)
Interest income	3,612	3,296	4,127
<b>Income before income taxes</b>	<b>585,629</b>	<b>564,112</b>	<b>543,602</b>
<b>Income taxes (note 7)</b>	<b>156,980</b>	<b>156,346</b>	<b>157,854</b>
<b>Net income</b>	<b>428,649</b>	<b>407,766</b>	<b>385,748</b>
<b>Net income attributable to non controlling interests (note 20)</b>	<b>4,280</b>	<b>4,881</b>	<b>2,936</b>
<b>Net income attributable to Tim Hortons Inc.</b>	<b>\$ 424,369</b>	<b>\$ 402,885</b>	<b>\$ 382,812</b>
<b>Basic earnings per common share attributable to Tim Hortons Inc. (note 4)</b>	<b>\$ 2.83</b>	<b>\$ 2.60</b>	<b>\$ 2.36</b>
<b>Diluted earnings per common share attributable to Tim Hortons Inc. (note 4)</b>	<b>\$ 2.82</b>	<b>\$ 2.59</b>	<b>\$ 2.35</b>
<b>Weighted average number of common shares outstanding (in thousands) – Basic (note 4)</b>	<b>150,155</b>	<b>155,160</b>	<b>162,145</b>
<b>Weighted average number of common shares outstanding (in thousands) – Diluted (note 4)</b>	<b>150,622</b>	<b>155,676</b>	<b>162,597</b>
<b>Dividends per common share</b>	<b>\$ 1.04</b>	<b>\$ 0.84</b>	<b>\$ 0.68</b>

*See accompanying Notes to the Consolidated Financial Statements.*

**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME**  
(in thousands of Canadian dollars)

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Net income</b>	\$ 428,649	\$ 407,766	\$ 385,748
<b>Other comprehensive income (loss)</b>			
Translation adjustments gain (loss)	31,333	(7,268)	9,634
Unrealized gains (losses) from cash flow hedges (note 15)			
Gain (loss) from change in fair value of derivatives	174	(5,009)	3,243
Amount of net (gain) loss reclassified to earnings during the year	(3,002)	24	4,840
Tax (expense) recovery (note 15)	(1,579)	1,442	(2,345)
Other comprehensive income (loss)	26,926	(10,811)	15,372
Comprehensive income	\$ 455,575	\$ 396,955	\$ 401,120
Comprehensive income attributable to non controlling interests	4,280	4,881	2,936
<b>Comprehensive income attributable to Tim Hortons Inc.</b>	<b>\$ 451,295</b>	<b>\$ 392,074</b>	<b>\$ 398,184</b>

*See accompanying Notes to the Consolidated Financial Statements.*



**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEET**  
(in thousands of Canadian dollars, except share and per share data)

	As at	
	December 29, 2013	December 30, 2012
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 50,414	\$ 120,139
Restricted cash and cash equivalents	155,006	150,574
Accounts receivable, net (note 5)	210,664	171,605
Notes receivable, net (note 6)	4,631	7,531
Deferred income taxes (note 7)	10,165	7,142
Inventories and other, net (note 8)	104,326	107,000
Advertising fund restricted assets (note 20)	39,783	45,337
<b>Total current assets</b>	<b>574,989</b>	<b>609,328</b>
<b>Property and equipment, net (note 9)</b>	<b>1,685,043</b>	<b>1,553,308</b>
<b>Notes receivable, net (note 6)</b>	<b>4,483</b>	<b>1,246</b>
<b>Deferred income taxes (note 7)</b>	<b>11,018</b>	<b>10,559</b>
<b>Equity investments (note 11)</b>	<b>40,738</b>	<b>41,268</b>
<b>Other assets (note 10)</b>	<b>117,552</b>	<b>68,470</b>
<b>Total assets</b>	<b>\$ 2,433,823</b>	<b>\$ 2,284,179</b>
<b>Liabilities and Equity</b>		
<b>Current liabilities</b>		
Accounts payable (note 12)	\$ 204,514	\$ 169,762
Accrued liabilities (note 12)	274,008	227,739
Deferred income taxes (note 7)	—	197
Advertising fund liabilities (note 20)	59,912	44,893
Short-term borrowings (note 13)	30,000	—
Current portion of long-term obligations	17,782	20,781
<b>Total current liabilities</b>	<b>586,216</b>	<b>463,372</b>
<b>Long-term obligations</b>		
Long-term debt (note 13)	843,020	406,320
Capital leases (note 16)	121,049	104,383
Deferred income taxes (note 7)	9,929	10,399
Other long-term liabilities (note 12)	112,090	109,614
<b>Total long-term obligations</b>	<b>1,086,088</b>	<b>630,716</b>
<b>Commitments and contingencies (note 17)</b>		
<b>Equity</b>		
<b>Equity of Tim Hortons Inc.</b>		
Common shares (\$2.84 stated value per share). Authorized: unlimited shares. Issued: 141,329,010 and 153,404,839 shares, respectively (note 18)	400,738	435,033
Common shares held in Trust, at cost: 293,816 and 316,923 shares, respectively (note 18)	(12,924)	(13,356)
Contributed surplus	11,033	10,970
Retained earnings	474,409	893,619
Accumulated other comprehensive loss	(112,102)	(139,028)
<b>Total equity of Tim Hortons Inc.</b>	<b>761,154</b>	<b>1,187,238</b>
<b>Non controlling interests (note 20)</b>	<b>365</b>	<b>2,853</b>
<b>Total equity</b>	<b>761,519</b>	<b>1,190,091</b>
<b>Total liabilities and equity</b>	<b>\$ 2,433,823</b>	<b>\$ 2,284,179</b>

*See accompanying Notes to the Consolidated Financial Statements.*

Approved on behalf of the Board:

By: /S/ Marc Caira  
\_\_\_\_\_  
Marc Caira, President & Chief Executive Officer

By: /S/ Michael J. Endres  
\_\_\_\_\_  
Michael J. Endres, Director

**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**  
(in thousands of Canadian dollars)

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Cash flows provided from (used in) operating activities</b>			
Net income	\$ 428,649	\$ 407,766	\$ 385,748
Adjustments to reconcile net income to net cash provided from operating activities			
Depreciation and amortization	161,809	132,167	115,869
Stock-based compensation expense (note 19)	21,989	11,862	17,323
Deferred income taxes	(4,885)	5,065	(5,433)
Changes in operating assets and liabilities			
Restricted cash and cash equivalents	(3,391)	(20,182)	(63,264)
Accounts receivable	(24,650)	(1,346)	2,099
Inventories and other	2,836	33,415	(32,057)
Accounts payable and accrued liabilities	46,766	6,692	349
Taxes	6,092	(18,065)	(39,197)
Settlement of interest rate forwards	(9,841)	—	—
Deposit with tax authorities	(36,532)	—	—
Other	9,893	1,913	10,030
<b>Net cash provided from operating activities</b>	<b>598,735</b>	<b>559,287</b>	<b>391,467</b>
<b>Cash flows (used in) provided from investing activities</b>			
Capital expenditures	(221,000)	(186,777)	(176,890)
Capital expenditures – Advertising fund (note 20)	(21,970)	(49,031)	(4,377)
Proceeds from sale of restricted investments	—	—	38,000
Other investing activities	5,708	(6,400)	(9,460)
<b>Net cash (used in) investing activities</b>	<b>(237,262)</b>	<b>(242,208)</b>	<b>(152,727)</b>
<b>Cash flows (used in) provided from financing activities</b>			
Repurchase of common shares (note 18)	(720,549)	(225,200)	(572,452)
Dividend payments to common shareholders	(156,141)	(130,509)	(110,187)
Distributions, net to non controlling interests	(2,858)	(3,913)	(6,692)
Net proceeds from issue of debt (note 13)	448,092	—	—
Net proceeds from issue of debt – Advertising fund	—	51,850	3,699
Short-term borrowing	30,000	—	—
Principal payments on long-term debt obligations	(36,175)	(7,710)	(8,586)
Other financing activities	3,550	(6,885)	6,398
<b>Net cash (used in) financing activities</b>	<b>(434,081)</b>	<b>(322,367)</b>	<b>(687,820)</b>
<b>Effect of exchange rate changes on cash</b>	<b>2,883</b>	<b>(1,070)</b>	<b>1,223</b>
<b>(Decrease) in cash and cash equivalents</b>	<b>(69,725)</b>	<b>(6,358)</b>	<b>(447,857)</b>
<b>Cash and cash equivalents at beginning of year</b>	<b>120,139</b>	<b>126,497</b>	<b>574,354</b>
<b>Cash and cash equivalents at end of year</b>	<b>\$ 50,414</b>	<b>\$ 120,139</b>	<b>\$ 126,497</b>
<b>Supplemental disclosures of cash flow information:</b>			
Interest paid	\$ 36,268	\$ 31,447	\$ 29,807
Income taxes paid	\$ 191,503	\$ 175,877	\$ 207,140
Non-cash investing and financing activities:			
Capital lease obligations incurred	\$ 34,712	\$ 26,095	\$ 27,789

*See accompanying Notes to the Consolidated Financial Statements.*

**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF EQUITY**  
(in thousands of Canadian dollars or thousands of common shares)

	Common Shares		Common Shares Held in Trust		Contributed Surplus	Retained Earnings	AOCI <sup>(1)</sup>		Total Equity THI	NCI <sup>(2)</sup>	Total Equity		
	Number	\$	Number	\$			Translation Adjustment	Cash Flow Hedges				\$	\$
<b>Balance as at January 2, 2011</b>	<b>170,664</b>	<b>\$ 484,050</b>	<b>(278)</b>	<b>\$ (9,542)</b>	<b>\$ —</b>	<b>\$ 1,105,882</b>	<b>\$ (137,804)</b>	<b>\$ (5,785)</b>	<b>\$ 1,436,801</b>	<b>\$ 5,641</b>	<b>\$ 1,442,442</b>		
Repurchase of common shares <sup>(3)</sup>	(12,849)	(36,492)	(61)	(2,797)	—	(535,960)	—	—	(575,249)	—	(575,249)		
Disbursed or sold from the Trust <sup>(4)</sup>	—	—	62	2,203	—	—	—	—	2,203	—	2,203		
Stock-based compensation	—	—	—	—	6,375	(5,579)	—	—	796	—	796		
Other comprehensive income	—	—	—	—	—	—	9,634	5,738	15,372	—	15,372		
Net income	—	—	—	—	—	382,812	—	—	382,812	2,936	385,748		
Dividends and distributions, net	—	—	—	—	—	(110,187)	—	—	(110,187)	(6,692)	(116,879)		
<b>Balance as at January 1, 2012</b>	<b>157,815</b>	<b>\$ 447,558</b>	<b>(277)</b>	<b>\$ (10,136)</b>	<b>\$ 6,375</b>	<b>\$ 836,968</b>	<b>\$ (128,170)</b>	<b>\$ (47)</b>	<b>\$ 1,152,548</b>	<b>\$ 1,885</b>	<b>\$ 1,154,433</b>		
Repurchase of common shares <sup>(3)</sup>	(4,410)	(12,525)	(112)	(6,154)	—	(212,675)	—	—	(231,354)	—	(231,354)		
Disbursed or sold from the Trust <sup>(4)</sup>	—	—	72	2,934	—	—	—	—	2,934	—	2,934		
Stock-based compensation	—	—	—	—	4,595	(2,143)	—	—	2,452	—	2,452		
Other comprehensive (loss)	—	—	—	—	—	—	(7,268)	(3,543)	(10,811)	—	(10,811)		
NCI transactions	—	—	—	—	—	(907)	—	—	(907)	907	—		
Net income	—	—	—	—	—	402,885	—	—	402,885	4,881	407,766		
Dividends and distributions, net	—	—	—	—	—	(130,509)	—	—	(130,509)	(4,820)	(135,329)		
<b>Balance as at December 30, 2012</b>	<b>153,405</b>	<b>\$ 435,033</b>	<b>(317)</b>	<b>\$ (13,356)</b>	<b>\$ 10,970</b>	<b>\$ 893,619</b>	<b>\$ (135,438)</b>	<b>\$ (3,590)</b>	<b>\$ 1,187,238</b>	<b>\$ 2,853</b>	<b>\$ 1,190,091</b>		
Repurchase of common shares <sup>(3)</sup>	(12,076)	(34,295)	(43)	(2,453)	—	(686,243)	—	—	(722,991)	—	(722,991)		
Disbursed or sold from the Trust <sup>(4)</sup>	—	—	66	2,885	—	—	—	—	2,885	—	2,885		
Stock-based compensation	—	—	—	—	63	(712)	—	—	(649)	—	(649)		
Other comprehensive income (loss) before reclassifications	—	—	—	—	—	—	31,333	(2,407)	28,926	—	28,926		
Amounts reclassified from AOCI <sup>(5)</sup>	—	—	—	—	—	—	—	(2,000)	(2,000)	—	(2,000)		
NCI transactions	—	—	—	—	—	(483)	—	—	(483)	483	—		
Net income	—	—	—	—	—	424,369	—	—	424,369	4,280	428,649		
Dividends and distributions, net	—	—	—	—	—	(156,141)	—	—	(156,141)	(7,251)	(163,392)		
<b>Balance as at December 29, 2013</b>	<b>141,329</b>	<b>\$ 400,738</b>	<b>(294)</b>	<b>\$ (12,924)</b>	<b>\$ 11,033</b>	<b>\$ 474,409</b>	<b>\$ (104,105)</b>	<b>\$ (7,997)</b>	<b>\$ 761,154</b>	<b>\$ 365</b>	<b>\$ 761,519</b>		

<sup>(1)</sup> Accumulated other comprehensive income ("AOCI").

<sup>(2)</sup> Non controlling interests ("NCI").

<sup>(3)</sup> Amounts reflected in Retained earnings represent consideration in excess of the stated value.

<sup>(4)</sup> Amounts are net of tax (see note 18).

<sup>(5)</sup> Amounts are net of tax (see note 15).

*See accompanying Notes to the Consolidated Financial Statements.*

**TIM HORTONS INC. AND SUBSIDIARIES**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(in thousands of Canadian dollars, except share and per share data)

**NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Description of business**

Tim Hortons Inc. is a corporation governed by the *Canada Business Corporations Act*. References herein to “Tim Hortons” or the “Company” refer to Tim Hortons Inc. and its subsidiaries. The Company’s principal business is the development and franchising of quick service restaurants primarily in Canada and the U.S., that serve premium blend coffee, espresso-based hot and cold specialty drinks (including lattes, cappuccinos and espresso shots), iced cappuccinos, specialty and steeped teas, cold beverages, fruit smoothies, home-style soups, chili, grilled Panini and classic sandwiches, wraps, yogurt and berries, oatmeal, breakfast sandwiches and wraps, and fresh baked goods, including donuts, Timbits<sup>®</sup>, bagels, muffins, cookies, croissants, Danishes, pastries and more. As the franchisor, we collect royalty revenue from franchised restaurant sales. The Company also controls the real estate underlying a substantial majority of the system restaurants, which generates another source of revenue. In addition, the Company has vertically integrated manufacturing, warehouse and distribution operations which supply a significant portion of our system restaurants with coffee and other beverages, non-perishable food, supplies, packaging and equipment.

The following table outlines the Company’s systemwide restaurant count and activity:

	2013	2012	2011
<b>Systemwide Restaurant Count</b>			
Franchised restaurants in operation – beginning of period	4,242	3,996	3,730
Restaurants opened	258	271	294
Restaurants closed	(39)	(26)	(29)
Net transfers within the franchised system	8	1	1
Franchised restaurants in operation – end of period	4,469	4,242	3,996
Company-operated restaurants – end of period	16	22	18
<b>Total systemwide restaurants – end of period<sup>(1)</sup></b>	<b>4,485</b>	<b>4,264</b>	<b>4,014</b>
<b>% of restaurants franchised – end of period</b>	<b>99.6%</b>	<b>99.5%</b>	<b>99.6%</b>

<sup>(1)</sup> Includes various types of standard and non-standard restaurant formats in Canada, the U.S. and the Gulf Cooperation Council (“GCC”) with differing restaurant sizes and menu offerings as well as self-serve kiosks, which serve primarily coffee products and a limited product selection. Collectively, the Company refers to all of these restaurants and kiosks as “systemwide restaurants.”

Excluded from the above table are 255 primarily licensed locations in the Republic of Ireland and the United Kingdom as at December 29, 2013 (2012: 245 restaurants; 2011: 261 restaurants).

**Fiscal year**

Each of the fiscal years presented consists of 52 weeks and ends on the Sunday nearest to December 31.

**Basis of presentation and principles of consolidation**

The Company prepares its financial statements in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

The functional currency of Tim Hortons Inc. is the Canadian dollar, as the majority of the Company’s cash flows are in Canadian dollars. The functional currency of each of the Company’s subsidiaries is typically the primary currency in which each subsidiary operates, which is primarily the Canadian dollar or U.S. dollar. The majority of the Company’s operations, restaurants and cash flows are based in Canada, and the Company is primarily managed in Canadian dollars. As a result, the Company’s reporting currency is the Canadian dollar.

The Consolidated Financial Statements include the results and balances of Tim Hortons Inc., its wholly-owned subsidiaries and certain entities which the Company consolidates as variable interest entities (“VIEs”). Intercompany accounts and transactions among consolidated entities have been eliminated upon consolidation. Investments in non-consolidated affiliates over which the Company exercises significant influence, but for which the Company is not the primary beneficiary and does not have control, are accounted for using the equity method. The Company’s share of the earnings or losses of these

**TIM HORTONS INC. AND SUBSIDIARIES**  
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**(in thousands of Canadian dollars, except share and per share data) - Continued**

non-consolidated affiliates is included in Equity income, which is included as part of operating income because these investments are operating ventures closely integrated into the Company's business operations.

***Use of estimates***

The preparation of Consolidated Financial Statements in conformity with U.S. GAAP requires management to make assumptions and estimates. These assumptions and estimates affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the Consolidated Financial Statements and the reported amounts of revenues and expenses during the reporting periods. Estimates and judgments are inherent in, but not limited to, the following: income taxes; valuations used when assessing potential impairment of long-lived assets and/or restaurant closure costs; the estimation of the useful lives of long-lived assets; whether an entity is a VIE and whether the Company is the primary beneficiary of that VIE and other related estimates; the fair value of stock-based compensation and the related stock-based compensation expense; the probability of forecast transactions occurring for purposes of applying hedge accounting; and reserve contingencies for litigation and various other commitments, contingencies and accruals. While management applies its judgment based on assumptions believed to be reasonable under the circumstances and at the time, actual results could vary from these assumptions, and estimates may vary depending on the assumptions used. The Company evaluates and updates its assumptions and estimates based on new events occurring, additional information being obtained or more experience being acquired.

***Earnings per share***

Basic earnings per common share attributable to Tim Hortons Inc. are computed by dividing Net income attributable to Tim Hortons Inc. in the Consolidated Statement of Operations by the weighted average number of common shares outstanding. Diluted computations are based on the treasury stock method and include assumed issuances of outstanding restricted stock units ("RSUs") and stock options with tandem stock appreciation rights ("SARs"), that take into account: (i) the amount, if any, the employee must pay upon exercise; (ii) the amount of compensation cost attributed to future services and not yet recognized; and (iii) the amount of tax benefits (both current and deferred), if any, that would be credited to contributed surplus assuming exercise of the options, net of shares assumed to be repurchased from the assumed proceeds, when dilutive.

***Revenue recognition***

The timing of revenue recognition for Sales (distribution, Company-operated restaurants and consolidated Non-owned restaurants) and Franchise revenues (*i.e.*, rents, royalties and franchise fees) does not involve significant estimates and assumptions.

***Sales***

The Company operates warehouses in Canada to distribute coffee, shelf-stable and other dry goods, and refrigerated and frozen products to its extensive restaurant system. Revenues from distribution sales are recognized upon delivery. Revenues from Company-operated restaurants and consolidated Non-owned restaurants consolidated pursuant to applicable accounting rules ("consolidated Non-owned restaurants") are recognized upon tender of payment at the time of sale.

***Franchise revenues***

Rental revenue, excluding contingent property and equipment rent, is recognized on a straight-line basis. Contingent rent, and royalties based on a percentage of monthly sales, are recognized as revenue on an accrual basis in the month earned. Restaurant owners may receive assistance through lower rents and royalties and reductions in, or assistance with, certain other operating costs ("relief"). Relief is recognized as a reduction to the Company's rents and royalties revenues. Franchise fees are collected at the time of sale or extension of franchise rights. Franchise fees and equipment sales are generally recognized as revenue when each restaurant commences operations or re-opens subsequent to a renovation and collectability is reasonably assured.

The advertising levies paid by restaurant owners to the Company's advertising funds, other than those from Company-operated restaurants and Non-owned consolidated restaurants, are generally netted in the Consolidated Statement of Operations because the contributions to these advertising funds are designated for specific purposes, and the Company acts, in substance, as an agent with regard to these contributions. Advertising levies intended to pay for specific long-lived assets acquired by the advertising funds are accrued in the month earned on a gross basis (see *Variable Interest Entities* below).

**TIM HORTONS INC. AND SUBSIDIARIES**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
**(in thousands of Canadian dollars, except share and per share data) - Continued**

*Tim Cards*

Proceeds from the initial sale or reloading of the Company's Tim Card<sup>®</sup> quick-pay cash card program ("Tim Card") balances are recognized as Restricted cash and cash equivalents in the Consolidated Balance Sheet along with a corresponding obligation. A Tim Card entitles the holder to use the value for purchasing products and the amounts generally are not redeemable for cash. When a guest uses a Tim Card to purchase products at a Company-operated restaurant or consolidated Non-owned restaurant, the Company recognizes the revenue from the sale of the product and relieves the obligation. When a customer uses a Tim Card at a franchised restaurant, the Company remits the cash to the restaurant owner from Restricted cash and cash equivalents and relieves the obligation.

While the Company will honour all valid Tim Cards presented for payment, the Company may, based on a historical review after the program has been in place for some time, determine the likelihood of redemption to be remote for certain card balances ("breakage") due to, among other factors, long periods of inactivity or historical redemption patterns. In these circumstances, to the extent management determines that there is no requirement for remitting funds to government agencies under unclaimed property laws, any such funds may be remitted to the Company's advertising and promotion funds. No such amounts for breakage have been recognized for Tim Cards since inception, as we continue to assess historical redemption patterns.

***Advertising costs***

Advertising costs are expensed as incurred, with the exception of media development costs which are expensed in the month that the advertisement is first communicated.

Advertising costs, related to Company-operated restaurants and consolidated Non-owned restaurants, consisting of contributions made to the Company's advertising funds, are recognized in Cost of sales in the Consolidated Statement of Operations. Contributions made to the advertising funds by the Company to fund additional advertising programs are included in General and administrative expenses in the Consolidated Statement of Operations. Contributions to the advertising funds are expensed when incurred.

***Stock-based compensation***

The Company's 2006 Stock Incentive Plan ("2006 Plan") and the 2012 Stock Incentive Plan ("2012 Plan") are omnibus plans, designed to allow for a broad range of equity-based compensation awards in the form of RSUs, stock options, SARs, dividend equivalent rights ("DERs"), performance awards and share awards. The 2012 Plan was approved by shareholders at the annual and special meeting of shareholders held on May 10, 2012. The 2012 Plan was adopted as a result of the substantial completion of the 2006 Plan, under which no new awards will be granted. Outstanding awards granted under the 2006 Plan will continue to be settled using shares registered under the 2006 Plan.

The Company has provided compensation to certain employees under the 2006 Plan and, subsequent to May 10, 2012, the 2012 Plan, in the form of RSUs and stock options with tandem SARs. In addition, the Company has issued deferred stock units ("DSUs") to non-employee directors under the Company's Non-Employee Director Deferred Stock Unit Plan.

***Restricted stock units***

RSUs are measured at fair value based on the closing price of the Company's common shares on the Toronto Stock Exchange ("TSX") on the first business day preceding the grant date. RSUs are expensed on a straight-line basis over the vesting period, which is a maximum 30-month period, except for grants to retirement-eligible employees, which, unless the grant of the RSU is subject to a performance condition, are expensed immediately. These expenses are primarily recognized in General and administrative expenses in the Consolidated Statement of Operations, consistent with the classification of the related employee compensation expense.

In addition, the Company grants performance-conditioned RSUs to certain of its employees. The performance component is based on prior-year performance and is used to determine the amount of units granted. Performance-conditioned RSUs are expensed on a straight-line basis beginning when the performance measures are set and extends over the performance period (prior to grant) and the vesting period (after the grant), based on management's determination that the achievement of the performance condition associated with the grant is probable. Both RSUs and performance-conditioned RSUs have accompanying DERs, that accumulate only subsequent to the grant (*i.e.*, not during the performance period).

RSUs are settled by the Company with the participant, after provision (on the account of the participant) for the payment of the participant's minimum statutory withholding tax requirements, primarily by way of disbursement of common shares from the TDL RSU Employee Benefit Plan Trust (the "Trust") or by an open market purchase by an agent of the Company on behalf

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of the eligible employee. The method of settlement is primarily dependent on the jurisdiction where the employee resides, but securities law, regulatory requirements and other factors are also considered. Since RSUs are settled with common shares, they are accounted for as equity-settled awards.

*Deferred stock units*

DSUs are granted in relation to the equity portion of the Board retainers paid as compensation for services provided by non-employee members of the Company's Board of Directors, who may also elect to receive the remainder of their Board and Committee compensation in the form of DSUs. DSUs are expensed on the date of grant since they vest immediately, although they are not payable until a director's separation from service. DSUs are notional units which track the value of the Company's common shares. These units are settled in cash based on the value of the Company's common shares on the TSX on the date of the director's separation of service from the Company. As a cash-settled award, the related liability is revalued to fair value at the end of each reporting period, and recognized in General and administrative expenses in the Consolidated Statement of Operations. DSUs have accompanying DERs, which are also expensed as earned and recognized in General and administrative expenses in the Consolidated Statement of Operations.

*Stock options*

The Company uses the Black-Scholes-Merton option pricing model to value outstanding options, which requires the use of subjective assumptions. These assumptions include the estimated length of time employees will retain their stock options before exercising them (the "expected term"), the expected volatility of the Company's common share price over the expected term, the risk-free interest rate, the dividend yield, and the forfeiture rate. The awards are issued with tandem SARs (see below) and are therefore accounted for as cash-settled awards. This results in a revaluation of the liability to fair value at the end of each reporting period, which is generally recognized in General and administrative expenses in the Consolidated Statement of Operations. The fair value of the options is expensed over the vesting period, except for grants to retirement-eligible employees which are expensed immediately.

*Stock appreciation rights*

SARs may be granted alone or in conjunction with a stock option. A SAR related to an option terminates upon the expiration, forfeiture or exercise of the related option, and is exercisable only to the extent that the related option is exercisable. Conversely, an option related to a SAR terminates upon the expiration, forfeiture or exercise of the related SAR, and is exercisable only to the extent that the related SAR is exercisable. Stock options with tandem SARs enable the employee to exercise the stock option to receive common shares or to exercise the SAR and receive a cash payment, in each case, of an amount equal to the difference between the market price of the common share on the exercise date and the exercise price of the stock option.

*Income taxes*

The Company uses the asset and liability method whereby income taxes reflect the expected future tax consequences of temporary differences between the carrying amounts of assets or liabilities for accounting purposes as compared to tax purposes. A deferred income tax asset or liability is determined for each temporary difference based on the currently enacted tax rates that are expected to be in effect when the underlying items of income and expense are expected to be realized, except for a portion of earnings related to foreign operations where repatriation is not contemplated in the foreseeable future. Income taxes reported in the Consolidated Statement of Operations include the current and deferred portions of the expense. Income taxes applicable to items charged or credited to equity are netted with such items. Changes in deferred income taxes related to a change in tax rates are recognized in the period when the tax rate change is enacted. In addition, the Consolidated Statement of Operations contains items that are non-taxable or non-deductible for income tax purposes and, accordingly, may cause the income tax provision to be different from what it would be if based on statutory rates.

When considered necessary, the Company records a valuation allowance to reduce deferred tax assets to the balance that is more likely than not to be realized. To determine the valuation allowance, the Company must make estimates and judgments on future taxable income, considering feasible tax planning strategies and taking into account existing facts and circumstances. When the Company determines that the net amount of deferred tax assets could be realized in greater or lesser amounts than recognized, the asset balance and income tax expense reflect the change in the period such determination is made. Due to changes in facts and circumstances and the estimates and judgments that are involved in determining the valuation allowance, future events could result in adjustments to this valuation allowance.

A tax benefit from an uncertain tax position may be recognized in the Consolidated Financial Statements only if it is more likely than not that the position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the Consolidated Financial Statements from such a position are measured based on the

**TIM HORTONS INC. AND SUBSIDIARIES**  
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largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. Changes in judgment that result in subsequent recognition, de-recognition or a change in measurement of a tax position taken in a prior period (including any related interest and penalties) are recognized as a discrete item in the interim period in which the change occurs. The Company records interest and potential penalties related to unrecognized tax benefits in Income taxes in the Consolidated Statement of Operations. The Company classifies a liability associated with an unrecognized tax benefit as a long-term liability, except for liabilities that are expected to be settled within the next 12 months.

The determination of income tax expense takes into consideration amounts that may be needed to cover exposure for open tax years. The number of tax years that remain open and subject to tax audits varies depending on the tax jurisdiction. A number of years may elapse before an uncertain tax position, for which the Company has unrecognized tax benefits, is audited and resolved. While it is often difficult to predict the final outcome or the timing of resolution of any particular uncertain tax position, the Company believes that its unrecognized tax benefits reflect management's current estimate of the expected outcomes. Unrecognized tax benefits are adjusted, as well as the related interest and penalties, in light of subsequent changes in facts and circumstances. Settlement of any particular uncertain tax position may require the use of cash. In addition, the resolution of a matter may result in an adjustment to the provision for income taxes which may impact the effective tax rate in the period of resolution.

***Foreign currency translation***

The functional currency of the Company's U.S. operating subsidiaries is the U.S. dollar. For such entities, the assets and liabilities are translated at the year-end Canadian dollar exchange rates, and the revenues and expenses are translated at average Canadian dollar exchange rates for the period. Translation adjustments resulting from rate differences between the average rate and year-end rate are recognized as a component of Equity in Other comprehensive income (loss) in the Consolidated Statement of Comprehensive Income.

Assets and liabilities denominated in a currency other than the functional currency of a subsidiary are translated at the period-end exchange rate and any currency adjustment is recognized in Other income, net in the Consolidated Statement of Operations.

***Cash and cash equivalents***

The Company considers short-term investments, which are highly liquid and have original maturities of three months or less, as cash equivalents. The Company limits the counterparty risk associated with its cash and cash equivalents by utilizing a number of different financial institutions and limiting the total amount of cash and cash equivalents held at any individual financial institution. The Company continually monitors the credit ratings of its counterparties and adjusts its positions, if appropriate. The majority of the cash and cash equivalents held by the Company as at December 29, 2013 and December 30, 2012 are held at Canadian financial institutions.

***Restricted cash and cash equivalents and Restricted investments***

Amounts presented as Restricted cash and cash equivalents in the Company's Consolidated Balance Sheet represent the net amount of cash loaded onto Tim Cards by guests, less redemptions and loans to the Tim Hortons Advertising and Promotion Fund (Canada) Inc. ("Ad Fund"). The balances are restricted, as per agreement with restaurant owners, and can only be used for the settlement of obligations under the Tim Card program and for other limited purposes, such as loans to the Ad Fund. Since the inception of the Tim Card program, interest earned on Restricted cash and cash equivalents has been contributed to the Company's advertising funds to help offset costs associated with this program. Obligations under the Tim Card program are included in Accrued liabilities in the Consolidated Balance Sheet.

Changes in Restricted cash and cash equivalents and obligations under the Tim Card program are reflected in operating activities in the Consolidated Statement of Cash Flows. Purchases of, and proceeds upon, the maturity of Restricted investments are included in investment activities in the Consolidated Statement of Cash Flows.

***Notes receivable, net***

The Company has outstanding Franchise Incentive Program ("FIP") arrangements with certain U.S. restaurant owners which generally provided interest-free financing ("FIP Note") for the purchase of certain restaurant equipment, furniture, trade fixtures and signage.

Notes receivable arise primarily from the FIP Notes and, to a lesser extent, from notes receivable on various equipment and other financing programs. In many cases, the Company will choose to hold a FIP Note beyond the initial term to help a restaurant owner achieve certain profitability targets or to accommodate a restaurant owner seeking to obtain third-party



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financing. If the restaurant owner does not repay the FIP Note, the Company is able to take back ownership of the restaurant and equipment based on the underlying franchise agreement, which collateralizes the FIP Note and, therefore, minimizes the credit risk to the Company.

The need for an allowance for uncollectible amounts is reviewed on a specific restaurant owner basis using information available to the Company, including past-due balances, whether the Company has extended the FIP Note beyond the initial term, restaurant sales and profitability targets, collateral available as security, and the financial strength of the restaurant owner. An allowance is recognized for FIP Notes receivable, both principal and imputed interest, when amounts are identified as either uncollectible or impaired. For impaired FIP Notes, the Company has established an allowance for the difference between the net investment in the FIP Note and the current value of the underlying collateral of the FIP Note, which is based primarily on the estimated depreciated replacement cost of the underlying equipment.

***Inventories, net***

Inventories are carried at the lower of cost (moving average) and market value and consist primarily of raw materials such as green coffee beans and finished goods such as restaurant food items, new equipment and parts, and paper supplies.

***Property and equipment, net***

The Company carries its Property and equipment, net in the Consolidated Balance Sheet at cost and depreciates and amortizes these assets using the straight-line method over the following estimated useful lives:

	<b>Depreciation Periods</b>
Building and leasehold improvements	10 to 40 years or lease term
Restaurant and other equipment	7 to 16 years
Capital leases	8 to 40 years or lease term
Computer hardware and software	3 to 10 years
Advertising fund property and equipment	3 to 10 years
Manufacturing and other equipment	4 to 30 years
Construction in progress	Reclassified to above categories when put in use

The Company is considered to be the owner of certain restaurants leased from an unrelated lessor because the Company constructed some of the structural elements of those restaurants. Accordingly, the Company has included the restaurant construction costs for these restaurants in Property and equipment, net on the Consolidated Balance Sheet and recognized the lessor's contributions to the construction costs for these certain restaurants as other debt.

Major improvements are capitalized, while maintenance and repairs are expensed when incurred.

***Impairment of long-lived assets***

Long-lived assets are grouped at the lowest level of independent cash flows and tested for impairment whenever an event or circumstance occurs that indicates impairment may exist ("triggering event").

Restaurant-related long-lived assets are grouped into operating markets as this is the lowest identifiable level of independent cash flows. Events such as prolonged negative same-store sales growth in the market, which is a key operating metric, prolonged negative cash flows in the operating market, a higher-than-average number of restaurant closures in any one market, or a current expectation that, more likely than not, a long-lived asset or asset group will be sold or otherwise disposed of prior to its estimated useful life, are indicators that the Company uses in evaluating whether a triggering event may exist. The Company also considers whether the affected market is developed or developing. In developed markets, the primary indicator for the overall health of an operating market is same-store sales growth. In developing markets, the Company assesses a number of additional factors, including systemwide sales growth, which encompasses new restaurants and same-store sales growth, the stage of growth of the operating market, the average unit sales volume trends, changes in the restaurant composition in the market and overall long-term performance expectations.

Non-restaurant-related assets are grouped at the lowest level of independent cash flows. Corporate assets, which relate primarily to land, buildings and computer hardware and software systems, are grouped on a consolidated level with all long-lived assets as they support the entire business and do not generate independent cash flows.

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If it is determined that a triggering event has occurred, an undiscounted cash flow analysis is completed on the affected asset group to determine if the future expected undiscounted cash flows of an asset group are sufficient to recover the carrying value of the assets. If it is determined that the undiscounted cash flows are insufficient, then the asset group is deemed to be impaired. The fair value of the long-lived assets is estimated primarily using third-party appraisals or discounted cash flows, as appropriate. If the fair value of the asset group is less than the carrying amount, an impairment loss is recognized for the difference between the carrying amount and the fair value of the asset group.

***Leases***

For operating leases, minimum lease payments, including minimum scheduled rent escalations, are recognized as rent expense on a straight-line basis over the lease term. This term includes certain option periods considered in the lease term and any periods during which the Company has use of the property but is not charged rent by a landlord (“rent holiday”). Contingent rentals are generally based on either a percentage of restaurant sales or as a percentage of restaurant sales in excess of stipulated amounts, and thus are not included in minimum lease payments but are included in rent expense when incurred. Rent incurred during the construction period is expensed. Leasehold improvement incentives paid to the Company by a landlord are recognized as a liability and amortized as a reduction of rent expense over the lease term.

When determining the lease term for purposes of recording depreciation and rent or for evaluating whether a lease is capital or operating, the Company includes option periods, to the extent it is reasonably assured at the inception of the lease that failure to renew would have a negative economic impact on the Company.

In the case of property that is leased or subleased by the Company to restaurant owners, minimum lease receipts, including minimum scheduled rent increases, are recognized as rent revenue on a straight-line basis. Contingent rent revenue is generally based on a percentage of franchised restaurant sales or a percentage of franchised restaurant sales in excess of stipulated amounts, and is recognized when these sales levels are met or exceeded.

***Variable interest entities***

The Company identifies its variable interests within equity investments and license or operator arrangements, determines whether the legal entity in which these interests reside constitutes a VIE, and whether the Company is the primary beneficiary and therefore consolidates those VIEs.

The VIE is consolidated if the Company has the power to direct and either has the obligation to absorb losses or right to receive benefits that potentially could be significant to that VIE. The consolidation of VIEs has no impact on consolidated net income attributable to Tim Hortons Inc. or earnings per share (“EPS”).

***VIEs for which the Company is the primary beneficiary:***

***Non-owned restaurants***—The Company enters into certain arrangements in which an operator acquires the right to operate a restaurant, but the Company owns the restaurant’s assets. In these arrangements, the Company has the ability to determine which operators manage restaurants and for what duration. The Company previously also entered into FIP arrangements, whereby restaurant owners finance the initial franchise fee and the purchase of restaurant assets.

In both operator and FIP arrangements, the Company performs an analysis to determine whether the legal entity in which operations are conducted lacks sufficient equity to finance its activities and is therefore a VIE. For the entities determined to be VIEs, if the Company receives potentially significant benefits from these VIEs and is considered to direct the activities that most significantly impact economic performance, then the VIE is consolidated.

***Advertising funds***—The Company participates in separate advertising funds for Canada and the U.S. which, on behalf of the Company and restaurant owners, collect contributions and administer funds for advertising and promotional programs to increase sales and enhance the reputation of the Company and its restaurant owners. The Company is the sole shareholder (Canada) and sole member (U.S.) of these funds. As the Company acts as an agent for these specifically designated contributions, the revenues, expenses and cash flows of the funds are generally netted in the Consolidated Statements of Operations and Cash Flows.

***The Trust***—In connection with RSUs granted to Company employees, the Company established the Trust, which purchases and retains common shares of the Company to satisfy the Company’s contractual obligation to deliver its common shares to settle the awards for most Canadian employees. The Company funds the Trust and directs the activities of the Trust.

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*VIEs for which the Company is not the primary beneficiary:*

The Company also has investments in certain real estate ventures determined to be VIEs of which the Company is not the primary beneficiary. The most significant of these is TIMWEN Partnership, owned on a 50/50 basis by the Company and The Wendy's Company ("Wendy's") to jointly develop the real estate underlying combination restaurants in Canada that offer Tim Hortons and Wendy's products at one location. Control is considered to be shared since all significant decisions must be made jointly. These real estate ventures are accounted for using the equity method, based on the Company's ownership percentages, and are included in Equity investments in the Consolidated Balance Sheet.

***Fair value measurements***

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability in an orderly transaction between market participants on the measurement date. Valuation techniques used by the Company to measure fair value maximize the use of observable inputs and minimize the use of unobservable inputs. The measurement of fair value is based on three levels of inputs, as follows:

- Level 1—Quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- Level 2—Inputs, other than Level 1 inputs, that are observable for the assets or liabilities, either directly or indirectly. Level 2 inputs include: quoted market prices for similar assets or liabilities; quoted prices in markets that are not active; or, other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

***Derivative instruments***

The Company recognizes and measures all derivatives as either assets or liabilities at fair value in the Consolidated Balance Sheet. Derivatives that qualify as hedging instruments are generally cash flow hedges.

The Company has a policy prohibiting speculative trading in derivatives. The Company may enter into derivatives that are not initially designated as hedging instruments for accounting purposes, but which largely offset the economic impact of certain transactions.

The Company limits its counterparty risk associated with derivative instruments by utilizing a number of different financial institutions, and by generally entering into International Swaps and Derivatives Association agreements with those financial institutions. The Company continually monitors its positions, and the credit ratings of its counterparties, and adjusts positions if appropriate. The Company did not have significant exposure to any individual counterparty as at December 29, 2013 or December 30, 2012.

***Cash flow hedges***

The Company's exposure to foreign exchange risk is mainly related to fluctuations between the Canadian dollar and the U.S. dollar. The Company is also exposed to changes in interest rates in the periods prior to the issuance of longer-term financing. The Company seeks to manage its cash flow and income exposures and may use derivative products to reduce the risk of a significant impact on its cash flows or income. The Company does not hedge foreign currency or interest rate risk in a manner that would entirely eliminate the effect of changes in foreign currency exchange rates or interest rates on net income and cash flows.

For cash flow hedges, the effective portion of the gains or losses on derivatives is recognized in the cash flow hedges component of Accumulated other comprehensive loss in Total equity of Tim Hortons Inc. in the Consolidated Balance Sheet and reclassified into earnings in the same period or periods in which the hedged transaction affects earnings. For interest rate forwards, gains or losses recognized in Accumulated other comprehensive income are amortized to interest expense over the life of the related debt, as the underlying interest expense is recognized in the Consolidated Statement of Operations. The ineffective portion of gains or losses on derivatives is reported in the Consolidated Statement of Operations. We classify the cash flows from hedging transactions in the same categories as the cash flows from the respective hedged items. The Company discontinues hedge accounting when: (i) it determines that the cash flow derivative is no longer effective in offsetting changes in the cash flows of a hedged item; (ii) the derivative expires or is sold, terminated or exercised; (iii) it is probable that the forecasted transaction will not occur; or (iv) management determines that designation of the derivative as a hedge instrument is

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no longer appropriate. For discontinued or de-designated cash flow hedges, the related accumulated derivative gains or losses are recognized in earnings in the Consolidated Statement of Operations.

*Other derivatives*

The Company has a number of total return swaps (“TRS”) outstanding that are intended to reduce the variability of cash flows and, to a lesser extent, earnings associated with stock-based compensation awards that will settle in cash, namely, the SARs that are associated with stock options and DSUs. The TRS do not qualify as accounting hedges and, therefore, the fair value adjustment at the end of each reporting period is recognized in General and administrative expenses in the Consolidated Statement of Operations. Each TRS has a seven-year term, but each contract allows for partial settlements, at the option of the Company, over the term and without penalty.

**Accounting changes - new accounting standards**

In fiscal 2013, we prospectively adopted Accounting Standards Update No. 2013-02—*Reporting of Amounts Reclassified Out of Accumulated Other Comprehensive Income*, which requires additional disclosure of significant reclassifications out of comprehensive income into net income, if the amount is required to be reclassified in its entirety.

**NOTE 2 CORPORATE REORGANIZATION EXPENSES**

The Company completed the realignment of roles and responsibilities under its new organizational structure, which includes a Corporate Centre and Business Unit, at the end of the first quarter of fiscal 2013, and incurred the following expenses, as set forth in the table below:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Termination costs	\$ 6,342	\$ 9,016	\$ —
Professional fees and other	2,349	7,602	—
CEO transition costs	3,070	2,256	—
<b>Total Corporate reorganization expenses</b>	<b>\$ 11,761</b>	<b>\$ 18,874</b>	<b>\$ —</b>

CEO transition costs include expenses related to an employment agreement with an executive officer and retention agreements with certain senior executives, which are being recognized over the estimated service period of these agreements. The Company has accrued \$2.8 million as at December 29, 2013 (2012: \$0.5 million) relating to the retention agreements.

	Termination costs	Professional fees and other	CEO transition costs	Total
Costs incurred during fiscal 2012	\$ 9,016	\$ 7,602	\$ 2,256	\$ 18,874
Paid during fiscal 2012	(1,458)	(3,775)	(411)	(5,644)
Accrued as at December 30, 2012	7,558	3,827	1,845	13,230
Costs incurred during fiscal 2013	6,342	2,349	3,070	11,761
Paid during fiscal 2013	(12,932)	(5,947)	(466)	(19,345)
<b>Accrued as at December 29, 2013<sup>(1)</sup></b>	<b>\$ 968</b>	<b>\$ 229</b>	<b>\$ 4,449</b>	<b>\$ 5,646</b>

<sup>(1)</sup> Of the total accrual, \$4.9 million is recognized in Accounts Payable (December 30, 2012: \$12.4 million), which is expected to be substantially settled in the first half of fiscal 2014 (see note 12).

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**NOTE 3 DE-BRANDING COSTS**

After evaluation of strategic considerations and the overall performance of the Cold Stone Creamery business in Tim Hortons locations, in the fourth quarter of 2013, we have decided to remove the Cold Stone Creamery brand from Tim Hortons restaurants in Canada. The de-branding costs recognized in the fourth quarter of fiscal 2013 as a result of this initiative, all of which were reflected in the Canadian segment, are set forth in the following table:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Payments to restaurant owners <sup>(1)(3)</sup>	\$ 7,373	\$ —	\$ —
Accelerated depreciation and amortization of long-lived assets <sup>(2)</sup>	6,827	—	—
Inventory write-downs	2,400	—	—
Other related costs <sup>(3)</sup>	2,416	—	—
<b>Total De-branding costs</b>	<b>\$ 19,016</b>	<b>\$ —</b>	<b>\$ —</b>

<sup>(1)</sup> Includes payments to affected restaurant owners to de-brand and to restore their restaurants.

<sup>(2)</sup> The Company's master license agreement with Kahala Franchise Corp. to use Cold Stone Creamery licenses in Canada remains in effect, although the remaining balance of \$2.4 million was amortized in the fourth quarter of 2013 as the Company has no further plans to develop the Cold Stone Creamery brand in Tim Hortons locations in Canada.

<sup>(3)</sup> Primarily recorded in Accrued liabilities, Other (see note 12) on the Consolidated Balance Sheet. The Company expects to settle these obligations in the first half of fiscal 2014.

**NOTE 4 EARNINGS PER COMMON SHARE ATTRIBUTABLE TO TIM HORTONS INC.**

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Net income attributable to Tim Hortons Inc.	\$ 424,369	\$ 402,885	\$ 382,812
Weighted average number of shares outstanding for computation of basic earnings per common share attributable to Tim Hortons Inc. (in thousands)	150,155	155,160	162,145
Dilutive impact of restricted stock units (in thousands)	212	217	197
Dilutive impact of stock options with tandem SARs (in thousands)	255	299	255
Weighted average number of shares outstanding for computation of diluted earnings per common share attributable to Tim Hortons Inc. (in thousands)	150,622	155,676	162,597
Basic earnings per common share attributable to Tim Hortons Inc.	\$ 2.83	\$ 2.60	\$ 2.36
Diluted earnings per common share attributable to Tim Hortons Inc.	\$ 2.82	\$ 2.59	\$ 2.35

**TIM HORTONS INC. AND SUBSIDIARIES**  
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**NOTE 5 ACCOUNTS RECEIVABLE, NET**

	As at	
	December 29, 2013	December 30, 2012
Accounts receivable	\$ 128,530	\$ 112,522
Franchise sales receivable	27,197	2,386
Other receivables <sup>(1)</sup>	56,602	57,942
	212,329	172,850
Allowance	(1,665)	(1,245)
Accounts receivable, net	\$ 210,664	\$ 171,605

<sup>(1)</sup> Includes accrued rent, Tim Card receivable, accrued income tax and other accruals.

**NOTE 6 NOTES RECEIVABLE, NET**

	As at					
	December 29, 2013			December 30, 2012		
	Gross	VIEs <sup>(1)</sup>	Total	Gross	VIEs <sup>(1)</sup>	Total
FIPs	\$ 16,677	\$ (13,668)	\$ 3,009	\$ 20,235	\$ (13,499)	\$ 6,736
Other notes receivable <sup>(2)</sup>	8,256	(649)	7,607	4,773	(942)	3,831
Notes receivable	\$ 24,933	\$ (14,317)	10,616	\$ 25,008	\$ (14,441)	10,567
Allowance <sup>(3)</sup>			(1,502)			(1,790)
<b>Notes receivable, net</b>			<b>\$ 9,114</b>			<b>\$ 8,777</b>
Current portion, net			\$ 4,631			\$ 7,531
Long-term portion, net			\$ 4,483			\$ 1,246

Class and Aging	As at					
	December 29, 2013			December 30, 2012		
	Gross	VIEs <sup>(1)</sup>	Total	Gross	VIEs <sup>(1)</sup>	Total
Current status (FIP notes and other)	\$ 9,688	\$ (2,081)	\$ 7,607	\$ 6,969	\$ (1,269)	\$ 5,700
Past-due status < 90 days (FIP notes)	328	—	328	407	(407)	—
Past-due status > 90 days (FIP notes)	14,917	(12,236)	2,681	17,632	(12,765)	4,867
Notes receivable	\$ 24,933	\$ (14,317)	10,616	\$ 25,008	\$ (14,441)	10,567
Allowance <sup>(3)</sup>			(1,502)			(1,790)
<b>Notes receivable, net</b>			<b>\$ 9,114</b>			<b>\$ 8,777</b>

<sup>(1)</sup> The notes payable to the Company by VIEs are eliminated on consolidation, which reduces the Notes receivable, net recognized on the Consolidated Balance Sheet (see note 20).

<sup>(2)</sup> Relates primarily to notes issued to vendors in conjunction with the financing of a property sale, and on various equipment and other financing programs.

<sup>(3)</sup> The Company has recognized an allowance to reflect the current value, based primarily on the estimated depreciated replacement cost of the underlying equipment held as collateral. Substantially all of the allowance relates to past-due FIP Notes.

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**NOTE 7 INCOME TAXES**

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Current</b>			
Canadian <sup>(1)</sup>	\$ 159,369	\$ 148,168	\$ 157,685
Foreign <sup>(2)</sup>	2,453	3,323	5,240
	<u>161,822</u>	<u>151,491</u>	<u>162,925</u>
<b>Deferred</b>			
Canadian <sup>(1)</sup>	(5,848)	2,836	(2,506)
Foreign <sup>(2)</sup>	1,006	2,019	(2,565)
	<u>(4,842)</u>	<u>4,855</u>	<u>(5,071)</u>
<b>Income tax expense</b>	<u>\$ 156,980</u>	<u>\$ 156,346</u>	<u>\$ 157,854</u>

<sup>(1)</sup> Income before income taxes representing Canadian earnings in fiscal 2013 was \$578.3 million (2012: \$554.9 million; 2011: \$536.1 million).

<sup>(2)</sup> Represents taxes related to U.S. and international operations.

A reconciliation of statutory Canadian and provincial income tax rates is shown below:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Income before income taxes	\$ 585,629	\$ 564,112	\$ 543,602
Statutory rate	26.5%	26.5%	28.3%
Income taxes at statutory rate	155,348	149,551	153,567
Taxation difference on foreign earnings	5,011	4,310	(1,846)
Provincial, state and local tax rate differentials	630	634	152
Change in reserves for uncertain tax positions	(8,412)	(1,620)	3,271
Change in valuation allowance	3,022	6,431	2,226
Other	1,381	(2,960)	484
Income taxes at effective rate	<u>\$ 156,980</u>	<u>\$ 156,346</u>	<u>\$ 157,854</u>
Effective tax rate	26.8%	27.7%	29.0%

**TIM HORTONS INC. AND SUBSIDIARIES**  
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The tax-effected temporary differences which gave rise to deferred tax assets and liabilities consisted of the following:

	As at	
	December 29, 2013	December 30, 2012
<b>Deferred tax assets</b>		
U.S. foreign tax credit carryforwards	\$ 18,649	\$ 23,209
Lease transactions	64,796	56,645
Property and equipment basis differences	11,757	11,008
Intangible assets basis differences	1,479	1,643
Stock-based compensation plans	6,062	5,776
Reserves and expenses not currently deductible	8,631	4,065
Deferred income	16,659	13,205
Loss carryforwards	10,960	5,037
All other	539	696
	<u>139,532</u>	<u>121,284</u>
Valuation allowance	(46,760)	(39,190)
	<u>\$ 92,772</u>	<u>\$ 82,094</u>
<b>Deferred tax liabilities</b>		
Lease transactions	\$ 43,409	\$ 38,244
Property and equipment basis differences	26,581	30,711
Unremitted earnings – foreign operations <sup>(1)</sup>	3,621	2,314
Stock-based compensation plans	6,486	2,975
All other	1,421	745
	<u>\$ 81,518</u>	<u>\$ 74,989</u>
<b>Net deferred tax assets</b>	<u>\$ 11,254</u>	<u>\$ 7,105</u>
Reported in Consolidated Balance Sheet as:		
Deferred income taxes – current asset	\$ 10,165	\$ 7,142
Deferred income taxes – long-term asset	11,018	10,559
Deferred income taxes – current liability	—	(197)
Deferred income taxes – long-term liability	(9,929)	(10,399)
	<u>\$ 11,254</u>	<u>\$ 7,105</u>

<sup>(1)</sup> The Company has provided for deferred taxes as at December 29, 2013 on approximately \$120.7 million (2012: \$88.2 million) of undistributed earnings that are not indefinitely reinvested.

The Company continues to provide a full valuation allowance on net federal deferred tax assets in the U.S, as well as certain state net operating loss carryforwards. In addition, the Company has provided for a full valuation allowance on losses resulting from public company costs, including costs of its new long-term debt. The Company periodically assesses the realization of its net deferred tax assets based on current and historical operating results, as well as expectations of future operating results. A valuation allowance is recorded if the Company believes its net deferred tax assets will not be realized in the foreseeable future. The Company has weighed both positive and negative evidence in determining whether to continue to maintain or provide a valuation allowance on its deferred tax assets. The Company's determination to maintain or provide a valuation allowance is based on what it believes may be the more likely than not result. The Company will continue to assess the realization of the deferred tax assets and may consider the release of all or a portion of the valuation allowance in the future based on the weight of evidence at that time.

Deferred taxes are not provided for temporary differences that represent the excess of the carrying amount for financial reporting purposes over the tax basis of investments in foreign subsidiaries, where the differences are considered indefinitely



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reinvested. These temporary differences may become taxable upon actual or deemed repatriation of earnings from the subsidiaries, or as a result of a sale or liquidation of subsidiaries which is not typical or planned. Determination of the deferred income taxes for these temporary differences is not practicable as the liability, if any, depends on circumstances existing if and when realization occurs. The amount of these temporary differences represented by undistributed earnings considered indefinitely reinvested in the foreign subsidiaries was approximately \$213.0 million as at December 29, 2013 (2012: \$213.0 million). The Company did not have significant cash on hand as at December 29, 2013 in the foreign subsidiaries to distribute these earnings.

The Company has Canadian pre-tax non-capital loss carryforwards of \$33.4 million, which will expire between fiscal 2029 and fiscal 2033 for federal and provincial purposes. The tax benefit on \$18.6 million of these Canadian losses is offset by a valuation allowance. U.S. state loss carryforwards of approximately \$92.5 million, the tax benefit of which is primarily offset by a valuation allowance, will expire between fiscal 2014 and fiscal 2033.

The Company's U.S. foreign tax credits of \$18.6 million will expire between fiscal 2020 and fiscal 2023.

A reconciliation of the beginning and ending amounts of unrecognized tax benefits (excluding related interest and penalties), is as follows:

	<u>December 29, 2013</u>	<u>December 30, 2012</u>
Balance at beginning of year	\$ 25,041	\$ 29,755
Additions based on tax positions related to the current year	510	1,034
Additions for tax positions of prior years	3,983	1,978
Reductions for tax positions of prior years	(1,280)	(3,533)
Reductions related to settlements with taxing authorities	(821)	(895)
Reductions as a result of a lapse of applicable statute of limitations	(10,114)	(3,298)
Balance at end of year	<u>\$ 17,319</u>	<u>\$ 25,041</u>
Reported in the Consolidated Balance Sheet as:		
Accrued liabilities, Taxes	\$ —	\$ 3,835
Other long-term liabilities (note 12)	17,319	21,206
	<u>\$ 17,319</u>	<u>\$ 25,041</u>

As at December 29, 2013, there are no uncertain tax positions for which ultimate deductibility or recoverability is highly certain but for which there is uncertainty about the timing of such deductibility or recoverability (2012: \$0.8 million). The \$17.3 million unrecognized tax benefits as at December 29, 2013 (2012: \$24.2 million) would impact the effective tax rate, over time, if recognized.

The Company accrues interest and potential penalties related to unrecognized tax benefits in income tax expense. As of December 29, 2013, the Company had accrued, cumulatively, approximately \$7.6 million (2012: \$8.8 million) for the potential payment of interest and penalties. During 2013, the Company recognized a recovery in its tax expense of approximately \$1.2 million related to interest and penalties (2012: expense of \$0.5 million; 2011: expense of \$1.2 million).

The Canada Revenue Agency ("CRA") issued notices of reassessment for the 2005 through 2009 taxation years for transfer pricing adjustments related to the Company's former investment in the Maidstone Bakeries joint venture. The proposed adjustments, including tax, penalty and interest, total approximately \$60.0 million. The Company filed a Notice of Objection with the CRA in October 2013. The Company will maintain approximately \$38.0 million of the proposed adjustment on deposit with the CRA and other taxation authorities while this matter is under dispute, most of which was deposited during fiscal 2013.

The cash deposit did not have a material adverse impact on our liquidity. Although the outcome of this matter cannot be predicted with certainty, the Company intends to contest this matter vigorously, and it believes that it will ultimately prevail based on the merits of its position. At this time, the Company believes that it has adequately reserved for this matter; however, it will continue to evaluate its reserves as it progresses through appeals and, if necessary, the litigation process. If the CRA's position is ultimately sustained as proposed, it may have a material adverse impact on earnings in the period that the matter is ultimately resolved.

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A Notice of Appeal to the Tax Court of Canada was filed in July 2012 in respect of a dispute with the CRA related to the deductibility of approximately \$10.0 million of interest expense for the 2002 taxation year. The court date is set for the second half of 2014. The Company believes that it will ultimately prevail in sustaining the tax benefit of the interest deduction and, as such, has not made a provision for this matter.

For Canadian federal tax purposes, except as noted above, the 2007 and subsequent taxation years remain open to examination and potential adjustment by the CRA. The CRA is conducting examinations of the 2008 through 2011 taxation years. For U.S. federal income tax purposes, the Company remains open to examination commencing with the 2010 taxation year. Income tax returns filed with various provincial and state jurisdictions are generally open to examination for periods of three to five years subsequent to the filing of the respective return. Except as described above, the Company does not currently expect any material impact on earnings to result from the resolution of matters related to open taxation years; however, it is possible that actual settlements may differ from amounts accrued.

It is reasonably possible that the total amount of unrecognized tax benefits will increase over the next 12 months by up to \$4.1 million, plus interest and penalties, as a result of possible tax authority audit and appeal settlements primarily relating to the deductibility of interest and other business expenses. In addition, it is also reasonably possible that unrecognized tax benefits, primarily related to certain business expenses, will decrease over the next 12 months by up to \$3.7 million plus interest and penalties, as a result of possible tax authority audit settlements and expiry of statute of limitations. There could be fluctuations in the amount of unrecognized tax benefits over the next 12 months as a result of the timing of the settlement of these tax audits and appeals and, currently, the Company cannot definitively determine the timing or the amount of individual settlements. The Company has made its estimates based on current facts and circumstances and cannot predict with sufficient certainty subsequent or changed facts and circumstances that may affect its estimates.

**NOTE 8 INVENTORIES AND OTHER, NET**

	As at	
	December 29, 2013	December 30, 2012
Raw materials	\$ 22,789	\$ 19,941
Finished goods	69,348	75,660
	92,137	95,601
Inventory obsolescence provision	(1,754)	(1,015)
Inventories, net	90,383	94,586
Prepays and other	13,943	12,414
<b>Total Inventories and other, net</b>	<b>\$ 104,326</b>	<b>\$ 107,000</b>

**TIM HORTONS INC. AND SUBSIDIARIES**  
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**NOTE 9 PROPERTY AND EQUIPMENT, NET**

	As at	
	December 29, 2013	December 30, 2012
Land	\$ 259,386	\$ 248,097
Buildings and leasehold improvements	1,638,755	1,481,454
Restaurant and other equipment	208,986	188,216
Capital leases <sup>(1)</sup>	233,090	205,543
Computer hardware and software <sup>(2)</sup>	124,114	117,266
Advertising fund property and equipment <sup>(3)</sup>	138,858	116,044
Manufacturing and other equipment	97,083	112,991
Construction in progress	35,827	18,957
Property and equipment, net of impairment	2,736,099	2,488,568
Accumulated depreciation and amortization	(1,051,056)	(935,260)
<b>Total Property and equipment, net</b>	<b>\$ 1,685,043</b>	<b>\$ 1,553,308</b>

<sup>(1)</sup> Capital leases relate primarily to leased buildings. The Company added \$34.5 million of capital leased assets in fiscal 2013 (2012: \$26.1 million).

<sup>(2)</sup> Includes internally and externally developed software of \$75.5 million, at cost, as at December 29, 2013 (2012: \$71.9 million) with a net book value of \$24.9 million as at December 29, 2013 (2012: \$26.8 million).

<sup>(3)</sup> Consists primarily of menu board equipment.

**NOTE 10 OTHER ASSETS**

	As at	
	December 29, 2013	December 30, 2012
Bearer deposit notes <sup>(1)</sup>	\$ 41,403	\$ 41,403
Tax deposits <sup>(2)</sup>	36,532	—
TRS contracts <sup>(1)</sup>	21,393	7,504
Rent leveling	5,419	5,240
Intangible assets <sup>(3)</sup>	494	3,674
Other long-term assets	12,311	10,649
<b>Total Other assets</b>	<b>\$ 117,552</b>	<b>\$ 68,470</b>

<sup>(1)</sup> The Company holds these deposit notes as collateral to reduce the carrying cost of the TRS. As a portion of the TRS is unwound, a proportionate share of these notes is also unwound (see note 15). See note 14 for the fair values of these assets.

<sup>(2)</sup> The Company has made deposits with the CRA and other taxation authorities relating to transfer pricing adjustments related to the Company's former investment in the Maidstone Bakeries joint venture (see note 7).

<sup>(3)</sup> Intangible assets consist of certain non-exclusive rights with Kahala Franchising, L.L.C. to use Cold Stone Creamery licenses in the U.S., which are being amortized over their related term. The Company has a master license agreement with Kahala Franchise Corp. to use Cold Stone Creamery licenses in Canada, the remaining balance of which was amortized in December 2013 (see note 3). Previously, the Company had an intangible asset for the use of the name and likeness of Ronald V. Joyce, a former owner of the Company, which was fully amortized in fiscal 2013. Total intangible amortization, which includes the amortization of the master license agreement, was \$3.3 million in fiscal 2013 (2012: \$1.0 million; 2011: \$1.0 million).

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**NOTE 11 EQUITY INVESTMENTS**

Combined summarized financial information for the Company's investments accounted for using the equity method is shown below. These amounts are, in aggregate, at 100% levels. The net income amounts shown below generally exclude income tax expense as the majority of these investments pertain to a partnership or joint venture, in which case ownership percentage of earnings is attributed to the partner or joint venturer and the associated income tax is included in Income taxes in the Consolidated Statement of Operations.

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Income Statement Information</b>			
Revenues	\$ 42,997	\$ 42,863	\$ 42,105
Expenses attributable to revenues	\$ (12,074)	\$ (12,902)	\$ (12,712)
Net income	\$ 30,341	\$ 29,382	\$ 29,067
Equity income—THI	\$ 15,170	\$ 14,693	\$ 14,354

	As at	
	December 29, 2013	December 30, 2012
<b>Balance Sheet Information</b>		
Current assets	\$ 7,832	\$ 8,408
Non-current assets	\$ 82,274	\$ 86,352
Current liabilities	\$ 1,432	\$ 4,010
Non-current liabilities	\$ 8,206	\$ 9,138
Partners' equity	\$ 80,468	\$ 81,612
Equity investment by THI	\$ 40,738	\$ 41,268

The Company's most significant equity investment is its 50% joint-venture interest with Wendy's, which jointly holds real estate underlying Canadian combination restaurants (see note 20). In fiscal 2013, the Company received distributions of \$14.8 million (2012: \$15.3 million; 2011: \$15.0 million) from this joint venture.

**NOTE 12 ACCOUNTS PAYABLE, ACCRUED LIABILITIES, AND OTHER LONG-TERM LIABILITIES**

*Accounts payable*

	As at	
	December 29, 2013	December 30, 2012
Accounts payable	\$ 142,131	\$ 126,312
Construction holdbacks and accruals	57,527	31,008
Corporate reorganization accrual (note 2)	4,856	12,442
<b>Total Accounts payable</b>	<b>\$ 204,514</b>	<b>\$ 169,762</b>

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***Accrued liabilities***

	As at	
	December 29, 2013	December 30, 2012
Tim Card obligations	\$ 184,443	\$ 159,745
Salaries and wages	22,553	21,477
Taxes	14,542	8,391
De-branding accruals <sup>(1)</sup>	9,538	—
Other accrued liabilities <sup>(2)</sup>	42,932	38,126
<b>Total Accrued liabilities</b>	<b>\$ 274,008</b>	<b>\$ 227,739</b>

<sup>(1)</sup> Includes accruals related to Cold Stone Creamery de-branding activity in Tim Hortons locations in Canada (see note 3).

<sup>(2)</sup> Includes accruals for contingent rent, current portion of the Maidstone Bakeries supply contract, deferred revenues, deposits, and various equipment and other accruals.

***Other long-term liabilities***

	As at	
	December 29, 2013	December 30, 2012
Accrued rent leveling liability	\$ 32,070	\$ 29,244
Stock-based compensation liabilities (note 19)	25,532	17,479
Uncertain tax position liability (note 7)	24,926	28,610
Maidstone Bakeries supply contract deferred liability	7,799	15,352
Other accrued long-term liabilities <sup>(1)</sup>	21,763	18,929
<b>Total Other long-term liabilities</b>	<b>\$ 112,090</b>	<b>\$ 109,614</b>

<sup>(1)</sup> Includes deferred revenues and various other accruals.

**NOTE 13 LONG-TERM DEBT**

	As at	
	December 29, 2013	December 30, 2012
Senior Unsecured Notes, Series 1, due June 1, 2017	\$ 301,196	\$ 301,544
Senior Unsecured Notes, Series 2, due December 1, 2023	449,892	—
Advertising fund debt	30,189	56,500
Other debt	69,794	60,223
	<u>\$ 851,071</u>	<u>\$ 418,267</u>
Less: current portion <sup>(1)</sup>	(8,051)	(11,947)
<b>Total Long-term debt</b>	<b>\$ 843,020</b>	<b>\$ 406,320</b>

<sup>(1)</sup> Excludes current portion due under capital leases of \$9.7 million as at December 29, 2013 (2012: \$8.8 million).

The Company's weighted average effective interest rate on total debt (excluding consolidated Non-owned restaurants) as at December 29, 2013 is 5.4% (2012: 5.8%). See note 14 for the fair value of the Company's total debt.

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Future maturities for the Company's long-term debt, as at December 29, 2013 are shown below:

	<b>Long-term debt</b>
2014	\$ 8,051
2015	8,500
2016	8,518
2017	308,696
2018	8,905
Subsequent years	507,313
<b>Total principal repayments</b>	<b>849,983</b>
Senior Unsecured Notes - Premium (Discount), net	1,088
<b>Total</b>	<b>\$ 851,071</b>
Current portion	\$ 8,051
Long-term portion	\$ 843,020

***Senior Unsecured Notes, Series 1, due June 1, 2017***

In fiscal 2010, the Company issued \$300.0 million of Senior Unsecured Notes, Series 1, due June 1, 2017 ("Series 1 Notes") in two tranches for net proceeds of \$302.3 million, which included a premium of \$2.3 million. The Company also entered into interest rate forwards, with a notional value of \$195.0 million, which acted as a cash flow hedge to limit the interest rate volatility in the period prior to the initial issuance of the Series 1 Notes, and resulted in a loss of \$4.9 million on settlement. The premium, the loss on the interest rate forwards, and financing fees of approximately \$1.8 million were deferred and are being amortized to Interest expense in the Consolidated Statement of Operations over the term of the Series 1 Notes. The effective yield, including all fees, premium and the interest rate forwards loss, is 4.45%.

The Series 1 Notes bear a fixed interest rate of 4.20% with interest payable in semi-annual installments, in arrears, which commenced December 1, 2010. The Series 1 Notes rank equally and *pari passu* with each other and with the notes of every other series (regardless of their actual time of issue), including the Series 2 Notes, issued under the Trust Indenture, and, with all other senior unsecured and unsubordinated indebtedness of Tim Hortons Inc. (the "Borrower"), including amounts owing under the 2010 Revolving Bank Facility and the 2013 Revolving Bank Facility (see below), except as to any sinking fund which pertains exclusively to any particular indebtedness of the Borrower, and statutorily preferred exceptions.

The Series 1 Notes are initially guaranteed by The TDL Group Corp. ("TDL"), the Borrower's largest Canadian subsidiary. For so long as the Borrower's and TDL's third-party revenues represent at least 75% of the consolidated revenues of the Company, as tested quarterly on a rolling 12-month basis, TDL will remain the sole subsidiary guarantor. To the extent that combined third-party revenues of these two entities is less than 75% of consolidated revenues, additional guarantors must be added until 75% of consolidated revenues are reached or exceeded. In each case, the Borrower's subsidiary with the highest gross revenue must be one of the guarantors. Alternatively, if the Borrower's third-party revenues reach or exceed 75% of consolidated revenues, the guarantors will be released. There are certain covenants limiting liens to secure borrowed money (subject to permitted exceptions), and limiting the Company's ability to undertake certain acquisitions and dispositions (subject to compliance with certain requirements), but there are no financial covenants.

The Series 1 Notes are redeemable, at the Borrower's option, at any time, upon not less than 30 days' notice, but no more than 60 days' notice, at a redemption price equal to the greater of: (i) a price calculated to provide a yield to maturity (from the redemption date) equal to the yield on a non-callable Government of Canada bond with a maturity equal to, or as close as possible to, the remaining term to maturity of the Senior Notes, plus 0.30%; and (ii) par, together, in each case, with accrued and unpaid interest, if any, to the date fixed for redemption. In the event of a change of control and a resulting rating downgrade to below investment grade, the Borrower will be required to make an offer to repurchase the Series 1 Notes at a redemption price of 101% of the principal amount, plus accrued and unpaid interest, if any, to the date of redemption.

***Senior Unsecured Notes, Series 2, due December 1, 2023***

The Company offered the Senior Unsecured Notes, Series 2, due December 1, 2023 ("Series 2 Notes") on a private placement basis in the fourth quarter of 2013 for total net proceeds of \$449.9 million, which included a discount of \$0.1 million. The Company

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also entered into interest rate forwards, with a notional value of \$498.0 million, which acted as a cash flow hedge to limit the interest rate volatility in the period prior to the initial issuance of the Series 2 Notes, which resulted in a loss of \$9.8 million on settlement. The discount, the loss on the interest rate forwards, and financing fees of approximately \$2.4 million were deferred and are being amortized to Interest expense in the Consolidated Statement of Operations over 10 years. The effective yield, including all fees and the interest rate forwards loss, is 4.87%.

The Series 2 Notes bear a fixed interest coupon rate of 4.52% with interest payable in semi-annual installments, in arrears, which will commence on June 1, 2014. The Series 2 Notes rank equally and *pari passu* with each other and with the notes of every other series (regardless of their actual time of issue), including the Series 1 Notes, issued under the Trust Indenture, and with all other senior unsecured and unsubordinated indebtedness of the Borrower, including amounts owing under the 2010 Revolving Bank Facility and the 2013 Revolving Bank Facility (see below), except as to any sinking fund which pertains exclusively to any particular indebtedness of the Borrower, and statutorily preferred exceptions.

The Series 2 Notes are initially guaranteed by TDL, on the same terms and conditions as prescribed for the Series 1 Notes (see *Senior Unsecured Notes, Series 1, due June 1, 2017* above). Similar to the Series 1 Notes, the Series 2 Notes are also subject to certain covenants limiting liens to secure borrowed money (subject to permitted exceptions) and limiting our ability to undertake certain acquisitions and dispositions (subject to compliance with certain requirements), but there are no financial covenants.

The Series 2 Notes are redeemable, at the Borrower's option, at any time, upon not less than 30 days' and not more than 60 days' notice, at a redemption price equal to the greater of: (i) a price calculated to provide a yield to maturity (from the redemption date) equal to the yield on a non-callable Government of Canada bond with a maturity equal to, or as close as possible to, the remaining term to maturity of the Series 2 Notes, plus 0.49%; and (ii) par, together, in each case, with accrued and unpaid interest, if any, to the date fixed for redemption. Notwithstanding the foregoing, on or after September 1, 2023, the Company may, at its option, redeem the Series 2 Notes in whole but not in part, upon not less than 30 days' and not more than 60 days' notice, at par, together with accrued and unpaid interest, if any, to the date fixed for redemption. In the event of a change of control (which, for the Series 2 Notes, includes a change in the majority of the Board of Directors) and a resulting rating downgrade to below investment grade, the Borrower will be required to make an offer to repurchase the Series 2 Notes at a redemption price of 101% of the principal amount, plus accrued and unpaid interest, if any, to the date of redemption.

### ***Revolving bank facilities***

In December 2010, and subsequently amended in January 2012, we entered into a 5-year unsecured senior revolving facility credit agreement (the "2010 Revolving Bank Facility"), which will mature on January 26, 2017. The 2010 Revolving Bank Facility has a similar guarantee structure as the Series 1 and Series 2 Notes and may be drawn by the Borrower or TDL and, as such, has a Tim Hortons Inc. guarantee that cannot be released. The 2010 Revolving Bank Facility consists of \$250.0 million (which includes \$25.0 million overdraft availability and a \$25.0 million letter of credit facility). The 2010 Revolving Bank Facility is undrawn, except for approximately \$5.2 million as at December 29, 2013 (2012: \$5.6 million) to support standby letters of credit, and is available for general corporate purposes. The 2010 Revolving Bank Facility bears commitment fees according to our credit rating; our current annual facility fee payable is 0.30% (2012: 0.20%).

In October 2013, we entered into a 364-day Revolving Bank Facility (the "2013 Revolving Bank Facility"), which will mature on October 3, 2014. The 2013 Revolving Bank Facility provides for up to \$400.0 million in revolving credit available at the request of the Company. The 2013 Revolving Bank Facility is available for general corporate purposes, including the purchase by the Company of its common shares under any normal course or substantial issuer bid, by private agreement, or otherwise, or other cash distribution to shareholders, in each case made in compliance with applicable securities laws and the requirements of the TSX. The 2013 Revolving Bank Facility bears commitment fees according to our credit rating; our current annual facility fee payable is 0.29%. As at December 29, 2013, the Company had drawn \$30.0 million on the 2013 Revolving Bank Facility (2012: nil) bearing an interest rate of 2.68%.

Each of the 2010 and 2013 Revolving Bank Facilities (collectively, "the Revolving Bank Facilities") provide variable rate funding options including bankers' acceptances, LIBOR, or prime rate plus an applicable margin. If certain market conditions caused LIBOR to be unascertainable or not reflective of the cost of funding, the administration agent under each of the Revolving Bank Facilities can cause the borrowing to be the base rate which has a floor of one month LIBOR plus 1.0%. These facilities do not carry market disruption clauses. The Revolving Bank Facilities contain certain covenants that limit the Company's ability to, among other things: incur additional indebtedness; create liens; merge with other entities; sell assets; make restricted payments; make certain investments, loans, advances, guarantees or acquisitions; change the nature of its business; enter into transactions with affiliates; enter into certain restrictive agreements; or pay dividends or make share

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repurchases if the Company is not in compliance with the financial covenants, or if such transactions would cause the Company to not be in compliance with the financial covenants. The Revolving Bank Facilities require the maintenance of two financial ratios, which we were in compliance with as at December 29, 2013:

- *Consolidated maximum total debt coverage ratio.* This ratio is computed as consolidated total debt divided by net income (excluding net income of VIEs) before interest expense, taxes, depreciation and amortization, and net of discrete non-cash losses and gains or extraordinary losses and gains incurred outside the ordinary course of business (the denominator). Consolidated total debt (the numerator) primarily includes (without duplication) all liabilities for borrowed money, capital lease obligations, letters of credit (whether or not related to borrowed money), the net marked-to-market under swap agreements and guarantee liabilities (excluding those scheduled in the applicable Revolving Bank Facility).
- *Minimum fixed charge coverage ratio.* This ratio is computed as net income (excluding net income of VIEs) before interest expense, taxes, depreciation and amortization, rent expense, and net of discrete non-cash losses and gains or extraordinary losses and gains incurred outside the ordinary course of business, collectively as the numerator, divided by consolidated fixed charges. Consolidated fixed charges includes interest and rent expense.

Events of default under the Revolving Bank Facilities include: a default in the payment of the obligations under the applicable Revolving Bank Facility or a change in control of Tim Hortons Inc. Additionally, events of default for the Borrower, TDL or any future Guarantor include: a breach of any representation, warranty or covenant under the applicable Revolving Bank Facility; certain events of bankruptcy, insolvency or liquidation; and, any payment default or acceleration of indebtedness if the total amount of indebtedness unpaid or accelerated exceeds \$25.0 million.

***Advertising fund debt***

The Ad Fund had a revolving credit facility bearing interest at a Banker's Acceptance Fee plus applicable margin related to the Expanded Menu Board Program. This Credit Facility was canceled in fiscal 2013 because the Ad Fund entered into an agreement with a Company subsidiary for a revolving credit facility funded by the Restricted cash and cash equivalents related to our Tim Card Program ("Tim Card Revolving Credit Facility") (see note 20). The Tim Card Revolving Credit Facility is non-interest bearing, as all interest earned on the Restricted cash and cash equivalents is contributed back to the Ad Fund per internal agreement, and there are no financial covenants associated with the Tim Card Revolving Credit Facility.

The Ad Fund has a 7-year term loan ("Term Loan") with a Canadian financial institution, a portion of which was prepaid in fiscal 2013 because the Ad Fund entered into an agreement with a Company subsidiary for a term loan for the same amount, which is also funded by the Restricted cash and cash equivalents related to our Tim Card program ("Tim Card Loan"). The Tim Card Loan has similar repayment terms as the Term Loan, but is non-interest bearing as all interest earned on the Restricted cash and cash equivalents is contributed back to the Ad Fund per internal agreement (see note 20).

The Term Loan is secured by the Ad Fund's assets and are not guaranteed by Tim Hortons Inc. or any of its subsidiaries. There are no financial covenants associated with the Term Loan or the Tim Card Loan. Events of default under the Term Loan include: a default in the payment of the obligations under the Term Loan; certain events of bankruptcy, insolvency or liquidation; and any material adverse effect in the financial or environmental conditions of the Ad Fund.

The Term Loan matures in November 2019 and will be repaid in equal quarterly installments. It bears interest at a Banker's Acceptance Fee plus an applicable margin, with interest payable quarterly in arrears, commencing January 2013. Prepayment of the loan is permitted without penalty at any time in whole or in part.

Of the Term Loan outstanding as at December 29, 2013, \$5.0 million is recorded in Current portion of long-term obligations (2012: \$9.7 million) and \$25.2 million is recorded in Long-term debt (2012: \$46.8 million) in the Consolidated Balance Sheet.

***Other debt***

Included in other debt as at December 29, 2013 is debt of \$60.3 million (2012: \$54.7 million) recognized in accordance with applicable lease accounting rules. The Company is considered to be the owner of certain restaurants leased by the Company from an unrelated lessor because the Company constructed some of the structural elements of those restaurants, and records the lessor's contributions to the construction costs for these restaurants as other debt. The average imputed interest rate for the debt recorded is approximately 15.5% (2012: 15.7%). In addition, the Company had other debt from the consolidation of Non-owned restaurants of \$9.5 million as at December 29, 2013 (2012: \$5.5 million).



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**NOTE 14 FAIR VALUES**

***Financial assets and liabilities measured at fair value***

	As at			
	December 29, 2013		December 30, 2012	
	Fair value hierarchy	Fair value asset (liability) <sup>(1)</sup>	Fair value hierarchy	Fair value asset (liability) <sup>(1)</sup>
<b>Derivatives</b>				
Forward currency contracts <sup>(2)</sup>	Level 2	\$ 4,181	Level 2	\$ (2,014)
Interest rate swap <sup>(3)</sup>	Level 2	(49)	n/a	—
Interest rate forwards <sup>(4)</sup>	Level 2	285	n/a	—
Total return swaps (“TRS”) <sup>(5)</sup>	Level 2	21,393	Level 2	7,504
<b>Total Derivatives</b>		<b>\$ 25,810</b>		<b>\$ 5,490</b>

<sup>(1)</sup> The Company values its derivatives using valuations that are calibrated to the initial trade prices. Subsequent valuations are based on observable inputs to the valuation model.

<sup>(2)</sup> The fair value of forward currency contracts is determined using prevailing exchange rates.

<sup>(3)</sup> The fair value of interest rate swaps is estimated using discounted cash flows and market-based observable inputs, including interest rate yield curves and discount rates.

<sup>(4)</sup> The fair value of interest rate forwards is determined using a regression analysis that considers the respective Government of Canada bond yield and over-the-counter interest rates representing the yield for lending securities against cash, also known as “repo rates”. The regression analysis includes using a hypothetical derivative approach for both prospective and retrospective effectiveness assessments.

<sup>(5)</sup> The fair value of the TRS is determined using the Company’s common share closing price on the last business day of the fiscal period, as quoted on the TSX.

***Other financial assets and liabilities not measured at fair value***

As at December 29, 2013 and December 30, 2012, the carrying values of Cash and cash equivalents and Restricted cash and cash equivalents approximated their fair values due to the short term nature of these investments.

The following table summarizes the fair value and carrying value of other financial assets and liabilities that are not recognized at fair value on a recurring basis on the Consolidated Balance Sheet:

	As at					
	December 29, 2013			December 30, 2012		
	Fair value hierarchy	Fair value asset (liability)	Carrying value	Fair value hierarchy	Fair value asset (liability)	Carrying value
Bearer deposit notes <sup>(1)</sup>	Level 2	\$ 41,403	\$ 41,403	Level 2	\$ 41,403	\$ 41,403
Notes receivable, net <sup>(2)</sup>	Level 3	\$ 9,114	\$ 9,114	Level 3	\$ 8,777	\$ 8,777
Series 1 Notes <sup>(3)</sup>	Level 2	\$ (315,519)	\$ (301,196)	Level 2	\$ (325,857)	\$ (301,544)
Series 2 Notes <sup>(3)</sup>	Level 2	\$ (445,419)	\$ (449,892)	n/a	\$ —	\$ —
Advertising fund term debt <sup>(4)</sup>	Level 3	\$ (30,189)	\$ (30,189)	Level 3	\$ (56,500)	\$ (56,500)
Other debt <sup>(5)</sup>	Level 3	\$ (126,548)	\$ (69,794)	Level 3	\$ (125,000)	\$ (60,223)

<sup>(1)</sup> The Company holds these notes as collateral to reduce the carrying costs of the TRS. The interest rate on these notes resets every 90 days; therefore, the fair value of these notes, using a market approach, approximates the carrying value.

<sup>(2)</sup> Management generally estimates the current value of notes receivable, net, using a cost approach, based primarily on the estimated depreciated replacement cost of the underlying equipment held as collateral.

<sup>(3)</sup> The fair value of the Senior Unsecured Notes, using a market approach, is based on publicly disclosed trades between arm’s length institutions as documented on Bloomberg LP.

<sup>(4)</sup> Management estimates the fair value of this variable rate debt using a market approach, based on prevailing interest rates plus an applicable margin.

<sup>(5)</sup> Management estimates the fair value of its Other debt, primarily consisting of contributions received related to the construction costs of certain restaurants, using an income approach, by discounting future cash flows using a Company risk-adjusted rate over the remaining term of the debt.

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**NOTE 15 DERIVATIVES**

	As at							
	December 29, 2013				December 30, 2012			
	Asset	Liability	Net asset (liability)	Classification on Consolidated Balance Sheet	Asset	Liability	Net asset (liability)	Classification on Consolidated Balance Sheet
<b>Derivatives designated as cash flow hedging instruments</b>								
Forward currency contracts <sup>(1)</sup>	\$ 4,181	\$ —	\$ 4,181	Accounts receivable, net	\$ 494	\$ (2,315)	\$ (1,821)	Accounts payable, net
Interest rate swap <sup>(2)</sup>	\$ —	\$ (49)	\$ (49)	Other long term liabilities	\$ —	\$ —	\$ —	n/a
Interest rate forwards <sup>(3)</sup>	\$ 285	\$ —	\$ 285	Accounts receivable, net	\$ —	\$ —	\$ —	n/a
<b>Derivatives not designated as hedging instruments</b>								
TRS <sup>(4)</sup>	\$21,393	\$ —	\$ 21,393	Other assets	\$ 8,614	\$ (1,110)	\$ 7,504	Other assets
Forward currency contracts <sup>(1)</sup>	\$ —	\$ —	\$ —	n/a	\$ 5	\$ (198)	\$ (193)	Accounts payable, net

<sup>(1)</sup> Notional value as at December 29, 2013 of \$154.0 million (December 30, 2012: \$195.1 million), with maturities ranging between January 2014 and December 2014; no associated cash collateral.

<sup>(2)</sup> Notional value as at December 29, 2013 of \$30.0 million (December 30, 2012: nil), with maturities through fiscal 2019; no associated cash collateral.

<sup>(3)</sup> Notional value as at December 29, 2013 of \$90.0 million (December 30, 2012: nil), maturing in April 2014; no associated cash collateral. Subsequent to fiscal 2013 year-end, the Company entered into additional interest rate forwards with a notional value of \$360.0 million, maturing in April 2014.

<sup>(4)</sup> The notional value and associated cash collateral, in the form of bearer deposit notes (see note 10), was \$41.4 million as at December 29, 2013 (December 30, 2012: \$41.4 million). The TRS have maturities annually, in May, between fiscal 2015 and fiscal 2019.

Derivatives designated as cash flow hedging instruments <sup>(1)</sup>	Classification on Consolidated Statement of Operations	Year-ended December 29, 2013			Year-ended December 30, 2012		
		Amount of gain (loss) recognized in OCI <sup>(2)</sup>	Amount of net (gain) loss reclassified to earnings	Total effect on OCI <sup>(2)</sup>	Amount of gain (loss) recognized in OCI <sup>(2)</sup>	Amount of net (gain) loss reclassified to earnings	Total effect on OCI <sup>(2)</sup>
Forward currency contracts	Cost of sales	\$ 9,971	\$ (3,969)	\$ 6,002	\$ (5,009)	\$ (667)	\$ (5,676)
Interest rate swap <sup>(3)</sup>	Interest (expense)	(242)	193	(49)	—	—	—
Interest rate forwards <sup>(4)</sup>	Interest (expense)	(9,555)	774	(8,781)	—	691	691
Total		174	(3,002)	(2,828)	(5,009)	24	(4,985)
Income tax effect	Income taxes	(2,581)	1,002	(1,579)	1,455	(13)	1,442
<b>Net of income taxes</b>		<b>\$ (2,407)</b>	<b>\$ (2,000)</b>	<b>\$ (4,407)</b>	<b>\$ (3,554)</b>	<b>\$ 11</b>	<b>\$ (3,543)</b>

<sup>(1)</sup> Excludes amounts related to ineffectiveness, as they were not significant.

<sup>(2)</sup> Other comprehensive income ("OCI").

<sup>(3)</sup> The Ad Fund entered into an amortizing interest rate swap to fix a portion of the interest expense on its term debt (see note 13).

<sup>(4)</sup> The Company entered into and settled interest rate forwards relating to the Series 1 and Series 2 Notes (see note 13). The Company also entered into interest rate forwards during fiscal 2013 in anticipation of the Company obtaining longer-term financing for the remaining portion of the approved increase in the first half of 2014, barring unforeseen market conditions and subject to the negotiation and execution of agreements.

Derivatives not designated as cash flow hedging instruments	Classification on Consolidated Statement of Operations	Year-ended		
		December 29, 2013	December 30, 2012	January 1, 2012
TRS	General and administrative expenses	\$ (13,889)	\$ 1,782	\$ (5,033)
Forward currency contracts	Cost of sales	(193)	1,097	(904)
<b>Total (gain) loss, net</b>		<b>\$ (14,082)</b>	<b>\$ 2,879</b>	<b>\$ (5,937)</b>

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**NOTE 16 LEASES**

The Company occupies land and buildings and uses equipment under terms of numerous lease agreements expiring on various dates through fiscal 2052. Land and building leases generally have an initial term of 10 to 30 years, while land-only lease terms can extend longer. Many of these leases provide for future rent escalations and renewal options. Certain leases require contingent rent, determined as a percentage of sales. Most leases also obligate the Company to pay the cost of maintenance, insurance and property taxes.

Assets leased under capital leases and included in property and equipment, but excluding leasehold improvements, consisted of the following:

	As at	
	December 29, 2013	December 30, 2012
Buildings	\$ 220,933	\$ 197,438
Other <sup>(1)</sup>	13,039	9,083
Accumulated depreciation	(75,437)	(67,721)
Total	<u>\$ 158,535</u>	<u>\$ 138,800</u>

<sup>(1)</sup> Includes capital leases of the Ad Fund (see note 20).

No individual lease is material to the Company. Future minimum lease payments for all leases, and the present value of the net minimum lease payments for all capital leases as at December 29, 2013, were as follows:

	Capital Leases	Operating Leases
2014	\$ 21,690	\$ 102,643
2015	25,723	103,784
2016	18,879	90,370
2017	15,906	77,996
2018	16,270	77,764
Subsequent years	142,299	599,185
Total minimum lease payments <sup>(1)</sup>	<u>\$ 240,767</u>	<u>\$ 1,051,742</u>
Amount representing interest	(109,987)	
Present value of net minimum lease payments	130,780	
Current portion	(9,731)	
	<u>\$ 121,049</u>	

<sup>(1)</sup> Of the total future minimum lease obligations noted above, the Company has minimum lease receipts under non-cancelable subleases with lessees of \$148.0 million for capital leases and \$534.0 million for operating leases.

Rent expense consists of rentals for premises and equipment leases, and was as follows:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Minimum rents	\$ 106,303	\$ 96,482	\$ 89,329
Contingent rents	77,892	77,842	74,549
Total rent expense <sup>(1)</sup>	<u>\$ 184,195</u>	<u>\$ 174,324</u>	<u>\$ 163,878</u>

<sup>(1)</sup> Included in Operating expenses in the Consolidated Statement of Operations.

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In connection with the franchising of certain restaurants, the Company has leased or subleased land, buildings and equipment to certain restaurant owners. Lease terms are generally 10 years with one or more five year renewal options. The restaurant owners bear the cost of maintenance, insurance and property taxes.

Company assets under lease or sublease, included in Property and equipment, net in the Consolidated Balance Sheet, consisted of the following:

	As at	
	December 29, 2013	December 30, 2012
Land	\$ 189,301	\$ 180,073
Buildings and leasehold improvements	1,474,802	1,318,194
Restaurant equipment	82,406	70,645
	1,746,509	1,568,912
Accumulated depreciation	(690,246)	(604,703)
	<u>\$ 1,056,263</u>	<u>\$ 964,209</u>

At December 29, 2013, future minimum lease receipts, excluding any contingent rent, were as follows:

	Operating Leases
2014	\$ 231,307
2015	202,577
2016	165,973
2017	136,856
2018	107,201
Subsequent years	237,211
Total	<u>\$ 1,081,125</u>

Rental income for each year amounted to the following:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Minimum rents	\$ 314,865	\$ 300,021	\$ 291,557
Contingent rents	264,820	257,594	242,101
Total rental income <sup>(1)</sup>	<u>\$ 579,685</u>	<u>\$ 557,615</u>	<u>\$ 533,658</u>

<sup>(1)</sup> Included in Rents and royalties revenues in the Consolidated Statement of Operations.

**NOTE 17 COMMITMENTS AND CONTINGENCIES**

On June 12, 2008, a proposed class action was issued against the Company and certain of its affiliates in the Ontario Superior Court by two of its franchisees, alleging, among other things, that the Company's Always Fresh baking system and expanded lunch offerings led to lower franchisee profitability. The claim, which sought class action certification on behalf of Canadian restaurant owners, as amended, asserted damages of approximately \$1.95 billion. The action was dismissed in its entirety by summary judgment in February, 2012 and all avenues of appeal were exhausted during the second quarter of 2013.

In addition, the Company and its subsidiaries are parties to various legal actions and complaints arising in the ordinary course of business. Reserves related to the potential resolution of any outstanding legal proceedings are based on the amounts that are determined by the Company to be probable and reasonably estimable. These reserves are not significant and are included in Accounts payable in the Consolidated Balance Sheet. As of the date hereof, the Company believes that the ultimate resolution of such matters will not materially affect the Company's consolidated financial statements.

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The Company has entered into purchase arrangements with some of its suppliers for terms which generally do not exceed one fiscal year. The range of prices and volume of purchases under the agreements may vary according to the Company's demand for the products and fluctuations in market rates. These agreements help the Company secure pricing and product availability. The Company does not believe these agreements expose the Company to significant risk.

**NOTE 18 COMMON SHARES**

***Share repurchase programs***

On February 20, 2013, our Board of Directors approved a new share repurchase program ("2013 Program") authorizing the repurchase of common shares, not to exceed the regulatory maximum of 15,239,531 shares, representing 10% of our public float, as defined under the TSX rules as of February 14, 2013, but subject to a cap of \$250.0 million in the aggregate. The 2013 Program received regulatory approval from the TSX. On August 8, 2013, the 2013 Program was amended to remove the former maximum dollar cap. Under the 2013 Program, the Company's common shares could be purchased through a combination of 10b5-1 automatic trading plan purchases, as well as purchases at management's discretion in compliance with regulatory requirements, and given market, cost and other considerations. Repurchases could be made on the TSX, the New York Stock Exchange ("NYSE"), and/or other Canadian marketplaces, subject to compliance with applicable regulatory requirements, or by such other means as may be permitted by the TSX and/or NYSE, and under applicable laws, including private agreements under an issuer bid exemption order issued by a securities regulatory authority in Canada. Purchases made by way of private agreements under an issuer bid exemption order by a securities regulatory authority were at a discount to the prevailing market price as provided in the exemption order. The 2013 Program commenced on February 26, 2013 and was terminated in February 2014 as the 10% public float maximum was reached. Common shares purchased pursuant to the 2013 Program were cancelled.

Share repurchase activity for fiscal 2013 and 2012 is reflected in the Consolidated Statement of Equity. All shares repurchased were cancelled.

In addition to completing the \$1 billion expanded share repurchase program approved by the Board of Directors in fiscal 2013, the Board has determined that it would be appropriate to renew the Corporation's normal course share repurchase program to permit the Corporation to repurchase up to an additional \$210.0 million of our shares, either concurrently with, or following the completion of, the expanded share repurchase program. Accordingly, on February 19, 2014, our Board of Directors approved a new share repurchase program ("2014 Program") authorizing the repurchase of an additional \$440.0 million in common shares, not to exceed the regulatory maximum of 13,726,219 shares, representing 10% of our public float as defined under the Toronto Stock Exchange ("TSX") rules as of February 14, 2014. The 2014 Program has received regulatory approval from the TSX. Our common shares may be purchased under the 2014 Program through a combination of 10b5-1 automatic trading plan purchases, as well as purchases at management's discretion in compliance with regulatory requirements, and given market, cost and other considerations. Repurchases may be made on the TSX, the New York Stock Exchange ("NYSE"), and/or other Canadian marketplaces, subject to compliance with applicable regulatory requirements, or by such other means as may be permitted by the TSX and/or NYSE, and under applicable laws, including private agreements under an issuer bid exemption order issued by a securities regulatory authority in Canada. Purchases made by way of private agreements under an issuer bid exemption order by a securities regulatory authority will be at a discount to the prevailing market price as provided in the exemption order. The 2014 Program is planned to begin on February 28, 2014 and will expire on February 27, 2015, or earlier if the \$440.0 million or 10% share maximum is reached. Common shares purchased pursuant to the 2014 Program will be canceled. The 2014 Program may be terminated by us at any time, subject to compliance with regulatory requirements. As such, there can be no assurance regarding the total number of shares or the equivalent dollar value of shares that may be repurchased under the 2014 Program.

***Shares held in the Trust***

The Company has a Trust, the TDL RSU Employee Benefit Plan Trust, which purchases shares on the open market to satisfy the Company's obligation to deliver shares to settle the awards for most Canadian employees (see note 19). The cost of the purchase of common shares held by the Trust has been accounted for as a reduction in outstanding common shares. These shares will be held by the Trust until the RSUs vest, at which time they will be disbursed to certain Canadian employees. Occasionally, the Trust may sell shares to the Company to facilitate the remittance of the associated employee withholding obligations.

***Share purchase rights***

Pursuant to our shareholder rights plan (the "Rights Plan"), one right to purchase a common share (a "Right") has been issued in respect of each of the outstanding common shares and an additional Right will be issued in respect of each additional

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common share issued prior to the Separation Time (as defined below). The purpose of the Rights Plan is to provide holders of our common shares, and our Board of Directors, with the time necessary so that, in the event of a take-over bid (the Canadian term for a tender offer) of the Company, alternatives to the bid which may be in the best interests of our Company are identified and fully explored.

The Rights will become exercisable and begin to trade separately from the associated common shares at the “Separation Time,” which is generally the close of business on the tenth trading day after the earliest to occur of: (a) a public announcement that a person or a group of affiliated or associated persons (an “Acquiring Person”) has acquired beneficial ownership of 20% or more of the outstanding common shares other than as a result of: (i) a reduction in the number of common shares outstanding, (ii) a Permitted Bid or Competing Permitted Bid (both as defined in the Rights Plan), (iii) acquisitions of common shares in respect of which the Company’s Board of Directors has waived the application of the Rights Plan, or (iv) other specified exempt acquisitions in which shareholders participate on a pro rata basis; (b) the date of commencement of, or the first public announcement of an intention of any person to commence, a take-over bid where the common shares subject to the bid, together with common shares owned by that person (including affiliates, associates and others acting jointly or in concert therewith) would constitute 20% or more of the outstanding common shares; and (c) the date upon which a Permitted Bid or Competing Permitted Bid ceases to be such.

After the Separation Time, each Right entitles the holder thereof to purchase one common share at the “Exercise Price,” which is initially \$150 per share. Following a transaction which results in a person becoming an Acquiring Person (a “Flip-in Event”), the Rights will entitle the holder thereof (other than a holder who is an Acquiring Person) to receive, upon exercise, common shares with a market value equal to twice the then exercise price of the Rights. For example, if, at the time of the Flip-in Event, the Exercise Price is \$150 per share and the common shares have a market price of \$25 per share, the holder of each Right would be entitled to receive \$300 per share in market value of the common shares (12 common shares) after paying \$150 per share for such shares (*i.e.*, the shares may be purchased at a 50% discount). In such event, however, any Rights directly or beneficially owned by an Acquiring Person (including affiliates, associates and others acting jointly or in concert therewith), or a transferee of any such person, will be void. A Flip-in Event does not include acquisitions pursuant to a Permitted Bid or Competing Permitted Bid.

The Rights Plan will remain in effect until September 28, 2018, subject to being reconfirmed by the Company’s shareholders every three years, next to occur in fiscal 2015.

**NOTE 19 STOCK-BASED COMPENSATION**

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Restricted stock units	\$ 6,522	\$ 9,537	\$ 6,247
Stock options and tandem SARs	12,745	1,599	9,055
Deferred stock units	2,722	726	2,021
<b>Total stock-based compensation expense<sup>(1)(2)</sup></b>	<b>\$ 21,989</b>	<b>\$ 11,862</b>	<b>\$ 17,323</b>

<sup>(1)</sup> Generally included in General and administrative expenses in the Consolidated Statement of Operations.

<sup>(2)</sup> The Company does not receive a significant income tax benefit associated with stock-based compensation expense, primarily because the Company has made an election to forego its corporate tax deduction in Canada to enable Canadian employees to receive favourable tax treatment on an exercise of the SAR feature.

Total share-based awards of 1.1 million have been made under the 2006 Plan during years 2010 through May 10, 2012, and 0.9 million have been made under the 2012 Plan since May 10, 2012, to officers and certain employees, of which 0.7 million were granted as RSUs and 1.3 million as stock options with tandem SARs. Dividend equivalent rights have accrued on the RSUs.

The 2012 Plan authorizes up to 2.9 million common shares of the Company for grants of awards. Awards that remained available to be granted under the 2006 Plan as of May 10, 2012 (the “Effective Date”), as well as awards granted under the 2006 Plan that are forfeited, or otherwise cease to be subject to such awards following the Effective Date (other than to the extent they are exercised for or settled in vested and non-forfeitable common shares) shall be transferred to and may be made available as awards under the 2012 Plan, provided that the aggregate number of common shares authorized for grants of awards under the 2012 Plan shall not exceed 2.9 million common shares. The terms of the 2006 Plan shall continue to govern awards

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granted under the 2006 Plan prior to the Effective Date. Following the Effective Date, no further awards have been, or will be, made under the 2006 Plan. As at December 29, 2013, there were outstanding equity awards covering 1.5 million common shares under the 2012 Plan.

The Company has entered into TRS contracts as economic hedges, covering 1.0 million of the Company's underlying common shares, which represents a portion of its outstanding stock options with tandem SARs, and substantially all of its DSUs. In fiscal 2013, the Company recognized a gain of \$13.9 million (2012: loss of \$1.8 million, 2011: gain of \$5.0 million) in General and administrative expenses (see note 15) related to the revaluation of the TRS contracts.

**Restricted stock units**

	Restricted Stock Units	Weighted Average Grant Date Fair Value per Unit	Total Intrinsic Value	Weighted Average Remaining Contractual Life
	(in thousands)	(in dollars)	(in thousands)	
<b>Balance as at December 30, 2012</b>	<b>312</b>	<b>\$ 50.91</b>	<b>\$ 15,147</b>	<b>1.5</b>
Granted <sup>(1)</sup>	160	56.73		
Dividend equivalent rights	7	56.40		
Vested and settled <sup>(2)</sup>	(150)	47.56		
Forfeited	(22)	52.29		
<b>Balance as at December 29, 2013<sup>(3)</sup></b>	<b>307</b>	<b>\$ 55.60</b>	<b>\$ 19,119</b>	<b>1.4</b>

<sup>(1)</sup> The weighted average grant date fair value per RSU granted in fiscal 2012 was \$54.49 (2011: \$45.76).

<sup>(2)</sup> Total total fair value of RSUs that vested and were settled in fiscal 2013 was \$9.1 million (2012: \$7.7 million, 2011: \$6.8 million). RSUs are generally settled with common shares from the Trust.

<sup>(3)</sup> Total unrecognized compensation cost related to non-vested RSUs outstanding was \$6.0 million (2012: \$4.6 million) and is expected to be recognized over a weighted-average period of 1.4 years (2012: 1.5 years). The Company expects substantially all of the outstanding RSUs to vest.

**Deferred stock units**

	Deferred Stock Units	Weighted Average Grant Date Fair Value per Unit
	(in thousands)	(in dollars)
<b>Balance as at December 30, 2012</b>	<b>138</b>	<b>\$ 37.56</b>
Granted <sup>(1)</sup>	11	57.59
Dividend equivalent rights	3	57.02
Settled <sup>(2)</sup>	(11)	37.41
<b>Balance as at December 29, 2013<sup>(3)</sup></b>	<b>141</b>	<b>\$ 39.57</b>

<sup>(1)</sup> The weighted average grant date fair value per DSU granted in fiscal 2012 was \$51.07 (2011: \$46.13).

<sup>(2)</sup> Total cash settlement of \$0.4 million of DSUs was made in fiscal 2013 (2012: \$0.4 million; 2011: nil).

<sup>(3)</sup> Total fair value liability for DSUs was \$8.8 million (2012: \$6.7 million) and is included in Other long-term liabilities in the Consolidated Balance Sheet.

**Stock options and tandem stock appreciation rights**

	Stock Options with SARs	Weighted Average Exercise Price	Total Intrinsic Value	Weighted Average Remaining Contractual Life
	(in thousands)	(in dollars)	(in dollars)	(in years)
<b>Balance as at December 30, 2012</b>	<b>1,172</b>	<b>\$ 40.73</b>	<b>\$ 10,681</b>	<b>4.7</b>
Granted	367	57.91		
Exercised <sup>(1)(2)</sup>	(329)	36.14		
Forfeited	(14)	53.47		
<b>Balance as at December 30, 2013<sup>(3)(4)(5)</sup></b>	<b>1,196</b>	<b>\$ 47.11</b>	<b>\$ 18,150</b>	<b>4.6</b>
<b>Total stock options/SARs exercisable as at December 29, 2013</b>	<b>574</b>	<b>\$ 38.39</b>	<b>\$ 13,713</b>	<b>3.4</b>

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- (1) Total cash settlement of \$6.9 million of SARs was made in fiscal 2013 (2012: \$4.2 million; 2011: \$3.7 million). The associated options were cancelled.
- (2) The total intrinsic value of stock options exercised in fiscal 2013 was \$6.9 million (2012: \$3.7 million; 2011: \$4.2 million).
- (3) Total fair value liability for stock options/SARs outstanding was \$16.7 million (2012: \$10.8 million) and is included in Other long-term liabilities in the Consolidated Balance Sheet.
- (4) A total of 0.3 million stock options/SARs vested in fiscal 2013 (2012: 0.4 million, 2011: 0.4 million), with an intrinsic value of \$5.6 million (2012: \$5.3 million, 2011: \$6.5 million).
- (5) Total unrecognized compensation cost related to non-vested stock options outstanding was \$3.3 million (2012: \$1.4 million) and is expected to be recognized over a weighted-average period of 1.6 years (2012: 1.5 years). The Company expects substantially all of the outstanding stock options with tandem SARs to vest.

The fair value of these awards was determined at the grant date and each subsequent re-measurement date by applying the Black-Scholes-Merton option-pricing model, using the following assumptions:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Expected share price volatility <sup>(1)</sup>	13% - 17%	9% - 20%	16% - 22%
Risk-free interest rate <sup>(2)</sup>	1.1% - 1.6%	1.1% - 1.3%	1.0% - 1.1%
Expected life <sup>(3)</sup>	0.5 - 4.0 years	1.0 - 4.0 years	1.7 - 3.9 years
Expected dividend yield <sup>(4)</sup>	1.7%	1.8%	1.4%
Closing share price (in dollars) <sup>(5)</sup>	\$62.29	\$48.51	\$49.36
Weighted average grant price	\$57.91	\$54.86	\$45.76

- (1) Estimated by using the Company's historical share price volatility for a period similar to the expected life of the option as determined below.
- (2) Referenced from Government of Canada bonds with a maturity period similar to the expected life of the options. If an exact match in maturity was not found, the closest two maturities, one before and one after the expected life of the options, were used to extrapolate an estimated risk-free rate.
- (3) Based on historical experience.
- (4) Based on current, approved dividends expressed as a percentage of either the exercise price or the closing price at the end of the period, depending on the date of the assumption.
- (5) The closing share price is quoted from the TSX as of the last trading day preceding the date specified.

For purposes of the pricing model, grants are segregated by grant date and based on retirement eligibility, and the assumptions are adjusted accordingly. All stock options with tandem SARs granted to-date vest over three years and expire seven years from the date of issuance, provided that if an employee retires, the term decreases to the earlier of four years after retirement or expiration of the original term.



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**NOTE 20 VARIABLE INTEREST ENTITIES**

*VIEs for which the Company is the primary beneficiary*

*Non-owned restaurants*

	As at			
	December 29, 2013		December 30, 2012	
	Restaurants	% of Systemwide Restaurants	Restaurants	% of Systemwide Restaurants
Consolidated Non-owned restaurants	331	7.4%	365	8.6%

*Advertising Funds*

The Ad Fund has rolled out a program to acquire and install LCD screens, media engines, drive-thru menu boards and ancillary equipment for our restaurants (“Expanded Menu Board Program”). The advertising levies, depreciation, interest costs, capital expenditures and financing associated with the Expanded Menu Board Program are presented on a gross basis on the Consolidated Statement of Operations and Cash Flows. The Ad Fund has purchased \$75.4 million of equipment cumulatively since the inception of the Expanded Menu Board Program in fiscal 2011.

Actual contribution rates, based on a percentage of restaurant sales, to the advertising funds for franchised and Company-operated restaurants for Canada were 3.5% (2012: 3.5%, 2011: 3.5%) and for the U.S. were 4.0% (2012: 4.0%, 2011: 4.0%). Franchise and license agreements require contributions of up to 4.0% of restaurant sales. Contribution rates for Canadian restaurant owners have been voluntarily reduced to 3.5% of restaurant sales, but the Company retains the right to remove this voluntary rate reduction at any time. Substantially all of the advertising receipts are spent in the year received by the Canadian and U.S. advertising funds. The advertising funds’ expenditures are set forth in the table below:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Advertising expenses	\$ 255,056	\$ 230,317	\$ 214,989

Company contributions to the Canadian and U.S. advertising funds were as follows:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Company contributions	\$ 10,800	\$ 10,813	\$ 10,487
Contributions from consolidated non-owned restaurants	13,801	12,545	10,466
<b>Total Company contributions</b>	<b>\$ 24,601</b>	<b>\$ 23,358</b>	<b>\$ 20,953</b>

**TIM HORTONS INC. AND SUBSIDIARIES**  
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The revenues and expenses associated with the Company's consolidated Non-owned restaurants and advertising funds presented on a gross basis, prior to consolidation adjustments, are as follows:

	Year-ended		
	December 29, 2013		
	Restaurant VIEs <sup>(1)</sup>	Advertising fund VIEs <sup>(2)</sup>	Total VIEs
Sales	\$ 369,850	\$ —	\$ 369,850
Advertising levies	—	10,711	10,711
Total revenues	369,850	10,711	380,561
Cost of sales	364,260	—	364,260
Operating expenses	—	9,269	9,269
Asset impairment <sup>(3)</sup>	441	—	441
Operating income	5,149	1,442	6,591
Interest expense	—	1,442	1,442
Income before taxes	5,149	—	5,149
Income taxes	869	—	869
<b>Net income attributable to non controlling interests</b>	<b>\$ 4,280</b>	<b>\$ —</b>	<b>\$ 4,280</b>

	Year-ended					
	December 30, 2012			January 1, 2012		
	Restaurant VIEs <sup>(1)</sup>	Advertising fund VIEs <sup>(2)</sup>	Total VIEs	Restaurant VIEs <sup>(1)</sup>	Advertising fund VIEs <sup>(2)</sup>	Total VIEs
Sales	\$ 338,005	\$ —	\$ 338,005	\$ 282,384	\$ —	\$ 282,384
Advertising levies	—	5,624	5,624	—	634	634
Total revenues	338,005	5,624	343,629	282,384	634	283,018
Cost of sales	332,151	—	332,151	277,953	—	277,953
Operating expenses	—	4,602	4,602	—	634	634
Asset impairment	—	—	—	900	—	900
Operating income	5,854	1,022	6,876	3,531	—	3,531
Interest expense	—	1,022	1,022	138	—	138
Income before taxes	5,854	—	5,854	3,393	—	3,393
Income taxes	973	—	973	457	—	457
<b>Net income attributable to non controlling interests</b>	<b>\$ 4,881</b>	<b>\$ —</b>	<b>\$ 4,881</b>	<b>\$ 2,936</b>	<b>\$ —</b>	<b>\$ 2,936</b>

<sup>(1)</sup> Includes rents, royalties, advertising expenses and product purchases from the Company which are eliminated upon the consolidation of these VIEs.

<sup>(2)</sup> Generally, the advertising levies that are not related to the Expanded Menu Board Program are netted with advertising and marketing expenses incurred by the advertising funds in operating expenses, as these contributions are designated for specific purposes. The Company acts as an agent with regard to these contributions.

**TIM HORTONS INC. AND SUBSIDIARIES**  
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The assets and liabilities associated with the Company's consolidated Non-owned restaurants and advertising funds presented on a gross basis, prior to consolidation adjustments, are as follows:

	As at			
	December 29, 2013		December 30, 2012	
	Restaurant VIEs	Advertising fund VIEs	Restaurant VIEs	Advertising fund VIEs
Cash and cash equivalents	\$ 7,773	\$ —	\$ 10,851	\$ —
Advertising fund restricted assets – current	—	39,783	—	45,337
Other current assets	7,155	—	6,770	—
Property and equipment, net	20,471	70,485	19,536	57,925
Other long-term assets	370	1,271	572	2,095
<b>Total assets</b>	<b>\$ 35,769</b>	<b>\$ 111,539</b>	<b>\$ 37,729</b>	<b>\$ 105,357</b>
Notes payable to Tim Hortons Inc. – current <sup>(1)(2)</sup>	\$ 13,689	\$ 3,040	\$ 13,637	\$ —
Advertising fund liabilities – current	—	59,913	—	44,893
Other current liabilities <sup>(3)</sup>	11,706	5,253	14,548	9,919
Notes payable to Tim Hortons Inc. – long-term <sup>(1)(2)</sup>	628	15,200	804	—
Long-term debt <sup>(3)</sup>	—	25,157	—	46,849
Other long-term liabilities	9,381	2,976	5,887	3,696
<b>Total liabilities</b>	<b>35,404</b>	<b>111,539</b>	<b>34,876</b>	<b>105,357</b>
Equity of VIEs	365	—	2,853	—
<b>Total liabilities and equity</b>	<b>\$ 35,769</b>	<b>\$ 111,539</b>	<b>\$ 37,729</b>	<b>\$ 105,357</b>

<sup>(1)</sup> Various assets and liabilities are eliminated upon the consolidation of these VIEs, the most significant of which are the FIP Notes payable to the Company, which reduces the Notes receivable, net reported on the Consolidated Balance Sheet (see note 6).

<sup>(2)</sup> In fiscal 2013, the Ad Fund entered into an agreement with a Company subsidiary for the Tim Card Revolving Credit Facility and the Tim Card Loan, which are funded by the Restricted cash and cash equivalents related to our Tim Card program. These balances are eliminated upon consolidation of the Ad Fund.

<sup>(3)</sup> Includes \$30.2 million of debt with a Canadian financial institution relating to the Expanded Menu Board Program (December 30, 2012: \$56.5 million), of which \$5.0 million is recognized in Other current liabilities (December 30, 2012: \$9.7 million), with the remainder recognized as Long-term debt.

The liabilities recognized as a result of consolidating these VIEs do not necessarily represent additional claims on the Company's general assets; rather, they represent claims against the specific assets of the consolidated VIEs. Conversely, assets recognized as a result of consolidating these VIEs do not represent additional assets that could be used to satisfy claims by the Company's creditors as they are not legally included within the Company's general assets.

#### *Trust*

In connection with RSUs granted to certain employees, the Company established the TDL RSU Employee Benefit Plan Trust, which purchases and retains common shares of the Company to satisfy the Company's contractual obligation to deliver shares to settle RSU awards for most participating Canadian employees. The cost of the shares held by the Trust as at December 29, 2013 of \$12.9 million (2012: \$13.4 million), is presented as a reduction in outstanding common shares on the Consolidated Balance Sheet.

#### ***VIEs for which the Company is not the primary beneficiary***

These VIEs are primarily real estate ventures, the most significant being the TIMWEN Partnership (see note 11). The Company does not consolidate these entities as control is considered to be shared by both the Company and the other joint owner(s).

**TIM HORTONS INC. AND SUBSIDIARIES**  
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**NOTE 21 SEGMENT REPORTING**

The Company operates exclusively in the quick service restaurant industry. Effective the first quarter of fiscal 2013, the chief decision maker views and evaluates the Company's reportable segments as follows:

**Canadian and U.S. business units.** The results of each of the Canadian and U.S. business units includes substantially all restaurant-facing activities, such as: (i) rents and royalties; (ii) product sales through our supply chain as well as an allocation of supply chain income driven primarily by the business units' respective systemwide sales; (iii) franchise fees; (iv) corporate restaurants; (v) equity income related to restaurant operating ventures; and (vi) business-unit-related general and administrative expenses. The business units exclude the effect of consolidating VIEs, consistent with how the chief decision maker views and evaluates the respective business unit's results.

**Corporate services.** Corporate services comprises services to support the Canadian and U.S. business units, including: (i) general and administrative expenses; (ii) manufacturing income, and to a much lesser extent, manufacturing sales to third parties; and (iii) income related to our distribution services, including the timing of variances arising primarily from commodity costs and the related effect on pricing, which generally reverse within a year, associated with our supply chain management. Our supply chain management involves securing a stable source of supply, which is intended to provide our restaurant owners with consistent, predictable pricing. Many of these products are typically priced based on a fixed-dollar mark-up and can relate to a pricing period which may extend beyond a quarter. Corporate services also includes the results of our International operations, which are currently not significant. Previously, the results of manufacturing activities and distribution services were included within the respective geographic segment where the facility was located. Additionally, we have revised the allocation of shared restaurant services, such as restaurant technologies and operations standards, between the Canadian and U.S. business units.

The Company has reclassified the segment data for prior years to conform to the current year's presentation.

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Revenues<sup>(1)</sup></b>			
Canada	\$ 2,660,358	\$ 2,595,921	\$ 2,403,002
U.S.	197,226	165,723	156,291
Corporate services	17,388	15,231	10,655
Total reportable segments	2,874,972	2,776,875	2,569,948
VIEs	380,561	343,629	283,018
<b>Total</b>	<b>\$ 3,255,533</b>	<b>\$ 3,120,504</b>	<b>\$ 2,852,966</b>
<b>Operating Income (Loss)</b>			
Canada	\$ 665,675	\$ 653,916	\$ 625,139
U.S. <sup>(2)</sup>	5,107	9,620	8,897
Corporate services	(44,517)	(57,013)	(68,281)
Total reportable segments	626,265	606,523	565,755
VIEs <sup>(2)</sup>	6,591	6,876	3,720
Corporate reorganization expenses	(11,761)	(18,874)	—
<b>Consolidated Operating Income</b>	<b>621,095</b>	<b>594,525</b>	<b>569,475</b>
Interest, net	(35,466)	(30,413)	(25,873)
<b>Income before income taxes</b>	<b>\$ 585,629</b>	<b>\$ 564,112</b>	<b>\$ 543,602</b>

<sup>(1)</sup> There are no inter-segment revenues included in the above table.

<sup>(2)</sup> In fiscal 2013, the Company recognized an asset impairment charge in the U.S. related to certain non-core and non-priority markets, of which \$2.5 million was recognized in the U.S. segment and \$0.4 million related to consolidated VIEs. In fiscal 2012, the Company recognized a recovery of \$0.4 million representing the final reversal of accruals upon the completion of closure activities in certain markets in New England in the U.S. segment. In fiscal 2011, the Company recognized an asset impairment charge related to under-performing restaurants in the Company's Portland market, of which a recovery of

**TIM HORTONS INC. AND SUBSIDIARIES**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(in thousands of Canadian dollars, except share and per share data) - *Continued*

\$0.5 million was recognized in the U.S. segment and \$0.9 million related to consolidated VIEs. Impairment charges reflect real estate and equipment fair values less costs to sell.

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Capital expenditures</b>			
Canada <sup>(1)</sup>	\$ 153,877	\$ 113,546	\$ 95,343
U.S.	49,757	59,998	38,554
Corporate services	17,366	13,233	42,993
<b>Total reportable segments</b>	<b>\$ 221,000</b>	<b>\$ 186,777</b>	<b>\$ 176,890</b>

<sup>(1)</sup> Excludes capital expenditures of the Ad Fund.

The following table provides a reconciliation of reportable segment Property and equipment, net and Total assets to consolidated Property and equipment, net and consolidated Total assets, respectively:

	As at	
	December 29, 2013	December 30, 2012
<b>Total Property and equipment, net</b>		
Canada <sup>(1)</sup>	\$ 1,008,141	\$ 915,733
U.S. <sup>(1)</sup>	413,928	378,457
Corporate services <sup>(2)</sup>	175,804	184,938
Total reportable segments	1,597,873	1,479,128
VIEs	87,170	74,180
<b>Consolidated Property and equipment, net</b>	<b>\$ 1,685,043</b>	<b>\$ 1,553,308</b>
<b>Total Assets</b>		
Canada	\$ 1,300,220	\$ 1,175,552
U.S.	450,377	400,231
Corporate services	272,330	281,043
Total reportable segments	2,022,927	1,856,826
VIEs	143,301	139,462
Unallocated assets <sup>(3)</sup>	267,595	287,891
<b>Consolidated Total assets</b>	<b>\$ 2,433,823</b>	<b>\$ 2,284,179</b>

<sup>(1)</sup> Includes primarily restaurant-related assets such as land, building and leasehold improvements.

<sup>(2)</sup> Includes property and equipment related to distribution services, manufacturing activities, and other corporate assets, substantially all of which is located in Canada.

<sup>(3)</sup> Includes Cash and cash equivalents, Restricted cash and cash equivalents, Deferred income taxes, Tax deposits and Prepaids, except as related to VIEs.

**TIM HORTONS INC. AND SUBSIDIARIES**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(in thousands of Canadian dollars, except share and per share data) - *Continued*

Significant non-cash items included in reportable segment operating income and reconciled to total consolidated amounts are as follows:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Depreciation and amortization</b>			
Canada	\$ 100,567	\$ 84,724	\$ 74,962
U.S.	33,853	23,837	20,488
Corporate services	15,655	17,254	17,602
<b>Total reportable segments</b>	<b>\$ 150,075</b>	<b>\$ 125,815</b>	<b>\$ 113,052</b>
VIEs	\$ 11,734	\$ 6,352	\$ 2,817
<b>Consolidated depreciation and amortization</b>	<b>\$ 161,809</b>	<b>\$ 132,167</b>	<b>\$ 115,869</b>

Consolidated Sales and Cost of sales were as follows:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Sales</b>			
Distribution sales	\$ 1,872,296	\$ 1,860,683	\$ 1,705,692
Company-operated restaurant sales	23,738	26,970	24,094
Sales from VIEs	369,850	338,006	282,384
<b>Total Sales</b>	<b>\$ 2,265,884</b>	<b>\$ 2,225,659</b>	<b>\$ 2,012,170</b>

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
<b>Cost of sales</b>			
Distribution cost of sales	\$ 1,619,858	\$ 1,631,091	\$ 1,501,503
Company-operated restaurant cost of sales	25,446	28,857	24,720
Cost of sales from VIEs	327,599	297,390	246,152
<b>Total Cost of sales</b>	<b>\$ 1,972,903</b>	<b>\$ 1,957,338</b>	<b>\$ 1,772,375</b>

**NOTE 22 RELATED PARTY TRANSACTIONS**

The Company had the following expenses and outstanding balances associated with its 50/50 joint venture with Wendy's:

	Year-ended		
	December 29, 2013	December 30, 2012	January 1, 2012
Contingent rent expense <sup>(1)</sup>	\$ 25,329	\$ 25,102	\$ 24,677

<sup>(1)</sup> Included in consolidated contingent rent expense (see note 16).

	As at	
	December 29, 2013	December 30, 2012
Accounts receivable	\$ 254	\$ 311
Accounts payable	\$ 1,972	\$ 2,048

**TIM HORTONS INC. AND SUBSIDIARIES**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
(in thousands of Canadian dollars, except share and per share data) - *Continued*

**NOTE 23 QUARTERLY FINANCIAL DATA (UNAUDITED)**

	2013			
	Q1	Q2	Q3	Q4
<b>Revenues</b>				
Sales	\$ 523,887	\$ 568,562	\$ 575,780	\$ 597,655
Franchise revenues				
Rents and royalties	187,454	209,289	212,114	212,364
Franchise fees	20,196	22,288	37,459	88,485
	<u>207,650</u>	<u>231,577</u>	<u>249,573</u>	<u>300,849</u>
<b>Total revenues</b>	<b>731,537</b>	<b>800,139</b>	<b>825,353</b>	<b>898,504</b>
Corporate reorganization expense (note 2)	(9,475)	(604)	(953)	(729)
De-branding costs (note 3)	—	—	—	(19,016)
Other costs and expenses, net	(594,145)	(622,956)	(655,572)	(730,988)
<b>Operating income</b>	<b>\$ 127,917</b>	<b>\$ 176,579</b>	<b>\$ 168,828</b>	<b>\$ 147,771</b>
Net income attributable to Tim Hortons Inc.	<u>\$ 86,171</u>	<u>\$ 123,736</u>	<u>\$ 113,863</u>	<u>\$ 100,599</u>
Diluted earnings per common share attributable to Tim Hortons Inc.	<u>\$ 0.56</u>	<u>\$ 0.81</u>	<u>\$ 0.75</u>	<u>\$ 0.69</u>
	2012			
	Q1	Q2	Q3	Q4
<b>Revenues</b>				
Sales	\$ 523,302	\$ 563,772	\$ 568,541	\$ 570,044
Franchise revenues				
Rents and royalties	180,186	198,973	201,556	200,277
Franchise fees	17,796	22,836	31,943	41,278
	<u>197,982</u>	<u>221,809</u>	<u>233,499</u>	<u>241,555</u>
<b>Total revenues</b>	<b>721,284</b>	<b>785,581</b>	<b>802,040</b>	<b>811,599</b>
Corporate reorganization expense (note 2)	—	(1,277)	(8,565)	(9,032)
Other costs and expenses, net	(589,661)	(625,465)	(639,816)	(652,163)
<b>Operating income</b>	<b>\$ 131,623</b>	<b>\$ 158,839</b>	<b>\$ 153,659</b>	<b>\$ 150,404</b>
Net income attributable to Tim Hortons Inc.	<u>\$ 88,779</u>	<u>\$ 108,067</u>	<u>\$ 105,698</u>	<u>\$ 100,341</u>
Diluted earnings per common share attributable to Tim Hortons Inc.	<u>\$ 0.56</u>	<u>\$ 0.69</u>	<u>\$ 0.68</u>	<u>\$ 0.65</u>

**SCHEDULE II**  
**TO CONSOLIDATED FINANCIAL STATEMENTS—VALUATION AND QUALIFYING ACCOUNTS**  
**(in thousands)**

Classification	Balance at Beginning of Year	Charged (Credited) to Costs & Expenses	Additions (Deductions)	Balance at End of Year
Fiscal year ended December 29, 2013:				
Deferred tax asset valuation allowance	\$ 39,190	\$ 3,022	\$ 4,548	\$ 46,760
Allowance for doubtful accounts and notes	3,035	1,606	(1,474)	3,167
Inventory reserve	1,015	2,181	(1,442)	1,754
	<u>\$ 43,240</u>	<u>\$ 6,809</u>	<u>\$ 1,632</u>	<u>\$ 51,681</u>
Fiscal year ended December 30, 2012:				
Deferred tax asset valuation allowance	\$ 40,494	\$ 6,431	\$ (7,735)	\$ 39,190
Allowance for doubtful accounts and notes	3,239	890	(1,094)	3,035
Inventory reserve	844	1,238	(1,067)	1,015
	<u>\$ 44,577</u>	<u>\$ 8,559</u>	<u>\$ (9,896)</u>	<u>\$ 43,240</u>
Fiscal year ended January 1, 2012:				
Deferred tax asset valuation allowance	\$ 37,471	\$ 2,226	\$ 797	\$ 40,494
Allowance for doubtful accounts and notes	1,484	4,651	(2,896)	3,239
Inventory reserve	1,052	689	(897)	844
	<u>\$ 40,007</u>	<u>\$ 7,566</u>	<u>\$ (2,996)</u>	<u>\$ 44,577</u>

Year-end balances are reflected in the Consolidated Balance Sheets as follows:

	December 29, 2013	December 30, 2012
Valuation allowance, deferred income taxes	\$ 46,760	\$ 39,190
Deducted from accounts receivable and notes receivable, net	3,167	3,035
Deducted from inventories and other, net	1,754	1,015
	<u>\$ 51,681</u>	<u>\$ 43,240</u>



## Report of Independent Registered Public Accounting Firm

To the Shareholders of Tim Hortons Inc.

We have audited the accompanying consolidated balance sheets of Tim Hortons Inc. and its subsidiaries as at December 29, 2013 and December 30, 2012 and the related consolidated statement of operations, comprehensive income, and cash flows for each of the years in the three-year period ended December 29, 2013. In addition, we have audited the financial statement schedule listed in the accompanying index appearing under item 15(a)(1) of the Annual Report on Form 10-K. We also have audited Tim Hortons Inc. and its subsidiaries' internal control over financial reporting as of December 29, 2013, based on criteria established in Internal Control - Integrated Framework (1992) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Management is responsible for these consolidated financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express an opinion on these consolidated financial statements, the financial statement schedule and the company's internal control over financial reporting based on our integrated audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements and the financial statement schedule are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the consolidated financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Tim Hortons Inc. and its subsidiaries as of December 29, 2013 and December 30, 2012 and the results of its operations and its cash flows for each of the years in the three-year period ended December 29, 2013 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial schedule referred to above presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also, in our opinion, Tim Hortons Inc. and its subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 29, 2013 based on criteria established in Internal Control - Integrated Framework (1992) issued by COSO.

(Signed) *PricewaterhouseCoopers LLP*

Chartered Professional Accountants, Licensed Public Accountant  
Toronto, Canada  
February 25, 2014

**GUARANTEE OF PERFORMANCE**

GUARANTEE OF PERFORMANCE

For value received, Tim Hortons, Inc. ("THI"), located at 874 Sinclair Road, Oakville, Ontario, Canada L6K 2Y1, absolutely and unconditionally guarantees the performance by its subsidiary, Tim Hortons USA Inc. ("Tim Hortons"), located at 4150 Tuller Road, Suite 236, Dublin, Ohio 43017, of all of the obligations of Tim Hortons, in accordance with the terms and conditions of its franchise registration filed or to be filed with any state authority and of its franchise agreements entered into with franchisees, as the same have been or may hereafter be amended, modified, renewed or extended from time to time. This guarantee shall continue in force until all obligations of Tim Hortons under the said franchise registration and franchise agreements shall have been satisfied or until Tim Hortons' liability to the respective franchisees under the respective franchise registration and franchise agreements have been completely discharged, whichever first occurs. THI shall not be discharged from liability hereunder as long as any claims by the franchisee against Tim Hortons remain outstanding. Notice of acceptance is waived. Notice of default on the part of Tim Hortons is not waived. This guarantee shall be binding on THI and on its successors and assigns.

IN WITNESS WHEREOF, THI has, by a duly authorized officer, executed this guarantee at Oakville, Ontario, Canada, on this 21<sup>st</sup> day of February, 2014

Tim Hortons, Inc.

By:   
\_\_\_\_\_  
Marc Caira

Title: President and CEO

ATTEST:

Name: Jill E. Aebker Sutton / Jill E. Sutton  
Title: EVP General Counsel and Secretary

**EXHIBIT E**  
**STANDARD RESTAURANT FRANCHISE AGREEMENT**

TIM HORTONS USA INC.

FRANCHISE AGREEMENT

WITH

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Franchisee

Dated \_\_\_\_\_, 201\_

Restaurant No. \_\_\_\_\_

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**TIM HORTONS USA INC.**

**FRANCHISE AGREEMENT**

THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, 201\_, by and between Tim Hortons USA Inc., an Delaware corporation with its principal place of business at 4150 Tuller Road, Suite 236, Dublin, Ohio U.S.A. 43017 (“**Franchisor**”) and \_\_\_\_\_ a \_\_\_\_\_, residing or having a principal place of business at \_\_\_\_\_ (“**Franchisee**”).

WHEREAS Franchisor, as the result of the expenditure of time, effort, and money, has acquired experience and skill in the development, opening, and operating of several types of retail outlets, involving the production, merchandising, and sale of selected foods and beverages (which may vary among retail outlets), such as coffee and other non-alcoholic beverages, baked goods, soups, sandwiches, and other related products, utilizing a specially designed exterior and interior appearance with specified equipment, equipment layouts, interior and exterior accessories, identification schemes, products, management programs, standards, specifications, and procedures, and proprietary trademarks and tradenames, all of which may be improved, further developed or otherwise modified from time to time and all of which are referred to in this Agreement as the “**Tim Hortons System**”;

WHEREAS the Franchisor owns all rights to, interest in, and goodwill of, and uses, promotes, and licenses the trademarks and/or tradenames “TIM HORTONS” and “TIMBITS” and such other trademarks, tradenames, service marks, logos, emblems, and other indicia of origin as are now designated, or may hereinafter be designated, as a part of the Tim Hortons System (hereinafter called the “**Proprietary Marks**”), all of which Franchisor has adopted and used to identify retail outlets operated pursuant to the Tim Hortons System and the food, beverage, and other products sold or used therein, and which the Franchisor continues to develop and use and control the usage of, for the benefit and use of itself and its franchisees, in order to identify for the public by the association of the Franchisor’s Proprietary Marks the source of goods and services marketed thereunder and to represent to the public the high and uniform standards of quality, cleanliness, appearance, and service available at the retail outlets operating thereunder;

WHEREAS Franchisee, being cognizant of the distinctive and valuable significance to the public of all of the foregoing, wishes to obtain from Franchisor the right and franchise to operate the type of retail outlet specified in Attachment B using the Tim Hortons System and the Proprietary Marks (hereinafter referred to as the “**Franchised Business**”); and

WHEREAS Franchisee understands and acknowledges the importance of Franchisor’s high and uniform standards of quality, cleanliness, appearance, and service; the value of the Tim Hortons System, and the necessity of opening and operating in conformity with the Tim Hortons System and in accordance with the Franchisor’s standards and specifications.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I  
GRANT OF FRANCHISE

Section 1.00 - Grant: Franchisor hereby grants to Franchisee upon the terms and conditions herein contained, the right, and Franchisee undertakes the obligation, to use the Tim Hortons System and Proprietary Marks, as both may be changed, improved, and further developed from time to time by Franchisor, to establish and operate a Franchised Business at the following location: \_\_\_\_\_ (hereinafter called the “**Franchised Business Premises**”). Franchisee shall operate the Franchised Business only at the Franchised Business Premises.

Section 1.01 - Non-Exclusivity of Franchise: Franchisee expressly acknowledges and agrees that the rights granted it by this Agreement are non-exclusive. Franchisor or any affiliate of Franchisor specifically retain the rights, among others, in any manner and on any terms and conditions deemed advisable, without granting Franchisee any rights, and regardless of the proximity to or economic impact on the Franchised Business:

- a. At any location other than the Franchised Business Premises, to acquire, convert, establish, and operate, and franchise, license and/or otherwise authorize others to acquire, convert, establish, and operate businesses which use any system, including the Tim Hortons System, and any proprietary marks, including the Proprietary Marks, and regardless of whether such businesses are the same as, similar to, or different from the Franchised Business; and
- b. At retail or wholesale, to sell or distribute, or license others to sell or distribute, any products or services under any proprietary marks, including the Proprietary Marks, at or from any location regardless of its proximity to the Franchised Business Premises as well as through telephone, television, mail order, catalogue, and/or computerized or other electronic remote entry ordering systems including, without limitation, the Internet.

Section 1.02 - Opening for Business: Franchisee shall not open for business without Franchisor’s prior written approval, which approval may be conditioned upon Franchisee’s strict compliance with Franchisor’s specifications for the Franchised Business Premises, and the completion of any required pre-opening training. Franchisee shall open for business on or about \_\_\_\_\_, 201\_\_ (the “**Opening Date**”). Franchisor and Franchisee shall execute a memorandum at the time that the Franchised Business opens to memorialize an Opening Date that differs from the Opening Date set in this Agreement. Time is of the essence in connection with the opening of business. If Franchisee or Franchisee’s affiliated entity owns or leases the property on which the Franchised Business Premises is located, Franchisor may terminate this Agreement at Franchisor’s option in writing if the Franchised Business does not open for business within six (6) months of the Opening Date.

ARTICLE II  
DURATION OF AGREEMENT

Section 2.00 - Initial Term: The initial term of this Agreement commences on the date of execution by both parties and, except as is otherwise provided in this Agreement, expires ten (10) years, less a day, after the Franchised Business is first opened for business to the public, which date shall be established pursuant to the memorandum executed pursuant to Section 1.02 hereof.

Section 2.01 - First Renewal: Franchisee shall have the option, subject to the following conditions, to renew this Agreement for one (1) additional, consecutive term of five (5) years, less a day (the “**First Renewal Term**”) which option shall be exercisable only by giving Franchisor written notice of such election to renew no fewer than six (6) months nor more than twelve (12) months prior to the end of the initial term. The First Renewal Term and a further properly exercised renewal term, if any, as set forth in Section 2.02 are sometimes referred to together in this Agreement as the “**renewal term**”. Franchisor may require, in its sole discretion, that any one or more of the following conditions be met prior to such renewal:

- a. Franchisee shall, at its expense, refurbish, renovate and modernize the Franchised Business Premises as Franchisor may reasonably require, including, without limitation, installation of new equipment and renovation of signs, furnishings, fixtures, and decor to reflect the then-current standards and image of the Tim Hortons System. Franchisee shall complete all required work within four (4) months after receipt of written notice from Franchisor specifying the work to be performed;
- b. Franchisee shall not be in default of any term, covenant or provision of this Agreement, or any other agreement between Franchisee and Franchisor or its affiliates, or of any standards set forth in Franchisor’s Confidential Operations Manual which consists of, collectively, all manuals, guides, bulletins, memoranda, notices, audio or video training materials, computer media, or other publications, documents or electronic communications (i.e., Internet or e-mail) setting forth information, advice, standards, requirements, operating procedures, instructions, or policies relating to the operation of the Franchised Business, as same may be amended from time to time (herein collectively referred to as the “**Manual**”), and Franchisee shall have complied with all the terms and conditions of this Agreement, the Manual and any other agreements during the initial term hereof;
- c. Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its affiliates, and shall have met those obligations in a timely manner throughout the initial term of this Agreement;

- d. Franchisee shall, at Franchisor's option, execute Franchisor's then-current form of renewal franchise agreement and any addenda thereto (and Guarantors must execute new Guarantees, if applicable) for the renewal term, including any additional renewal terms, if any, set forth in this Agreement, which renewal franchise agreement shall supersede this Agreement in all respects, and the terms of which may differ materially from and be less advantageous to Franchisee than the terms of this Agreement; provided, however, that Franchisee shall not be required to pay any initial franchise fee upon the execution of the renewal franchise agreement;
- e. Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective shareholders, directors, agents, and employees; and
- f. If Franchisee has leased or subleased the Franchised Business Premises from a party other than Franchisor or an affiliate of Franchisor, Franchisee shall furnish evidence satisfactory to Franchisor that Franchisee has the right to remain in possession of the Franchised Business Premises for the duration of the renewal term.
- g. If Franchisee has subleased the Franchised Business Premises from Franchisor or an affiliate of Franchisor, then Franchisor (or the affiliate) shall have renewed its own lease for the Franchised Business Premises, or otherwise has the right to remain in possession of the premises, throughout the renewal term of the renewal franchise agreement. Franchisee acknowledges and understands that Franchisor's (or its affiliate's) actions shall be, in its sole discretion, based solely on an evaluation of its own business interests rather than those of Franchisee.

Section 2.02 - Second Renewal: Franchisee shall have the option, subject to the following conditions, to renew this Agreement for one (1) further, consecutive term of five (5) years, less a day (the "**Second Renewal Term**"), which option shall be exercisable only by giving Franchisor written notice of such election to renew no fewer than six (6) months nor more than twelve (12) months prior to the end of the First Renewal Term. Franchisor may require, in its sole discretion, that any one or more of the following conditions be met prior to such renewal:

- a. Franchisee shall not be in default of any term, covenant or provision of this Agreement, or any other agreement between Franchisee and Franchisor or its affiliates, or of any standards set forth in Franchisor's Manual, and Franchisee shall have complied with all the terms and conditions of this Agreement, the Manual and any other agreements during the First Renewal Term hereof;
- b. Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its affiliates, and shall have met those

obligations in a timely manner throughout the First Renewal Term of this Agreement;

- c. Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective shareholders, directors, agents, and employees; and
- d. If Franchisee has leased or subleased the Franchised Business Premises from a party other than Franchisor or an affiliate of Franchisor, Franchisee shall furnish evidence satisfactory to Franchisor that Franchisee has the right to remain in possession of the Franchised Business Premises for the duration of the Second Renewal Term.
- e. If Franchisee has subleased the Franchised Business Premises from Franchisor or an affiliate of Franchisor, then Franchisor (or the affiliate) shall have renewed its own lease for the Franchised Business Premises, or otherwise has the right to remain in possession of the premises, throughout the Second Renewal Term of the renewal franchise agreement. Franchisee acknowledges and understands that Franchisor's (or its affiliate's) actions shall be, in its sole discretion, based solely on an evaluation of its own business interests rather than those of Franchisee.

Section 2.03 - No Further Right of Renewal: Franchisee hereby acknowledges that Franchisee shall have no further right to renew or extend this Agreement, and no representations, warranties, promises, commitments or agreements, whether expressed or implied or collateral, have been made by Franchisor to Franchisee to that effect, other than the right provided in Section 2.01 and 2.02 above, and this Agreement shall expire at the end of the initial term or, if renewed in accordance with the terms and provisions of Section 2.01 above, at the end of the First Renewal Term or, if further renewed in accordance with the terms and provisions of Section 2.02 above, at the end of the Second Renewal Term.

Section 2.04 - Effect of Non-Renewal: If Franchisee continues to operate the Franchised Business at the Franchised Business Premises after the end of the initial term or at the end of the First Renewal Term without expressly exercising its option to renew in accordance with Section 2.01 or Section 2.02, as applicable or continues to operate after the end of the Second Renewal Term, Franchisee shall be deemed to be operating such Franchised Business on a month-to-month basis under the terms and conditions of this Agreement and Franchisor may terminate this Agreement at any time.

### ARTICLE III DUTIES OF FRANCHISOR

Section 3.00 - Performance by Others: Franchisee acknowledges and agrees that any duty or obligation imposed on Franchisor by this Agreement may be performed by any designee, employee, or agent of Franchisor, as Franchisor may direct.

Section 3.01 - Training: Franchisor shall offer an initial training program to Franchisee and those employees of Franchisee whom Franchisor, at its sole discretion, deems necessary and appropriate. During the term of this Agreement, Franchisor shall make available such other training programs as it deems necessary and appropriate, in accordance with the provisions of Section 5.03.

Section 3.02 - Pre-Opening and Opening Assistance: Franchisor shall provide, at its expense, on-site pre-opening and opening assistance to Franchisee. The timing, nature, and duration of such assistance shall be at Franchisor's sole discretion provided, however, that (i) in no event shall such on-site assistance exceed 10 calendar days; and (ii) Franchisor shall not be obligated to provide any pre-opening and opening assistance if Franchisee or any affiliate currently operates a Franchised Business.

Section 3.03 - Ongoing Assistance: Franchisor shall provide such other initial and on-going advisory assistance to Franchisee concerning the marketing, merchandising, and general business operations of the Franchised Business, as Franchisor deems appropriate.

Section 3.04 - Confidential Operating Manual: Franchisor shall provide Franchisee, on loan, one copy of the Manual, including, as Franchisor deems advisable, modifications thereto. At Franchisor's sole discretion, the Manual may be in written or electronic format, or a combination thereof. Franchisor may, from time to time in its sole discretion, revise the Manual to incorporate changes. However, no changes to the Manual shall be made which would impose an unreasonable economic burden on Franchisee or unreasonably increase Franchisee's obligations. Franchisee shall, at its expense, implement any changes upon receipt of notice thereof from Franchisor, and shall complete their implementation within such time as Franchisor may specify.

Section 3.05 - Inspections: Franchisor shall conduct, when and as frequently as it deems advisable, inspections of the Franchised Business Premises and evaluations of the Franchised Business' management and operations, in order to assist Franchisee and to maintain the Tim Hortons System's standards of quality, appearance, and service.

#### ARTICLE IV PAYMENTS

Section 4.00 - Initial Franchise Fee: In consideration of the franchise granted herein, Franchisee shall pay to Franchisor at the time of execution of this Agreement, an initial franchise fee of Thirty-Five Thousand Dollars (\$35,000), which, payment, except under the limited circumstances set forth below, shall be deemed fully earned and non-refundable when made, in consideration of administrative and other expenses incurred by Franchisor in entering into this Agreement, and for Franchisor's lost or deferred opportunity to enter into this Agreement with others.

- a. Franchisor, in its sole discretion, may refund up to fifty percent (50%) of the Initial Franchise Fee, with the remainder retained by Franchisor as compensation for its expenses, if Franchisee is approved to own or lease

the property upon which the Franchised Business Premises are located, and this Agreement is terminated pursuant to Section 12.01(x), and such termination occurs despite Franchisee's best efforts (as determined by Franchisor in its sole judgment) to develop and construct the Franchised Business Premises pursuant to Section 5.17 on condition that Franchisee executes Franchisor's general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective shareholders, directors, agents, and employees.

- b. Franchisor, in its sole discretion, may refund up to fifty percent (50%) of the Initial Franchise Fee, with the remainder retained by Franchisor as compensation for its expenses, if this Agreement is terminated for a failure to complete initial training and Franchisor concludes (in its sole judgment) that Franchisee has made a good faith effort to successfully complete the training program as set forth in Section 5.01, on condition that Franchisee executes Franchisor's general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective shareholders, directors, agents, and employees.

Any refund supplied under Section 4.00 (a) or (b) shall be made within thirty days after the date of termination of the Franchise Agreement.

Section 4.01 - Royalty Fee: Franchisee shall pay to Franchisor a continuing non-refundable royalty fee each week during the term of this Agreement in an amount equal to four and one-half percent (4½) of weekly Gross Sales (as that term is defined in Section 4.03 -of this Agreement) if Franchisee will lease the Restaurant Franchised Business Premises from Franchisor or an affiliate of Franchisor or six percent (6%) of weekly Gross Sales if Franchisee will lease the Franchised Business Premises from a party other than Franchisor or an affiliate of Franchisor or if Franchisee or its affiliate will own the Franchised Business Premises. For the purposes of this Agreement, a week shall commence at 2:00 p.m. each Sunday and end at 1:59 p.m. on the following Sunday. Franchisee shall submit, by Tuesday of each week for the previous week, a weekly Gross Sales report on forms designated by Franchisor, and shall submit by Thursday of each week the royalty payment owing on such Gross Sales. Franchisor shall have the right, in its sole and absolute discretion, to change the days on which reports and payments are due.

Section 4.02 - Advertising Contribution: Franchisee shall make a continuing non-refundable advertising contribution each month during the term of this Agreement, in the amount and manner and for the purposes set forth in Article VIII of this Agreement. Except as Franchisor may otherwise require pursuant to Section 4.05 hereof, Franchisee shall submit, by the tenth day of each month for the previous month, a monthly Gross Sales report on forms designated by Franchisor, together with the advertising contribution owing on such Gross Sales.

Section 4.03 - "Gross Sales" Defined: "**Gross Sales**" shall mean the total amount (but not including taxes collected from customers and remitted to the taxing authority) of all sales of all products and services of every kind and character, and all other income of every kind and nature



related to the Franchised Business, for cash, on credit, or for any other consideration, and regardless of collection with respect to credit or other consideration, and all proceeds received from any business interruption insurance with respect to the Franchised Business. Gross Sales shall not include an exchange of products or services between different Franchised Businesses owned by Franchisee where the exchange is made solely for the convenient operation of the Franchised Businesses and is not the completion of a sale on or from the Franchised Business Premises. Franchisee may deduct from the computation of Gross Sales cash or credit refunds to customers, but only if the original selling price was previously included in the computation of Gross Sales.

Section 4.04 - Late Charges: Any payment not received by Franchisor on or before its due date shall be deemed overdue. In addition to Franchisor's rights under Article XII, Franchisee shall pay interest on any overdue payment at the annual rate of five percent (5%) above the prime rate of the Huntington National Bank set from time to time, calculated from the due date on a per diem basis compounded daily until the date of payment, or the maximum amount permitted by law, whichever is less.

Section 4.05 - Electronic Transfer Payment Program: Franchisee shall participate in an Electronic Transfer Payment Program (hereinafter referred to as "ETPP") for the payment of monies and the reporting of Gross Sales. Franchisee shall comply with all instructions and procedures established by Franchisor in the Manual or otherwise in writing with respect to such ETPP, including reducing the time within which Franchisee must submit payments or reports to Franchisor.

## ARTICLE V DUTIES OF THE FRANCHISEE

Section 5.00 - Importance of Compliance with Tim Hortons System Standards: Franchisee understands and acknowledges that every detail of the Tim Hortons System is important to Franchisor, to Franchisee, and to other franchisees, in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities, and techniques, to increase the demand for the products and services offered by franchised businesses and to protect and enhance the Franchisor's reputation and goodwill.

Section 5.01 - Training: Prior to the commencement of the Franchised Business, Franchisee (or, if Franchisee is a corporation, partnership, or limited liability company, a principal of Franchisee, as the term "principal" is defined in Section 18.03 f. of this Agreement) shall attend and complete to Franchisor's satisfaction, the initial training program in the operation of the Franchised Business which is offered by Franchisor. The training program shall consist of a minimum of seven (7) weeks and a maximum of nine (9) weeks of training at the Franchisor's affiliate's training center in Oakville, Ontario, Canada and/or such other location selected by Franchisor. Franchisor shall provide training, instructors, a training manual, and other materials without charge to Franchisee. Franchisee shall be responsible for any and all other expenses incurred in attending the initial training program, including, without limitation, the cost of lodging, travel, and living expenses. Franchisor shall have the right to terminate this Agreement if, at any time during the initial training program, it concludes (in its sole judgment)

that Franchisee or its principal does not appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the Tim Hortons System or this Agreement. In the event of such termination, and if Franchisor (in its sole judgment) concludes that Franchisee has made a good faith effort to successfully complete the training program, Franchisor shall refund fifty percent (50%) of the initial franchise fee paid to it by Franchisee, with the remainder retained by Franchisor as compensation for its expenses in training and/or evaluating the Franchisee. Any refund shall be made within thirty days after the date of termination of the Franchise Agreement.

Section 5.02 - Hiring and Training of Employees by Franchisee: Franchisee shall hire, train, and supervise, at its expense, all of its employees, and shall be exclusively responsible for the terms and conditions of their employment and the proper performance of their responsibilities in the operation of the Franchised Business, notwithstanding any advice that Franchisor may provide. Franchisee's employees shall at all times present a neat and clean appearance to the public and shall comply with such dress codes and meet such other standards as Franchisor may establish in the Manual or otherwise in writing. Franchisee shall at all times maintain a sufficient number of trained employees to service the customers of the Franchised Business but, in any event, the Franchised Business shall at all times be staffed by the minimum number specified in the Manual.

Section 5.03 - Additional Training: Franchisee (or if Franchisee is a corporation, limited liability company or partnership, a principal of Franchisee) shall attend and complete such additional training programs as may be required by Franchisor, at the time(s) and location(s) selected by Franchisor. Franchisor shall provide such training, instructors, a training manual, and other materials as Franchisor deems appropriate, without charge to Franchisee except for a fee for materials, which fee shall not exceed \$500 per annum. Franchisee shall be responsible for any and all other expenses incurred in attending any additional training program including, without limitation, the cost of lodging, travel, and living expenses.

Section 5.04 - Use of Premises: Franchisee shall use the Franchised Business Premises solely for the operation of the Franchised Business and keep the Franchised Business (which shall include, without limitation, all sales areas and dining areas) open for business and in normal operation for twenty-four (24) hours per day, seven (7) days per week, subject to applicable laws and regulations regulating hours of business, and shall not use or permit the use of the Franchised Business Premises for any other purpose or activity.

Section 5.05 - Franchisee Purchases: Franchisee shall operate the Franchised Business in strict conformity with such standards, methods, and specifications as Franchisor may from time to time prescribe in the Manual or otherwise in writing. Franchisee shall not (a) deviate from such standards, methods, and specifications without Franchisor's prior written consent or (b) otherwise operate in any manner which reflects adversely on Franchisor's Proprietary Marks or the Tim Hortons System. Among other actions, Franchisee shall:

- a. Maintain in sufficient supply, and use at all times, only such products, equipment, materials, signs, and supplies as conform to Franchisor's standards and specifications; and not use non-conforming items;

- b. Purchase and use such ingredients and commodities which may form any part or all of the products made, sold, or consumed on the Franchised Business Premises (which shall include but not be limited to donut flours, toppings, fillings, frostings, flavourings, coffee, tea, chocolate, dairy products, vegetable oil, and soft drinks) as specified by Franchisor in the Manual or otherwise in writing;
- c. Sell or offer for sale only such products and services which are prepared with such ingredients and commodities, and in accordance with such recipes and manner of preparation as are specified by Franchisor and meet Franchisor's uniform standards of quality, and as have been expressly approved for sale in writing by Franchisor; sell or offer for sale, all products and services required by Franchisor in the Manual or otherwise in writing as being part of the Tim Hortons System; not deviate from Franchisor's methods, standards, and specifications; and immediately discontinue selling or offering for sale any products or services which Franchisor may, in its sole discretion, disapprove in writing at any time. With respect to the offer and sale of all menu items, products and services, Franchisee is free to set prices, provided that the Franchisor may, where allowed by applicable law, establish maximum prices which may be charged based on an analysis of the market and to facilitate advertising and competitive strategies; and
- d. Purchase and install, at its expense, all fixtures, furnishings, equipment, decor, signs, and other items as Franchisor may reasonably direct from time to time in the Manual or otherwise in writing; and shall not install or permit to be installed on or about the Franchised Business Premises, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved as meeting Franchisor's standards and specifications. If Franchisee leases or subleases the Franchised Business Premises from Franchisor or an affiliate of Franchisor, then notwithstanding Franchisee's purchase and/or installation of fixtures, furnishings, equipment, and other items, if such fixtures, furnishings, equipment, and other items are listed on a schedule provided to Franchisee by Franchisor as an integral asset to the Franchised Business Premises ("**Integral Assets**"), the Integral Assets are deemed to be permanent fixtures that remain the property of Franchisor or its affiliate.
- e. If Franchisee or its affiliate is approved to lease or own and will construct its own Franchised Business Premises and Franchisee incurs costs related to the development of design drawings or through Franchisor's development assistance, by, for example, engaging Franchisor to assist with permitting requirements or to construct part or all of the Franchised Business Premises, Franchisee shall pay for such amounts invoiced by Franchisor prior to ordering of equipment for the Franchised Business Premises. Amounts invoiced for design drawings and development

assistance are due whether or not the Franchised Business is ultimately opened and are non-refundable.

Section 5.06 - Designated Suppliers: Franchisor shall have the right to restrict the availability of current and future products, fixtures, design drawings, building components, furnishings, equipment, décor, signs, supplies, paper goods, services, menu ingredients and/or other items used or sold by the Franchised Business or necessary to construct the Franchised Business Premises to (i) Franchisor, (ii) an affiliate of Franchisor; or (iii) third party supplier(s) designated by Franchisor. As used in this Agreement, the term “**suppliers**” includes manufacturers, wholesalers, distributors, and service providers.

Section 5.07 - Approved Suppliers: Franchisee shall purchase all products, design drawings, building components, fixtures, furnishings, equipment, decor, signs, supplies, paper goods, services, menu ingredients, and other items used or sold by the Franchised Business or necessary to construct the Franchised Business Premises solely from suppliers who demonstrate, to Franchisor’s continuing reasonable satisfaction, the ability to meet Franchisor’s reasonable standards and specifications for such items; who possess adequate quality controls and capacity to supply Franchisee’s needs promptly and reliably; and who have been approved by Franchisor in the Manual or otherwise in writing and not thereafter disapproved. If Franchisee desires to purchase products or services from other than approved suppliers, Franchisee shall submit (or request its proposed supplier to submit) to Franchisor a written request to approve the proposed supplier, together with such evidence of conformity with Franchisor’s specifications, approval policies and pre-requisites as the Franchisor may reasonably require. Franchisor shall have the right to inspect and evaluate the supplier’s facilities and products to be supplied, and Franchisee shall pay, in advance, all of Franchisor’s estimated reasonable expenses incurred in so doing, with a final payment adjustment made after completion of the inspection and evaluation. Franchisor may from time to time re-inspect and re-evaluate the facilities of any approved supplier and revoke its general approval of particular suppliers if and when Franchisor determines, in its sole discretion, that such suppliers no longer meet Franchisor’s then-current standards and criteria for approving new suppliers. Upon receipt of written notice of such revocation, Franchisee immediately shall cease to purchase from any disapproved supplier.

Section 5.08 - Physical Condition of the Premises: Franchisee shall maintain the Franchised Business Premises (including adjacent public areas) in a clean, orderly condition and in excellent repair; and, in connection therewith, Franchisee shall, at its expense, make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor’s prior written consent) as may be required for that purpose, including, without limitation, interior and exterior painting once each year in the color scheme approved by Franchisor and periodic repairing, and replacing of obsolete or deteriorated interior and exterior signs, furnishings, fixtures, equipment (including, without limitation, lighting, wiring, plumbing, fixtures, heating, ventilation, and air conditioning equipment, and distributor systems), and decor as Franchisor may reasonably direct by written notice to Franchisee. Franchisee shall complete all work specified in the notice within the time frame set forth in the notice.

Section 5.09 - Refurbishing: Franchisee shall refurbish the Franchised Business Premises at Franchisor’s request, but not more often than once every five (5) years, to conform to the trade

dress, color schemes and presentation of the Proprietary Marks consistent with Franchisor's then-current public image including, without limitation, such remodeling, replacement of equipment, redecoration, and modifications to existing improvements as may be requested by Franchisor, provided, however, that Franchisee shall not be required to expend for refurbishing greater than three percent (3%) of its aggregate Gross Sales of the Restaurant during the immediately preceding five (5) years, whether operated by Franchisee or a predecessor during all or part of that five (5) year period. This Section shall not apply with respect to any refurbishing required as a condition to renewal of this Agreement.

Section 5.10 - Franchisor's Right of Inspection: Franchisor and/or its agents shall have the right to enter upon the premises of the Franchised Business at any time for the purpose of conducting inspections. Franchisee shall cooperate in such inspections by rendering such assistance as Franchisor may reasonably request. Upon notice from Franchisor, Franchisee shall take such steps as may be necessary immediately to correct the deficiencies detected during any such inspection that do not conform with the Franchisor's then current standards and specifications.

Section 5.11 - Franchisor's Right of Removal: Franchisee shall permit Franchisor or its agents, at any reasonable time, to remove from the premises of the Franchised Business, at Franchisor's option, representative samples of any ingredients, products, materials, supplies, and paper goods used in the operation of the Franchised Business, without payment therefor, in amounts reasonably necessary for testing by Franchisor or an independent laboratory, to determine whether said samples meet Franchisor's then-current standards and specifications. In addition to any other remedies it may have under this Agreement, Franchisor may require Franchisee to bear the cost of such testing if the supplier has not been approved by Franchisor or if the sample fails to conform to Franchisor's standards or specifications.

Section 5.12 - Franchisee's Performance of Lease Obligations: Franchisee shall comply with all terms of its lease or sublease, and all other agreements affecting the operation of the Franchised Business; and shall not engage in any activity which may jeopardize Franchisee's right to remain in possession of, or to renew the lease or sublease for, the Franchised Business Premises. If Franchisee will lease or sublease the Franchised Business Premises from a party other than Franchisor or its affiliate or if Franchisee will own the Franchised Business Premises, then promptly following Franchisor's written approval of your proposed Franchised Business Premises, Franchisee agrees to obtain a lease or sublease for the Franchised Business Premises which must be accompanied by the Lease Rider included in Attachment C of this Agreement. Franchisee agrees to deliver to Franchisor a copy of any proposed lease or sublease for the Franchised Business Premises and any related documents at least ten (10) business days before Franchisee executes the lease or sublease. Any lease or sublease will be subject to Franchisor's advance written approval, which will not be unreasonably withheld or delayed, provided, however, that Franchisor expressly reserves the right to disapprove any lease or sublease not accompanied by the Lease Rider included in Attachment C. Franchisor has no liability to Franchisee or to any third parties by virtue of its approval rights regarding the terms or negotiation of a lease Franchisee signs directly with a landlord. Franchisee shall provide Franchisor with a copy of the executed lease or sublease for the Franchised Business Premises within ten (10) days after it is fully executed. If Franchisee elects to purchase the property upon

which the Franchised Business Premises will be located, Franchisee shall provide Franchisor with a copy of the executed purchase agreement within ten (10) days after it is fully executed. If Franchisee owns the property upon which the Franchised Business Premises is located or is leasing the Franchised Business Premises from an entity affiliated with Franchisee, Franchisee shall execute a Lease Option Agreement with Franchisor's affiliate.

Section 5.13 - Maintaining Health Standards: Franchisee shall meet and maintain the highest health standards and ratings applicable to the operation of the Franchised Business. Franchisee shall notify Franchisor by telephone within twenty-four hours, and confirm in writing within two (2) days thereafter, of any investigation or violation, actual or alleged, concerning any health or sanitary laws or regulations and, thereafter, take any actions directed by Franchisor or government agencies concerning same.

Section 5.14 - Making Changes in the Tim Hortons System: Franchisee acknowledges that the Tim Hortons System and the products and services offered by the Franchised Business may be modified, (such as, but not limited to, the addition, deletion, and modification of operating procedures, products, and services) from time to time by Franchisor, and Franchisee agrees to comply with all such modifications including, without limitation, all requirements needed to implement the modifications, such as replacement or renovation of equipment, remodeling, redecoration, and modifications to existing improvements, including structural changes. If Franchisee makes any suggestions or recommendations which are ultimately adopted by Franchisor, then such suggestions and/or recommendations shall form part of the Tim Hortons System and shall be owned exclusively by Franchisor. Franchisee shall not be entitled to any compensation directly or indirectly related to the suggestions and/or recommendations and Franchisee shall have the right to use or continue to use any such suggestions or recommendations which become part of the Tim Hortons System.

Section 5.15 - Limitations on Franchisee Debt: Franchisee shall ensure that the Franchised Business debt, excluding current non past-due amounts payable to trade creditors, shall not exceed seventy percent (70%) of the fair market value of the Franchised Business assets.

Section 5.16 - Execution of Security Agreement and Deposit Account Control Agreement: Simultaneously with the execution of this Agreement and as security for any and all debts and obligations from time to time owing by Franchisee to Franchisor or any of its affiliates including, without limitation, obligations relating to the payment of any and all monies owing by Franchisee to Franchisor or its affiliates pursuant to (i) this Agreement; (ii) any lease/sublease of the Franchised Business Premises; (iii) a promissory note; (iv) an asset purchase agreement; and/or (v) any other agreement between Franchisee and Franchisor or its affiliates, Franchisee shall execute Franchisor's (or its affiliate's) then-current form of Security Agreement. At Franchisor's request, which request may be made at any time during the term of this Agreement, Franchisee also shall sign Franchisor's then-current form of Deposit Account Control Agreement. For purposes of the above-referenced two agreements, all obligations, liabilities, and indebtedness of Franchisee to Franchisor's affiliates shall also be deemed to be owing to Franchisor, and Franchisor shall have the right to enforce the Security Agreement and Deposit Account Control Agreement accordingly.

Section 5.17 - Franchisee's Construction of the Franchised Business: Upon Franchisor's prior written approval, Franchisee may develop and construct the Franchised Business at Franchisee's expense and Franchisee shall do the following:

- a. be responsible for selecting the site, subject to Franchisor's written approval. Franchisor may approve or disapprove proposed sites within Franchisor's sole discretion and may consider any factors, both objective and subjective, that in Franchisor's sole judgment, it considers to be relevant to site selection for the Restaurant. Franchisee acknowledges that Franchisor is relying heavily on Franchisee's knowledge of the local market in selecting the proposed site. Franchisor's approval is given solely for the purpose of obtaining compliance with the Tim Hortons System.
- b. secure all financing required to develop and operate the Franchised Business;
- c. conduct due diligence of the Franchised Business Premises (such as environmental site assessment and geotechnical investigation) and obtain all required building, utility, sign, health, sanitation, business, and other permits and licenses;
- d. provide to Franchisor construction plans and specifications before Franchisee begins constructing the Franchised Business Premises. Franchisor must review and approve in writing all final plans and specifications before Franchisee begins constructing the Franchised Business and all changes to the approved plans and specifications arising during construction.
- e. build the Franchised Business at its expense, including all required improvements, according to Franchisor's specifications and layouts for the Franchised Business, and Franchisor will specify requirements for dimensions, design, image, interior layout, decor, equipment, and color scheme. Franchisee shall use an architect designated by Franchisor and an approved general contractor (which may include or be limited to Franchisor and/or Franchisor's affiliates) to design and construct the Franchised Business. It is Franchisee's responsibility to prepare construction plans and specifications to suit the Franchised Business Premises and to conform such plans and specifications to applicable federal, state, and local laws, codes, and regulations, including the Americans with Disabilities Act ("ADA") or similar rules governing public accommodations for persons with disabilities, and all encumbrances recorded on title and lease requirements (if applicable).

- f. diligently pursue construction of the Franchised Business Premises. Franchisor may inspect the Franchised Business Premises while Franchisee is developing the Franchised Business;
- g. purchase or lease, and install, all required fixtures, furniture, equipment (including a required or recommended computer, and point-of-sale information system), furnishings, and signs for the Franchised Business;
- h. obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating, and installation services; and
- i. purchase an opening inventory of authorized and approved products, materials, and supplies to operate the Franchised Business.

Franchisor's approvals under this Section 5.17 are given without representations or warranties of any kind and Franchisee remains solely responsible for all aspects of the development process, including but not limited to the workmanship, design, construction, cost, and compliance with applicable law.

## ARTICLE VI FRANCHISOR'S TRADE MARKS

Section 6.00 - Franchisee's Use of Proprietary Marks: Franchisee's right to use Franchisor's Proprietary Marks shall be limited strictly to their use in connection with the operation of the Franchised Business at the Franchised Business Premises and only in the manner authorized and permitted by Franchisor, and is limited to such Proprietary Marks which Franchisor specifically designates from time to time for use by the Franchised Business.

Section 6.01 - Franchisee's Lack of Ownership: Franchisee expressly acknowledges Franchisor's ownership and rights in and to the Proprietary Marks, and agrees not to represent in any manner that Franchisee has any ownership interest therein. Franchisee further agrees that its use of the Proprietary Marks does not give Franchisee any ownership or other interest in or to the Proprietary Marks other than the right to use them in the manner authorized by this Agreement.

Section 6.02 - Infringement by Franchisee: Franchisee acknowledges that the use of the Proprietary Marks in any manner not authorized by this Agreement is an infringement of Franchisor's ownership and rights in and to the Proprietary Marks, and expressly covenants that during the term of this Agreement and after its expiration or termination, Franchisee shall not, directly or indirectly, commit an act of infringement, contest or aid in contesting, or jeopardize the validity or right of Franchisor to the Proprietary Marks, or take any other action in derogation thereof.

Section 6.03 - Claims Against Proprietary Marks: Franchisee shall promptly notify Franchisor of any suspected unauthorized use of, or any challenge to the validity of the Proprietary Marks, or any challenge to Franchisor's ownership of, right to use, or franchise others to use, the Proprietary Marks. Franchisee acknowledges that Franchisor has the right to



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

Section 6.04 - Further Uses of Proprietary Marks: Franchisee expressly understands and acknowledges that:

- a. Its right to use the Proprietary Marks and/or the Tim Hortons System is non-exclusive, and Franchisor has and retains the right: (i) to grant additional franchises to use the Proprietary Marks in addition to those franchises granted to existing franchisees; (ii) to distribute, offer for sale, and/or to develop and establish other systems for the same or similar products or services utilizing the same or similar Proprietary Marks as well as any other proprietary marks, and to grant licenses thereto either through Tim Hortons Restaurants or other distribution channels (including, without limiting the generality of the foregoing, delivery units, kiosks, grocery or convenience stores or express units, mail order, television, catalogue sales, Internet websites or other means of electronic advertising) without providing the Franchisee any rights therein; and (iii) to use the Proprietary Marks itself in connection with selling products and services;
- b. All goodwill arising from Franchisee's use of the Proprietary Marks and the Tim Hortons System shall inure directly and exclusively to Franchisor's benefit, and that upon expiration or termination of this Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with any of Franchisee's use of the Tim Hortons System or the Proprietary Marks;
- c. It will operate the Franchised Business and advertise under the name "Tim Hortons" without prefix or suffix;

- d. It will use the Proprietary Marks solely in the manner prescribed by Franchisor;
- e. It will not make use of any Proprietary Mark or any part thereof in Franchisee's partnership, corporate or other business name, on the Internet, or in or as any part of any domain name, website address, or e-mail address;
- f. It will secure Franchisor's prior written approval as to form and content prior to filing any assumed name or equivalent registration;
- g. It will not interfere with in any manner nor attempt to prohibit the filing of any assumed name or equivalent registration by any other franchisee of Franchisor. If Franchisee's consent to such filing is requested, Franchisee irrevocably appoints Franchisor or its designee to execute all required documents to effect such consent; and
- h. It will not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor.

Section 6.05 - Substitution of Proprietary Marks: Franchisor reserves the right to require Franchisee to use different proprietary marks for use in identifying the Tim Hortons System and the businesses operating thereunder if the Proprietary Marks no longer can be used, or if Franchisor, in its sole discretion, determines that substitution of different Proprietary Marks will be beneficial to the Tim Hortons System. In such circumstances, the use of the substituted proprietary marks shall be governed by the terms of this Agreement, and Franchisor shall not compensate Franchisee for such substitution and shall bear only the costs of modifying Franchisee's signs and advertising materials to conform to Franchisor's new Proprietary Marks.

## ARTICLE VII CONFIDENTIAL OPERATING MANUAL

Section 7.00 - In General: In order to protect the reputation and goodwill of the Tim Hortons System and Franchisor, and to maintain uniform standards of operation under the Franchisor's Proprietary Marks, Franchisee shall conduct the Franchised Business in accordance with the standards, methods, policies, and procedures specified in the Manual.

Section 7.01 - Confidential Use: Franchisee shall at all times treat the Manual and the information contained therein as confidential, and shall use all reasonable efforts to maintain such information as secret and confidential. In addition, any and all information, trade secrets, knowledge and know-how, including, without limitation, drawings, materials, equipment, recipes, construction and operating information and other data which Franchisor designates as secret or confidential, also shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention prior to disclosure thereof by Franchisor; or which, at or after the time of disclosure by Franchisor to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others

who were lawfully in possession of such information and were under no obligation to maintain its confidentiality. Franchisee shall divulge such confidential information only to such of its employees as must have access to it in order to operate the Franchised Business, and shall not at any time, without Franchisor's prior written consent, copy or otherwise reproduce the foregoing, in whole or in part, nor otherwise make the same available to any unauthorized person or source.

Section 7.02 - Manuals: The Manual shall at all times be deemed and remain the sole property of Franchisor, and Franchisee's sole right in and to the Manual shall be to possess and use it during the term of this Agreement. Franchisor may from time to time revise the contents of the Manual, and Franchisee agrees to comply with each new or changed standard. Franchisor may transmit the Manual and any changes, additions, modifications and revisions by electronic mail, internet, intranet or portal or other electronic means. Franchisee shall at all times ensure that its loaned paper copy of the Manual is kept current and up-to-date, and in the event of any dispute as to the contents of the Franchisee's Manual, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's principal place of business shall be controlling.

Section 7.03 - Non-Disclosure Covenants From Individuals: Franchisee shall obtain from any principal or employee who may have access to any confidential information of Franchisor, and furnish to Franchisor, a covenant to maintain the confidentiality of information received. Such covenant shall be in a form satisfactory to Franchisor including, without limitation, specific identification of Franchisor as a third party beneficiary of such covenant with the independent right to enforce it.

Section 7.04 - Irreparable Injury From Disclosure of Confidential Information: Franchisee acknowledges that failure to comply with the requirements of Sections 7.00 through 7.03 will result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining an injunction prohibiting any conduct by Franchisee in violation of Sections 7.00 through 7.03.

## ARTICLE VIII ADVERTISING

Section 8.00 - Franchisee's Obligations: Franchisee shall contribute to advertising, each month, an amount equal to four percent (4%) of the Gross Sales of the Franchised Business for the preceding month. Said contribution shall be paid to the system advertising fund, The Tim's National Advertising Program, Inc. (hereinafter, "TNAP"), which shall operate subject to the provision of Section 8.02 herein. Franchisor may in its sole discretion direct TNAP to allocate said contributions as between local, regional, and national advertising and promotional programs and may modify such allocation at its sole discretion from time to time.

Section 8.01 - Franchisor's Obligation to Contribute: Each business operating under the Tim Hortons System and Proprietary Marks which is owned by Franchisor shall contribute to TNAP, each month, on the same basis and in the same amounts as franchisees contribute.

Section 8.02 - TNAP: Recognizing the value of advertising and promotion, and the importance of the standardization of advertising and promotional programs to the furtherance of the goodwill and public image of the Franchised Business, Franchisee agrees that Franchisor shall have the right, but not the obligation, to establish, maintain, and administer TNAP or another System advertising fund. The following provisions shall apply to TNAP:

- a. TNAP, all contributions thereto, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, directing, conducting, and developing advertising, marketing, public relations, and/or promotional programs and materials, and any other activities and related investments and/or initiatives, including but not limited to capital investments, which Franchisor believes will enhance the image of the Tim Hortons System, including, among other things, the costs of preparing and conducting advertising campaigns in various media including the internet; preparation of direct mail advertising; market research; employing advertising and/or public relations agencies to assist therein; purchasing promotional items; conducting and administering product launches; and providing promotional and other marketing materials and services;
- b. TNAP shall be maintained and administered by Franchisor. Franchisor shall direct all advertising and promotional programs, with sole discretion over the creative concepts, materials, and media used in such programs, and the placement and allocation thereof. Franchisee agrees and acknowledges that TNAP is intended to maximize general public recognition, acceptance and use of the Tim Hortons System and Proprietary Marks; and that Franchisor is not obligated, in administering TNAP, to make expenditures for Franchisee which are equivalent or proportionate to Franchisees' contributions, or to ensure that Franchisee benefits directly or pro rata from expenditures by TNAP. TNAP is not a trust fund, and Franchisor shall have no fiduciary responsibility to Franchisee in connection with the collection or use of TNAP monies or any other aspect of TNAP's operations;
- c. All payments required hereunder shall be made by Franchisee in a manner specified by Franchisor. All payments shall be accounted for separately from the other monies of Franchisor and shall not be used to defray any expenses of Franchisor, except for such reasonable costs and overhead, if any, as may be incurred in activities reasonably related to the administration or direction of TNAP and advertising programs including, among other things, costs of personnel for creating and implementing advertising, promotional, and marketing programs. The funds held by TNAP and any earnings thereon shall not otherwise inure to the benefit of Franchisor. Franchisor shall maintain separate accounts for TNAP;

- d. A statement of the operations of TNAP shall be prepared annually and shall be made available to Franchisee upon request, the cost of such statement to be paid by TNAP; and
- e. Although TNAP is intended to be of perpetual duration, Franchisor shall have the right to terminate TNAP at any time in its sole judgment. TNAP shall not be terminated, however, until all monies in it have been expended or returned to the contributors.

Section 8.03 - Local Advertising by Franchisee: All local advertising and promotion which Franchisee may choose to conduct in addition to any advertising and promotion conducted by TNAP shall be at Franchisee's own expense, and shall not be credited against Franchisee's obligations pursuant to Section 8.00. In addition, such advertising or promotion shall be in such media and of such type and format as Franchisor may approve, shall be conducted in a dignified manner over a time frame established by Franchisor, and shall conform to such standards and requirements as set forth in the Manual or otherwise in writing. Franchisee shall submit samples of all advertising and promotional plans and materials to Franchisor, in the manner described in Section 18.01, prior to their use, and may not commence use of the materials unless and until Franchisor shall have furnished written notice to Franchisee authorizing such use. Franchisor also shall have the right at any time after Franchisee commences use of any advertising or promotional plans and materials to prohibit further use, effective upon receipt by Franchisee of written notice from Franchisor.

Section 8.04 - Franchisee's Opening Promotion: Upon execution of this Agreement, Franchisee shall deposit the sum of Three Thousand Dollars (\$3,000.00) with Franchisor, which sum shall be spent on an initial local advertising and promotion program, the form, timing and content of which shall be approved by Franchisor in writing. Franchisor shall use this deposit to pay expenses incurred by Franchisee in implementing the approved initial local advertising and promotion program, up to the amount of the deposit, and upon receipt from Franchisee of such documentation as Franchisor shall reasonably require to substantiate the expenditure. Franchisor may, in its sole discretion, contribute funds to Franchisee's initial local advertising and promotion program. Regardless of any such contributions by Franchisor, Franchisee's obligations under this Section 8.04 shall be in addition to Franchisee's obligations under Section 8.00, and no expenditures in fulfilling this obligation shall be credited against Franchisee's obligations under Section 8.00.

Section 8.05 - Participation in Market Information Program: Franchisee shall participate in and furnish information to Franchisor's market information system in order to assist Franchisor in planning, conducting, and evaluating regional, and national advertising and promotional programs. Franchisee shall, at its expense, install and maintain in good working order the equipment specified by Franchisor to enable it to electronically gather all relevant information. Franchisee shall pay all initial and ongoing telephone charges incurred in participating in Franchisor's market information program.

Section 8.06 - Internet Website: Franchisee acknowledges and agrees that any Internet websites, e-mail addresses, or other means of electronic advertising or commerce created and/or

operated by or on behalf of Franchisor shall be deemed advertising under this Agreement and may be paid for by such national, regional, and other advertising programs as determined by Franchisor. Any Internet websites or Internet domain name or other address which Franchisee wishes to register, create, and/or operate and which contains any reference to the Tim Hortons System, any Proprietary Mark, or the Franchised Business shall be subject to Franchisor's prior written approval, which approval may be arbitrarily withheld. In the event such permission is given, it may thereafter be withdrawn, or if required by Franchisor, Franchisee shall cease operating its own website and/or shall establish its website as part of any other website which Franchisor may prescribe and/or shall establish electronic links to such websites as Franchisor may prescribe. Franchisee shall comply with Franchisor's standards and specifications for electronic advertising and commerce, including, without limitation, those in relation to the use and display of the Proprietary Marks and any copyrighted materials.

## ARTICLE IX ACCOUNTING AND RECORDS

Section 9.00 - Maintenance by Franchisee: Franchisee agrees to maintain and preserve during the term of this Agreement, complete and accurate books, records, and accounts in accordance with the form and manner prescribed by Franchisor from time to time in the Manual or otherwise in writing. Records shall include, without limitation, sales invoices, purchase invoices, cash register receipts (journal tapes and reports), credit and debit card receipts, delivery slips, bank deposit books, work orders, dockets, timecards, checks, bank statements, time sheets, and tax returns.

Section 9.01 - Review by Franchisor: Franchisee shall submit to Franchisor for review such forms, reports, records, and financial statements in the form and at the times required by Franchisor, in the Manual or otherwise in writing.

Section 9.02 - Preservation of Records: Franchisee shall preserve for a period of not less than six (6) years all accounting records and supporting documents relating to the Franchisees operation of the Franchised Business.

Section 9.03 - Sales Reports and Profit and Loss Statements: Franchisee shall submit the sales reports referred to in Sections 4.01 and 4.02 within the time periods set out therein and in the manner and form designated by Franchisor from time to time. The Franchisee further covenants to submit (i) within ten (10) days after the end of each month, a profit and loss statement for the just-completed month in the manner and format designated by the Franchisor; and (ii) within ninety (90) days after the end of each of its fiscal years, an annual audited report of Gross Sales certified by an independent certified accountant in a form prescribed by Franchisor from time to time in writing.

Section 9.04 - Annual Financial Statement: The Franchisee shall submit an annual financial statement prepared in accordance with generally accepted accounting principles and including, without limitation, a balance sheet, a statement of income, and a statement of changes in financial position from the beginning of the fiscal year, within ninety (90) days after the end of each fiscal year. If such annual financial statement is not delivered to Franchisor at or before the

required time, Franchisor, in addition to its other rights under this Agreement and at law, shall have the right to have Franchisee's accounts audited, and the annual financial statement prepared, at Franchisee's expense.

Section 9.05 - Tax Returns: At Franchisor's request, Franchisee shall provide, within seven (7) days after such request, complete copies of any and all federal, state, and local tax returns filed by Franchisee as well as Franchisee's unemployment insurance filings; provided, however, that if Franchisee is a sole proprietorship, Franchisee may, at its option, and with respect to its personal tax filings, submit only those schedules which reflect the revenues and expenses of the Franchised Business.

Section 9.06 - Other Reports: Franchisee shall provide to Franchisor such other financial and non-financial reports as Franchisor may from time to time require in its sole and absolute discretion, such as, but not limited to, operational reports, order forms, and records.

Section 9.07 - Franchisor's Right to Audit: Franchisor or its designee shall have the right at any time during normal business hours, without prior written notice to Franchisee, to audit or cause to be audited, the reports, financial statements, and tax returns that Franchisee is required to submit to the Franchisor hereunder and its books and records including, without limitation, all bookkeeping and accounting records, invoices, payroll records, time cards, check stubs, cancelled checks, bank deposits, bank statements, receipts, income tax and sales tax records and returns, inventory records, and any other books and records of Franchisee that Franchisor deems necessary to conduct such audit. If Franchisor should determine that an audit is necessary after the expiration or termination of this Agreement, Franchisee shall, upon notice, deliver to Franchisor all required records and documents. Franchisee shall fully cooperate with Franchisor's auditors, authorized representatives and agents. If an audit should disclose an understatement of Gross Sales for any period or periods, in addition to the rights of Franchisor set out in Article XII, Franchisee shall pay, within five (5) days after receipt of the audit report, the amount understated together with interest as set out in Section 4.04. Further, in the event such audit is made necessary by the failure of Franchisee to furnish reports, financial statements, tax returns, or schedules, as herein required, or if an understatement of Gross Sales for any period is determined by any such audit to be greater than two percent (2%) of the Gross Sales for such period disclosed by the audit, in addition to the rights of Franchisor set out in Article XII, Franchisee shall reimburse Franchisor for the cost of such audit, including, without limitation, the charges of any independent accountant and the travel expenses, room, board and compensation of its employees or representatives.

Section 9.08 - Computer System: At Franchisor's request, Franchisee, at its expense, shall purchase or lease, and thereafter maintain, such telecommunications systems, computer hardware and software, required dedicated telephone and power lines, modem(s), printer(s), and other computer-related accessories or peripheral equipment including but not limited to point-of-sale, credit or debit verification, automatic bank transfer or depository, information storage, and/or retrieval transmission systems as Franchisor specifies, for the purpose of, among other functions, recording sales, processing credit and debit card and bank transactions, and other recordkeeping and central functions. Franchisee shall provide such assistance as may be required to connect its computer system with Franchisor's computer system. Franchisor shall

thereafter have the right from time to time and at any time to retrieve and use for any purpose such data and information from Franchisee's computer system as Franchisor, in its sole and exclusive discretion, deems necessary or desirable. In view of the possible interconnection of computer systems and the necessity that such systems be compatible with each other, Franchisee expressly agrees that it will strictly comply with Franchisor's standards and specifications for all item(s) associated with Franchisee's computer system. To ensure full operational efficiency and optimum communication capability between and among computer systems installed by Franchisee, Franchisor, and other franchisees, Franchisee agrees, at its expense, to keep its computer system in good maintenance and repair, and, at its expense, to promptly install such additions, changes, modifications, substitutions, and/or replacements to Franchisee's computer hardware, software, telephone and power lines, and other computer-related facilities as Franchisor directs.

Section 9.09 - Acceptance of Customer Payment Options: At Franchisor's request, Franchisee shall accept debit cards, credit cards, stored value gift cards, or other non-cash systems specified by Franchisor to enable Franchisee's customers to purchase the products offered by the Franchised Business. Franchisee shall acquire, at its expense, all necessary hardware and/or software used in connection with these non-cash systems.

## ARTICLE X INSURANCE

Section 10.00 - Franchisee's Insurance: Franchisee shall procure prior to the Opening Date and maintain in full force and effect during the term of this Agreement, and any renewal hereof, at Franchisee's expense, an insurance policy or policies protecting Franchisee and Franchisor and its affiliates, and their respective directors, shareholders, employees, and agents against any demand or claim with respect to personal or bodily injury, death, or property damage, or any loss, liability or expense whatsoever arising or occurring upon or in connection with the Franchised Business as well as such other insurance as Franchisor may reasonably require for its own and the Franchisee's protection. Such policy or policies shall (i) be written by insurer(s) acceptable to Franchisor, (ii) name Franchisor, and its affiliates, and their respective directors, shareholders, employees, and agents as additional insureds, with primary non-contributory coverage, (iii) comply with the requirements prescribed by Franchisor in writing at the time such policies are obtained, and (iv) provide at least the types and minimum amounts of coverage specified in the Manual as it may from time to time be adjusted.

Section 10.01 - Franchisor's Insurance: Franchisee's obligation to obtain and maintain the insurance set forth in Section 10.00 of this Agreement shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section 16.02 hereof.

Section 10.02 - Evidence of Insurance: At least five (5) days prior to the time any insurance is first required to be carried by Franchisee, and thereafter at least thirty (30) days prior to the expiration of any policy, Franchisee shall deliver to Franchisor Certificates of Insurance evidencing the proper types and at least the minimum amounts of coverage required by



Franchisor, as set forth in the Manual as it may from time to time be adjusted. All Certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given to Franchisor in the event of material alteration to or cancellation or non-renewal of the coverages evidenced by such Certificates. Certificates shall name Franchisor, its affiliates and their respective directors, shareholders, employees, and agents as additional insureds, with primary non-contributory coverage, and shall expressly provide that any interest of each shall not be affected by any breach by Franchisee of any policy provisions for which such Certificates evidence coverage.

Section 10.03 - Franchisee's Failure to Insure: Should Franchisee for any reason fail to procure and maintain the required insurance, Franchisor shall have the right, but not the obligation, to procure such insurance and to charge the cost of such insurance to Franchisee, which charges, together with a reasonable fee for Franchisor's expenses in so acting, shall be payable by Franchisee immediately upon notice. The foregoing remedies shall be in addition to any other remedies Franchisor may have.

Section 10.04 - Franchisor Insuring by Consent: If Franchisor procures insurance for Franchisee, Franchisee acknowledges and agrees that Franchisor shall not be acting as the agent of Franchisee; and Franchisee waives any claim against Franchisor arising through any and all loss, damage, liability, or legal fees and costs, including any claim for loss of business profits incurred by Franchisee, because the amount or extent of such claim or claims is not covered by the insurance policies obtained by Franchisor.

Section 10.05 - Additional Insurance Provisions: In connection with any and all insurance required to be maintained by Franchisee pursuant to Section 10.00 hereof, Franchisee and Franchisee's insurers shall agree to waive their rights of subrogation against Franchisor and its affiliates, and their respective directors, shareholders, employees, and agents, and Franchisee's Certificates of Insurance shall reflect such waiver. In addition, all public liability and property damage policies shall contain a provision that the additional insureds shall be entitled to recover under such policies for any loss occasioned to them or by reason of the negligence of Franchisee or its servants, agents, or employees.

## ARTICLE XI TRANSFERABILITY OF INTEREST

Section 11.00 - Franchisor's Right To Transfer: Franchisor shall have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity. With respect to any assignment which results in the subsequent performance by the assignee of all of Franchisor's obligations under this Agreement, the assignee shall expressly assume and agree to perform such obligations, and shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment. In addition, and without limitation to the foregoing, Franchisee expressly affirms and agrees that Franchisor may sell its assets, its Proprietary Marks, or its System; may sell its securities in a public offering or in a private placement; may permit and participate in any transfer or distribution of its securities in connection with a spin-off; may merge, acquire other corporations, or be acquired by another

corporation; and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial reorganization or restructuring.

Section 11.01 - Franchisee's Right To Transfer: Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee's (or, if Franchisee is a corporation, limited liability company or partnership, its principals') business skill, financial capacity, and personal character. Accordingly, neither Franchisee nor any immediate or remote successor to any part of Franchisee's interest in this Agreement, nor any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in Franchisee, in this Agreement, or in all or substantially all of the assets of the Franchised Business, shall sell, encumber, assign, transfer, convey, pledge, merge, or give away any direct or indirect interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business without the prior written consent of Franchisor. Any purported assignment or transfer not having the written consent of Franchisor required by this Section 11.01 shall be null and void and shall constitute a material breach of this Agreement, for which Franchisor may immediately terminate without opportunity to cure pursuant to Section 12.01 of this Agreement.

Section 11.02 - Conditions to Franchisee Transfer: Franchisee acknowledges that it is the policy of the Franchisor that the profitability of the Franchised Business should be derived from the day-to-day operations of the business and not from a resale of the business. Franchisee therefore covenants and agrees that Franchisor may arbitrarily withhold its consent to any transfer of this Agreement in whole or in part if it determines in its sole and absolute discretion that the sale or transfer price to be paid by any proposed transferee is inappropriate. In addition, Franchisor may, in its sole discretion, require any or all of the following as conditions to its consent to a transfer by Franchisee or any immediate or remote successor to any part of Franchisee's interest in this Agreement, or any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in Franchisee, in this Agreement or in all or substantially all of the assets of the Franchised Business:

- a. Franchisee shall not be in default of any provision of this Agreement;
- b. The transferor shall have executed a general release in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective partners, shareholders, directors, employees, and agents;
- c. The transferee (or, if the transferee is other than an individual, a principal of the transferee approved by Franchisor) shall demonstrate to Franchisor's satisfaction that it meets Franchisor's standards for managerial experience, business reputation, and credit rating; has the aptitude and ability to conduct the Franchised Business; has adequate financial resources and capital to operate the Franchised Business; makes an equity payment of a minimum of thirty percent (30%) of the sale or transfer price in unencumbered and non-borrowed funds; has no conflicting or competing business interests (including those of any

immediate family members) and satisfies such other criteria and conditions as Franchisor shall reasonably impose.

- d. All directors, officers, and shareholders of a transferee corporation or all general partners of a transferee partnership, shall guarantee the payment of the transferee's financial obligations to Franchisor and indemnify Franchisor for any and all losses sustained because of the transferee's breach of any provision of this Agreement during the term hereof; and shall execute such documents as Franchisor shall require to evidence such obligations;
- e. At Franchisor's request, the transferee (and, if the transferee is other than an individual, such principals of the transferee as Franchisor may request) shall execute either (i) for a term ending on the expiration date of this Agreement, the standard form franchise agreement (and individuals' Guarantees, if applicable) then being offered to new Tim Hortons System franchisees, which agreement shall supersede this Agreement in all respects and the terms of which agreement may differ materially from the terms of this Agreement and may be less favorable to the transferee; provided, however, that the transferee shall not be required to pay an initial franchise fee and no higher percentage of royalty payments or advertising contributions shall be required; or (ii) a written assignment of the transferor's Franchise Agreement (including individuals' Guarantees, if applicable), with the transferee assuming all of Franchisee's obligations hereunder, on such forms and containing such other terms as Franchisor deems appropriate;
- f. The transferee (or those principals of a corporate or partnership transferee designated by Franchisor) shall successfully complete, at its expense, the initial training program required of new franchisees and the transferee shall reimburse the Franchisor for all costs it incurs with respect to such training;
- g. Franchisee shall pay Franchisor a transfer fee of five percent (5%) of the full purchase price provided, however, that in lieu of a transfer fee (i) transactions governed by Section 11.07 of this Agreement shall pay the fee specified therein; and (ii) transfers to a corporation formed for the convenience of ownership, where the ownership of such corporation is by the same persons and in the same proportion as the ownership of Franchisee before such transfer, shall pay a fee equal to the reasonable legal and administrative expenses incurred by Franchisor in reviewing and processing the transaction;
- h. Franchisee shall remain liable for all of its obligations to Franchisor and its affiliates in connection with the Franchised Business which arose prior

to the effective date of the transfer, and shall execute any documents reasonably requested by Franchisor to evidence such liability;

- i. Franchisee shall have paid all amounts due to Franchisor; and
- j. The transferee, at its expense, shall refurbish the Franchised Business Premises to conform to Franchisor's then-current standards and specifications, and complete the refurbishing and other requirements within the time specified by Franchisor.
- k. Franchisee shall, at Franchisor's request, prepare and furnish to the transferee and/or Franchisor such financial reports and other data relating to the Franchised Business and its operations as Franchisor deems reasonably necessary or appropriate for the transferee and/or Franchisor to evaluate the Franchised Business and the proposed transfer. Franchisee authorizes Franchisor to confer with any proposed transferee and furnish it with information concerning the Franchised Business and the terms and conditions of the proposed transfer, and Franchisor may do so without any liability, except for intentional misstatements made to a transferee.

Section 11.03 - Franchisee Security Interests: Franchisee shall not grant a security interest in the Franchised Business or in any of the assets of the Franchised Business without first obtaining the prior written consent of Franchisor. Franchisor's consent or refusal to consent may be based upon whatever factors Franchisor, in its sole discretion, deems economically and commercially reasonable in protecting Franchisor's interests under this Agreement and the relationship created hereunder. However, Franchisor shall not consent to any such granting of a security interest unless all the following conditions are met:

- a. The security interest is granted only for the purpose of securing a loan in favor of Franchisee, which loan shall only be for the use and benefit of the Franchised Business;
- b. In the event of any default by Franchisee under any documents in any way relating to the security interest or the loan to which it relates, Franchisor shall have the right at its sole option (but not the obligation) to cure any such default and/or to be substituted as obligor to the lender whose interests are secured by such security interest;
- c. In the event of any such default, and if Franchisor chooses to be substituted as obligor, Franchisor shall be so substituted in all respects on the same terms and conditions to which Franchisee was subject, except that any acceleration of the obligations secured, due to the Franchisee's default, shall be void upon cure by Franchisor;
- d. The aggregate amount of debt shall not exceed the limitation imposed in Section 5.15 of this Agreement; and

- e. Such other conditions and terms as Franchisor shall deem necessary and/or prudent to protect its interests under this Agreement.

Section 11.04 - Franchisor's Right of First Refusal: If Franchisee or any immediate or remote successor to any part of Franchisee's interest in this Agreement, or any entity holding any direct or indirect interest in the Franchisee, in this Agreement, or in all or substantially all of the assets of the Franchised Business desires to accept any bona fide offer from a third party to purchase such interest or assets or an interest in this Agreement, Franchisee shall notify Franchisor of such offer at least thirty (30) days before such transfer is proposed to take place, and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of such written notification, to send written notice to the seller that Franchisor intends to purchase the seller's interest or assets on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest or assets, closing of such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by Franchisor. If Franchisor declines to purchase the seller's interest or assets, any material change thereafter in the terms of the offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 11.04 shall not constitute a waiver of any other provision of this Agreement, including all the requirements of this Article 11, with respect to a proposed transfer. In the event the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest or assets proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, an independent appraiser shall be designated by Franchisor at Franchisor's expense, and the appraiser's determination of such cash value shall be binding.

Section 11.05 - Franchisee Transfer By Death or Disability: Upon the death or mental or physical incapacity of any person with an interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business, the executor, administrator, or personal representative of such person shall transfer such interest to a third party approved by Franchisor within six (6) months after such death or incapacity. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer, except that the transfer fee shall be waived. In the case of transfer by devise or inheritance, however, if the heirs or beneficiaries of any such person are unable to meet the conditions of this Article 11, the executor, administrator, or personal representative of the decedent shall transfer the decedent's interest to another party approved by Franchisor within six (6) months which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement. If the interest is not disposed of within such period, Franchisor may terminate this Agreement, pursuant to Section 12.01.d. hereof. For the purpose of this Agreement, Franchisee or a principal of Franchisee shall be deemed to be mentally or physically incapacitated in the event that its normal participation in the Franchised Business is for any reason curtailed by reason of mental or physical disability for a cumulative period of ninety (90) days in any twelve (12) month period during the term of this Agreement, including renewals.

Section 11.06 - Consent to Transfer Does Not Constitute Waiver: Franchisor's consent to a transfer of any interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

Section 11.07 - Franchisees' Sale of Securities: The sale of securities in Franchisee is subject to all of the conditions to transfer set out in this Article XI. All materials required to comply with federal or state law shall be submitted to Franchisor for review prior to filing with any government agency; and any materials to be used in any offering shall be submitted to Franchisor for review prior to their use. No offering shall imply, by use of the Proprietary Marks or otherwise, that Franchisor is participating in an underwriting, issuance, or offering of securities of either Franchisee or Franchisor; and Franchisor's review of any offering shall be limited solely to the subject of the relationship between Franchisee and Franchisor. Franchisee and the other participants in the offering must fully indemnify Franchisor in connection with the offering. For each proposed offering, Franchisee shall pay to Franchisor a non-refundable fee of Twenty-Five Thousand Dollars (\$25,000), at the time that Franchisee submits materials for review by Franchisor. Franchisee shall give Franchisor written notice at least thirty (30) days prior to the date of commencement of any offering or other transaction covered by this Section 11.07. Any such offering shall be subject to Franchisor's right of first refusal as provided in Section 11.04 hereof. No transfer fee shall be imposed by Franchisor.

Section 11.08 - Transfer By Bankruptcy - Right of First Refusal: If, for any reason, this Agreement is not terminated pursuant to Section 12.01 and assignment or assumption of this Agreement to any person or entity who has made a bona fide offer to accept an assignment or assumption of this Agreement is contemplated, pursuant to the United States Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth (a) the name and address of the proposed assignee, and (b) all of the terms and conditions of the proposed assignment or assumption, and (c) the adequate assurance of proposed assignee's future performance of the Agreement (which shall incorporate the relevant prerequisites applicable to any other proposed transferees as set forth in Section 11.02 of this Agreement) referred to in Section 3.65(b)(3) of the Bankruptcy Code shall be given to Franchisor within twenty (20) days after receipt of such proposed assignee's offer to accept assignment or assumption of this Agreement, and, in any event, within ten (10) days prior to the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment or assumption, and Franchisor shall thereupon have the prior right and option, to be exercised by notice given at any time prior to the effective date of such proposed assignment or assumption, to accept an assignment or assumption of this Agreement to Franchisor itself upon the same terms and conditions and for the same consideration, if any, as in the bona fide offer made by the proposed assignee, less any brokerage commissions which may be payable by Franchisee out of the consideration to be paid by such assignee for the assignment or assumption of this Agreement.

Section 11.09 - Limitation of Remedies: If Franchisor withholds, delays, or refuses to give consent to any request for transfer or assignment of this Agreement, whether or not Franchisor is entitled to do so, Franchisor shall not be liable for any losses or damages in any way resulting therefrom and Franchisee shall not be entitled to terminate this Agreement or

exercise any other remedy whatsoever in respect thereof except to seek the order of a court of competent jurisdiction compelling Franchisor to grant any consent.

Section 11.10 - Restrictions on Franchisee's Right to Transfer: In the event that Franchisee or any immediate or remote successor to any part of Franchisee's interest in this Agreement, or any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in Franchisee, in this Agreement, or in all or substantially all of the assets of the Franchised Business wishes to make a transfer as described in Section 11.01 hereof during the first five (5) years of the initial term of this Agreement, the seller shall do so only by offering to sell all of the assets of the Franchised Business to Franchisor at a price equal to the depreciated value of all personalty, as depreciated value is defined in Section 12.03 hereof, and for inventory at a price equal to its invoice price. Franchisor may exercise its purchase option in accordance with this Section within thirty (30) days of receipt of written notice from the seller advising it wishes to make a transfer described in Section 11.01. In the event that Franchisor does not exercise its purchase option, the seller must complete the proposed transfer to the third party at the purchase price set out in this Section and in accordance with the provisions of this Article XI.

Section 11.11 - Additional Condition To Franchisor's Consent to Transfer: Franchisor shall have the right to require as a condition pre-requisite to its consent to any transfer pursuant to this Section 11, that the transferee (including, in the event that the transferee is a corporation, its officers, directors, and shareholders, if the transferee is a partnership, all general partners and if the transferee is a limited liability company, all members and managers) execute the covenants concerning confidentiality, as set forth in Section 7.03, and non-competition, as set forth in Section 13.06 hereof.

## ARTICLE XII TERMINATION

Section 12.00 - Termination Without Notice or Opportunity to Cure: Franchisee shall be deemed to be in default under this Agreement, and all rights granted to Franchisee herein shall automatically terminate without notice to Franchisee, if Franchisee or any one of the Guarantors shall become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by Franchisee or any one of the Guarantors or such a petition is filed against and not opposed by Franchisee or any one of the Guarantors; if Franchisee or any one of the Guarantors is adjudicated as bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee or any one of the Guarantors; if a final judgment against Franchisee remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); if Franchisee is dissolved; if execution is levied against Franchisee's business or property; if suit to foreclose any lien or mortgage against the Franchised Business Premises or equipment used therein is instituted against Franchisee or any one of the Guarantors and not

dismissed within thirty (30) days; or if the real or personal property of the Franchised Business shall be sold after levy thereupon by any sheriff, marshal, or constable.

Section 12.01 - Termination With Notice but Without Opportunity to Cure: Franchisee shall be in default hereunder, and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon receipt of notice by Franchisee upon the occurrence of any of the following events:

- a. If Franchisee at any time ceases to operate or otherwise abandons the Franchised Business for two consecutive days without the consent of Franchisor, or for any reason whatsoever loses the right to possession of the Franchised Business Premises or otherwise forfeits the right to do or transact business in the jurisdiction where the premises of the Franchised Business is located. If, however, through no fault of Franchisee, the premises are lost, damaged, or destroyed by an event such that repairs or reconstruction cannot be completed within one hundred twenty (120) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the premises, which approval shall not be unreasonably withheld;
- b. If Franchisee (or any principal of Franchisee) is or was convicted of, or plead or has pleaded no contest to, a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the Tim Hortons System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;
- c. If any purported assignment or transfer of any direct or indirect interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business is made to any third party without Franchisor's prior written consent, contrary to the terms of Article XI hereof;
- d. If a transfer resulting from an occurrence described in Section 11.05 hereof is not effected within the required time frame;
- e. If Franchisee fails to comply with the covenants set forth in Section 13.01 hereof or fails to obtain and deliver execution of the covenants required under Sections 7.03 or 13.06 hereof;
- f. If, contrary to the terms of Article VII hereof, Franchisee or any principal of Franchisee discloses or divulges the contents of the Manual or other confidential information of Franchisor;



- g. If Franchisee or any principal of Franchisee has made any material misrepresentations in connection with Franchisee's application to Franchisor for the franchise granted herein;
- h. If Franchisee, after curing a default for which Franchisor sends a Notice of Termination pursuant to Section 12. 02 commits the same or different default within twelve (12) months from the date of the first notice of default;
- i. If Franchisee loses, for any reason whatsoever, any license required with respect to the operation of the Franchised Business;
- j. If Franchisee or any principal of Franchisee fails to successfully complete the initial training required by Section 5.01;
- k. If Franchisee understates any payment to Franchisor by three percent (3%) or more, or understates any such payment in any amount, twice in any five (5) year period;
- l. If an imminent threat or danger to public health or safety results from the operation of the Franchised Business and it is not corrected within forty-eight (48) hours of having received notice thereof from Franchisor;
- m. If Franchisee knowingly maintains false books or records or submits any false reports or statements to Franchisor;
- n. If Franchisee attempts to remove any substantial part of the leasehold improvements, fixtures, furnishings, or stock-in-trade from the Franchised Business Premises other than in the course of normal sales to customers or pursuant to a permitted assignment or sale transaction as set out in Article XI or when the same are no longer required for the conduct of the Franchised Business and other leasehold improvements, fixtures, furnishings, or stock-in-trade of equal or greater value and utility in the conduct of the Franchised Business are being substituted therefor;
- o. If, at any time, any person other than Franchisee operates the Franchised Business, unless under the direct and full supervision and control of Franchisee;
- p. If any insurance policy required by Article X shall be cancelled or shall be threatened by the insurer to be cancelled or the coverage thereunder reduced to below the minimum required by this Agreement, provided that such right will not be exercised by Franchisor without first giving notice to Franchisee to remedy the condition giving rise to cancellation, threatened cancellation, or reduction of coverage, and Franchisee has failed to remedy such condition within forty-eight (48) hours after such notice is received;

- q. If Franchisee defaults in paying any monies due to third parties for which Franchisor is or may become liable, and such default is not corrected by Franchisee within fifteen (15) days of receipt of written notice thereof from Franchisor to Franchisee;
- r. If Franchisee fails to comply with the provisions of Section 5.04 of this Agreement;
- s. If, within five (5) days after receipt of written notice from Franchisor that any payment due from the Franchised Business is overdue, Franchisee does not make such payment in the requested amount to Franchisor, an affiliate of Franchisor, or to Franchisee's suppliers or creditors, unless, with respect to Franchisee's suppliers or creditors, Franchisee notifies Franchisor of the existence of a *bona fide* dispute and takes immediate action to resolve it;
- t. If Franchisee or any of its principals engages in any dishonest or unethical conduct which, in Franchisor's sole judgment, is reasonably likely to have an adverse effect on the Tim Hortons System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;
- u. If Franchisee or any affiliate of Franchisee commits an act of default under any other agreement with Franchisor or any of Franchisor's affiliates for which such agreement is terminated;
- v. If Franchisee takes, withholds, misdirects, or appropriates for Franchisee's own use any funds withheld from Franchisee's employees' wages for employees' taxes, FICA, insurance or benefits, or generally fails to deal fairly and honestly with Franchisee's employees or customers;
- w. If Franchisee sells unapproved products or uses unapproved suppliers in violation of Section 5 of this Agreement.
- x. If Franchisee or Franchisee's affiliated entity owns or leases from a third-party the property upon which the Franchised Business Premises are located and Franchisee fails to open the Franchised Business within six (6) months of the Opening Date set forth at Section 1.02.

Section 12.02 - Termination With Notice and With Opportunity to Cure: Except as otherwise provided in Sections 12.00 and 12.01 of this Agreement, Franchisee shall have thirty (30) days after its receipt from Franchisor of a written Notice of Termination within which to remedy any default under this Agreement and to provide evidence thereof to Franchisor. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee, effective immediately upon the expiration of the thirty-day period or such longer period as applicable law may require. Franchisee shall be in default pursuant to this Section 12.02 for failure to

substantially comply with any of the requirements imposed by this Agreement, as it may from time to time reasonably be modified or supplemented by the Manual, or failure to carry out the terms of this Agreement in good faith.

Section 12.03 - Rights and Obligations of Parties on Termination or Expiration: Upon termination or expiration of this Agreement, all rights granted hereunder to Franchisee shall terminate, and:

- a. Franchisee shall immediately cease to operate the Franchised Business and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor;
- b. Franchisee shall immediately and permanently cease to use, by advertising or in any other manner whatsoever, any methods, procedures, and techniques associated with the Tim Hortons System; all Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the Tim Hortons System; and all trade secrets or other confidential information of Franchisor including, without limitation, the Manual;
- c. Franchisee shall take such action as may be necessary to cancel any assumed name registration or equivalent registration obtained by Franchisee which contains the Proprietary Marks, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within ten (10) days after termination or expiration of this Agreement.

Franchisee shall, on demand, execute any documents reasonably requested by Franchisor to cancel any assumed name registration or equivalent registration obtained by Franchisee which contains the Proprietary Marks. If the Franchisee fails to execute such cancellation documents on demand, Franchisee hereby irrevocably appoints the Secretary of the Franchisor as its attorney to execute such documents on Franchisee's behalf.

- d. Unless otherwise agreed upon in writing, Franchisee shall, at Franchisor's request, immediately assign to Franchisor any interest which Franchisee has in any lease or sublease for the leased premises of the Franchised Business and thereafter immediately vacate the premises, and surrender possession to Franchisor. In the event Franchisor does not request such assignment, Franchisee, within thirty (30) days after termination or expiration of this Agreement, shall make such modifications or alterations to the premises (including, without limitation, the changing of the color scheme and other distinctive design features) as may be necessary to distinguish the appearance of the premises from that of franchised businesses operated by other franchisees of Franchisor, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose. In the event Franchisee fails or refuses to comply

with the requirements of this Section 12.03d., Franchisor shall have the right to enter upon the premises where the Franchised Business was conducted, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand;

- e. Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business (to the extent permitted pursuant to Section 13.02), not to use any reproduction, counterfeit copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which, in Franchisor's sole discretion, is likely to cause confusion, mistake or deception, or is likely to dilute Franchisor's rights in and to the Proprietary Marks. Franchisee further agrees not to utilize any designation of origin or description or representation which, in Franchisor's sole discretion, falsely suggests or represents an association or connection with Franchisor constituting unfair competition;
- f. Franchisee shall promptly pay all amounts owing to Franchisor and its affiliates. In the event of termination for any default of Franchisee, such amounts shall include all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of Franchisor against any and all of the personal property, furnishings, equipment, signs, fixtures, and inventory owned by Franchisee and on the Franchised Business Premises at the time of default;
- g. Franchisee shall pay to Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor prior or subsequent to the termination or expiration of the franchise herein granted in obtaining injunctive or other relief for the enforcement of any provisions of this Section 12.03, including collection actions;
- h. Franchisee shall immediately deliver to Franchisor the Manual and all other manuals, video materials, records, plans, specifications, and other materials prepared by Franchisor containing information relating to the operation of the Franchised Business, and all copies thereof (all of which are acknowledged to be the property of Franchisor);
- i. Franchisor shall have the option, to be exercised within fifteen (15) days after termination or expiration of this Agreement, to purchase from Franchisee any or all of the furniture, equipment, signs, fixtures, improvements, supplies, and inventory related to the operation of the Franchised Business, at the depreciated value thereof. The depreciated value shall be calculated on a declining balance basis of accounting at the

rate of twenty percent (20%) per annum. If any mortgage, charge, security interest, lien or encumbrance exists on any purchased item, Franchisor shall have the right to pay the amount of such mortgage, charge, security interest, lien or encumbrance directly to the creditor and deduct such payment from the amount due to Franchisee for the purchase price. If Franchisor elects to exercise any option to purchase herein provided, closing shall take place within fifteen (15) days after the purchase price shall have been established. Franchisor shall have the right to set off all amounts due from Franchisee against the purchase price of such items. In the event that the amount required to discharge creditors' liens exceeds the depreciated value as calculated, Franchisee shall be liable for, and promptly pay to Franchisor, the difference between the depreciated value as calculated and the amount paid by Franchisor to creditors;

- j. All covenants, obligations, and agreements of Franchisee which by their terms or by reasonable implication are to be performed, in whole or in part, after the termination or expiration of this Agreement, shall survive such termination or expiration; and
- k. Franchisee shall, on the date of termination or expiration, as applicable, immediately cease to use any telephone numbers, listings and service, websites, electronic mail addresses, domain names and any other business listing used by Franchisee in connection with Franchised Business and shall immediately transfer or cause to be transferred all such telephone numbers, listings, services and registrations to Franchisor, or to its designee (or to discontinue them, if Franchisor so requests) and shall execute such documents and do such other acts and things as may be necessary to effect the foregoing. If Franchisee fails or refuses to comply with the requirements of this Subsection, Franchisee hereby irrevocably appoints Franchisor and its agents as its true and lawful attorney to take any action, execute any document or do any other act or thing in order to effect the transfer of such numbers, listings and service in accordance with this Subsection at Franchisee's sole risk and expense, and Franchisee hereby covenants and agrees for its successors and assigns to allow, ratify and confirm whatsoever Franchisor and its agents shall do by virtue of the foregoing power of attorney.

Section 12.04 - Amendment to Agreement to Conform to Applicable Law:  
Notwithstanding the termination provisions set forth above, in the event that any valid, applicable law or regulation of a competent governmental authority having jurisdiction over this Agreement or the parties hereto limits Franchisor's rights of termination hereunder or shall require longer notice or cure periods than those set forth above, this Agreement shall be deemed amended to conform to the minimum notice or cure periods or restrictions upon termination required by such laws and regulations. Franchisor shall not, however, be precluded from contesting the validity, enforceability, or application of such laws or regulations in any action, proceeding, hearing, or dispute relating to this Agreement or the termination thereof.

ARTICLE XIII  
INDEPENDENT COVENANTS OF FRANCHISEE

Section 13.00 - Franchisee to Devote Full Time and Best Efforts: Unless otherwise approved by Franchisor in writing prior to Opening for Business, Franchisee covenants that during the term of this Agreement and any renewals thereof, it (or if Franchisee is a corporation, limited liability company, or partnership, the principals of Franchisee) will (i) faithfully, honestly, and diligently perform its duties in connection with and devote its entire working time, labor, skill, and best efforts to, the Franchised Business; and (ii) reside in the United States at a location no farther than 30 miles from the Franchised Business Premises.

Section 13.01 - Non-Competition During the Term of the Agreement: Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the Tim Hortons System. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, neither it nor any of its' or its principals' immediate family members (i.e., spouse and children), shall, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person or legal entity;

- a. own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any business (other than another Franchised Business) that is the same or similar to the Franchised Business or which offers products or services which are the same as or similar to the products and services being offered by the Franchised Business;
- b. divert or attempt to divert any present or prospective business or customer of the Franchised Business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the Tim Hortons System; or
- c. employ or seek to employ any person who is at that time employed by Franchisor or by any other franchisee of Franchisor, or otherwise directly or indirectly induce such person to leave his or her employment without the prior written consent of Franchisor.

Section 13.02 - Non-Competition After the Term of the Agreement: Franchisee covenants that, except as otherwise approved in writing by Franchisor, Franchisee shall not, for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement (regardless of the cause for termination) and continuing for one (1) year thereafter (and in the case of any violation of this covenant, for one (1) year after the violation ceases) either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, or legal entity, own, maintain, advise, operate, engage in, make loans to, be employed by,

provide assistance to, or have any interest in (as owner or otherwise) or relationship or association with any business that: (a) offers products or services which are the same as or similar to the products and services offered by the Franchised Business under the Tim Hortons System, and (b) is, or is intended to be, located at or within (i) the Franchised Business Premises, (ii) a two (2) mile radius of the Franchised Business Premises or (iii) a two (2) mile radius of any other Franchised Business operated by Franchisor or any other franchisee of Franchisor on the date of this Agreement is executed by Franchisee.

Section 13.03 - Exception to Non-Competition Covenants: Sections 13.01 and 13.02 shall not apply to ownership by Franchisee of a less-than-five-percent (5%) beneficial interest in the outstanding equity securities of any company with securities registered under the Securities Exchange Act of 1934.

Section 13.04 - Reduction of Scope of Non-Competition Covenants: Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 13.01 and 13.02, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof; and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 18.02 hereof.

Section 13.05 - Other Claims: Franchisee expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Article 13. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Article 13.

Section 13.06 - Covenants From Additional Persons: Franchisee shall obtain and furnish to Franchisor executed covenants similar in substance to those set forth in Sections 13.01 and 13.02 (including covenants applicable upon the termination of a person's relationship with Franchisee) from any or all of the following persons: (a) all employees of Franchisee who have attended any training program described in Section 5.01 or 5.03 of this Agreement; (b) all officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of Franchisee, and of any corporation directly or indirectly controlling Franchisee, if Franchisee is a corporation; (c) the general partners and any limited partners (including any corporation, and the officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of any corporation which controls directly or indirectly, any general or limited partner), if Franchisee is a partnership; and (d) the members of any limited liability company. Every covenant required by this Section 13.06 shall be in a form approved by Franchisor, including, without limitation, specific identification of Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

Section 13.07 - Independent Covenants: The parties agree that each of the covenants or provisions of this Agreement shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of any covenant or provision is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Franchisee expressly agrees to be bound by any

lesser covenant or provision subsumed within the terms of such covenant or provision that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

Section 13.08 - Breach of Covenants Causing Irreparable Injury: Franchisee acknowledges that Franchisee's violation of any covenant of this Article XIII would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

ARTICLE XIV  
CORPORATE, PARTNERSHIP, OR LIMITED LIABILITY  
COMPANY FRANCHISEES

Section 14.00 - Corporate Franchisee: Except as otherwise approved in writing by Franchisor, if Franchisee is a corporation, it shall (i) confine its activities, and its governing documents shall at all times provide that its activities are confined, exclusively to operating the Franchised Business; (ii) furnish Franchisor with its articles of incorporation and bylaws as well as such other documents that Franchisor may reasonably request, including the Guarantee, Indemnification and Acknowledgement, attached as Attachment A, executed by current beneficial owners of any class of voting stock of Franchisee; (iii) maintain stop transfer instructions on its records against the transfer of any equity securities and only issue securities upon the face of which a legend, in a form satisfactory to Franchisor, appears which references the transfer restrictions imposed by this Agreement; (iv) not issue any voting securities or securities convertible into voting securities without Franchisor's prior approval, which approval shall be conditioned on, among other prerequisites, the new shareholder(s)'s execution of a Guarantee, Indemnification and Acknowledgement in the form attached as Attachment A; and (v) maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Franchisee and furnish the list to Franchisor upon request.

Section 14.01 - Partnership Franchisee: If Franchisee is a partnership, it shall: (i) confine its activities exclusively to operating the Franchised Business; (ii) furnish Franchisor with its partnership agreement, as well as such other documents as Franchisor may reasonably request and any amendments thereto; (iii) furnish to Franchisor, upon request, a current list of all general and limited partners in Franchisee; and (iv) each general partner shall execute the Guarantee, Indemnification and Acknowledgement attached to this Agreement as Attachment A.

Section 14.02 - Limited Liability Company Franchisee: If Franchisee is a limited liability company, it shall: (i) furnish Franchisor with its articles of organization and operating agreement, as well as such other documents as Franchisor may reasonably request, and any amendments thereto; (ii) prepare and furnish to Franchisor, upon request, a current list of all members and managers in Franchisee; (iii) maintain stop transfer instructions on its records against the transfer of any equity securities and shall only issue securities which bear a legend, in a form satisfactory to Franchisor, which references the transfer restrictions imposed by this



Agreement; and (iv) each member shall execute the Guarantee, Indemnification and Acknowledgement attached to this Agreement as Attachment A.

ARTICLE XV  
TAXES AND COMPLIANCE WITH LAWS

Section 15.00 - Franchisee Liability for Taxes: Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the operation of the Franchised Business. Franchisee shall promptly pay to Franchisor the amount equal to all taxes levied or assessed, including, but not limited to, unemployment taxes, sales taxes, use taxes, withholding taxes, excise taxes, personal property taxes, intangible property taxes, gross receipt taxes, taxes on royalties, any similar taxes or levies imposed upon, or required to be collected or paid by Franchisor by reason of the furnishing of products, intangible property (including trademarks and trade names), or service by Franchisor to Franchisee through the sale, license or lease of property or property rights provided by this Agreement.

Section 15.01 - Compliance With Laws, Rules and Regulations: Franchisee shall comply with all federal, state, and local laws, rules, and regulations applicable to the Franchised Business Premises and the operation of the Franchised Business, including, without limitation, those related to health, safety and sanitation; construction, building, public accommodation and fire codes; the environment; employment and immigration; menu items, product labeling and nutritional information; and any requirements imposed by Franchisee's insurers. Franchisee shall obtain, in a timely manner, and maintain throughout the term of this Agreement, any and all permits, certificates, or licenses necessary for the full and proper conduct of the Franchised Business, including, without limitation, licenses to do business, assumed name registrations, sales tax permits, and fire and health clearances. Franchisee shall notify Franchisor in writing within five (5) days of the commencement of any investigation, action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operation or financial condition of the Franchised Business. Franchisee shall cooperate with Franchisor with respect to any and all investigations and audits conducted by Franchisor, its authorized representatives, auditors, agents and/or appointees, for the purpose of determining Franchisee's compliance with its obligations under this Section. In the event that any such investigation discloses non-compliance by Franchisee with any of the foregoing obligations, Franchisee shall reimburse Franchisor for all of Franchisor's costs associated with the investigation.

ARTICLE XVI  
INDEPENDENT CONTRACTOR: INDEMNIFICATION

Section 16.00 - No Fiduciary Relationship: It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them; that Franchisee shall be an independent contractor; and that nothing in this Agreement is intended to constitute or appoint either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

Section 16.01 - Independent Contractor: Franchisee shall not make any contract, agreement, warranty, or representation on Franchisor's behalf, or incur any debt or other obligation in Franchisor's name. During the term of this Agreement, Franchisee shall hold itself out to the public as an independent contractor operating the Franchised Business pursuant to a franchise agreement from Franchisor. Franchisee agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place at the Franchised Business Premises, the content of which Franchisor reserves the right to specify, as well as on the stationery, order forms, business cards, and similar materials of the Franchised Business.

Section 16.02 - Indemnification: Franchisee shall indemnify and hold harmless to the fullest extent permitted by law, Franchisor, its affiliates and their respective directors, employees, shareholders, and agents (collectively, "**indemnitees**") from all losses and expenses (as hereinafter defined) incurred in connection with any litigation or other form of adjudicatory procedure, claim, demand, investigation, or formal or informal inquiry (regardless of whether same is reduced to judgment) or any settlement thereof which arises directly or indirectly from, as a result of, or in connection with Franchisee's operation of the Franchised Business (collectively, "**event**"), and regardless of whether same resulted from any strict or vicarious liability imposed by law on the indemnitees, provided, however, that this indemnity shall apply to any liability arising from the negligence of indemnitees but shall not apply to the gross negligence of indemnitees (except to the extent that joint liability is involved, in which event the indemnification provided herein shall extend to any finding of comparative negligence or contributory negligence attributable to Franchisee). For the purpose of this Section 16.02, the term "**losses and expenses**" shall be deemed to include compensatory, exemplary, or punitive damages; fines; and penalties; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; compensations for damages to Franchisor's reputation and goodwill; and all other costs associated with any of the foregoing losses and expenses. Franchisee shall give Franchisor prompt notice of any event which could give rise to indemnification hereunder, and, at the expense and risk of Franchisee, Franchisor may elect to assume (but under no circumstance is obligated to undertake) the defense and/or settlement thereof, provided that Franchisor will seek the advice and counsel of Franchisee. Any assumption of Franchisor shall not modify Franchisee's indemnification obligation. Franchisor may, in its sole judgment, take such actions as it deems necessary and appropriate to investigate, defend, or settle any event or take other remedial or corrective actions with respect thereof as may be, in Franchisor's sole judgment, necessary for the protection of the indemnitees or the Tim Hortons System.

## ARTICLE XVII APPLICABLE LAW

Section 17.00 - Choice of Law: This Agreement takes effect upon its acceptance and execution by Franchisor in Ohio, and Ohio law shall apply to any claim or controversy regarding the making, entering into, performance, interpretation, breach or termination of this Agreement. In the event of any conflict of law, the laws of Ohio shall prevail, without regard to the application of Ohio conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of Ohio, and if the Franchised Business is located outside of

Ohio and such provision would be enforceable under the laws of the state in which the Franchised Business is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Article XVII is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Ohio to which it would not otherwise be subject.

Section 17.01 - Non-Exclusive Rights and Remedies: No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

Section 17.02 - Waiver of Jury Trial and Punitive Damages: **FRANCHISOR AND FRANCHISEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING. FRANCHISOR AND FRANCHISEE HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT.**

Section 17.03 - Reduction of Statute of Limitations: **ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF FRANCHISEE AND FRANCHISOR, OR FRANCHISEE'S OPERATION OF THE FRANCHISED BUSINESS, BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER, SHALL BE COMMENCED WITHIN TWO (2) YEARS FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION, OR SUCH CLAIM OR ACTION SHALL BE BARRED.**

Section 17.04 - Choice of Venue: Any litigation brought by Franchisee against Franchisor shall be brought exclusively, and any action brought by Franchisor against Franchisee may be brought, in the federal district court covering the location at which Franchisor has its principal place of business at the time the action is commenced; provided, however, that if the federal court would not have subject matter jurisdiction had the action been commenced in such court, then, in such event, the action shall (with respect to actions commenced by Franchisee) and may (with respect to actions commenced by Franchisor) be brought in the state court within the judicial district in which Franchisor has its principal place of business at the time the action is commenced. The parties waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

## ARTICLE XVIII MISCELLANEOUS

Section 18.00 - Nonwaiver: Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any

waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor. No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of this Agreement against Franchisee or any franchisee, or out of any breach or default by Franchisee, or by any other franchisee, of any of the terms, provisions, or covenants of this Agreement or any other Franchise Agreement, nor any custom or practice of Franchisor or Franchisee at variance with the terms hereof shall constitute a waiver by Franchisor to enforce any such right, option, or power as against Franchisee, or as to subsequent breach or default by Franchisee. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding or succeeding breach by or obligations of Franchisee of any terms, covenants, or conditions of this Agreement.

Section 18.01 - Notices: Any and all notices, approvals or consents required or permitted under this Agreement shall be in writing and shall be personally delivered or dispatched by recognized overnight delivery service, to the respective parties at the addresses set forth on the signature page of this Agreement unless and until a different address has been designated by written notice to the other party. Notices, approvals or consents shall be conclusively deemed to have been given, delivered, received and effective as follows: by personal delivery – at the time of delivery; by recognized overnight delivery service – on the next business day following the date on which the notice, approval or consent was deposited with the overnight delivery service for next business day service.

Section 18.02 - Entire Agreement: This Agreement, the Attachments hereto, and the documents referred to herein, constitute the entire and complete agreement between the parties concerning the subject matter hereof, and supersede any and all prior agreements between the parties, no other representations having induced Franchisee to execute this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require Franchisee to waive reliance on any representation made by Franchisor in the franchise disclosure document delivered to Franchisee. Franchisee acknowledges that it is neither aware of nor relying upon any oral or written representation or understanding which is contrary to the terms and conditions of this Agreement or the contents of any document furnished to Franchisee. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by them or their authorized officers or agents in writing.

Section 18.03 - Severability and Construction:

- a. Except as expressly provided to the contrary herein, each article, section, paragraph, part, term, covenant and provision of this Agreement shall be considered severable; and if, for any reason, any article, section, paragraph, part, term, provision, and/or covenant herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, articles, sections, paragraphs, parts, terms, provisions, and/or covenants of this Agreement as may remain otherwise valid; and the latter shall

continue to be given full force and effect and bind the parties hereto; and the invalid portions, articles, sections, paragraphs, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement;

- b. Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court or agency order;
- c. Time is of the essence in this Agreement;
- d. The Article and Section headings herein are for convenience only and shall not affect the construction of the terms of this Agreement;
- e. Each party shall execute such further and other agreements, assurances, undertakings, acknowledgments or documents, or take such further actions as may be necessary or desirable in order to give full effect to this Agreement and every part hereof; and
- f. As used in this Agreement, (i) the term “**principal**” of a Franchisee shall mean a shareholder of a corporate franchisee, a general partner of a partnership franchisee, and/or a member of a limited liability company; (ii) an “**affiliate**” of Franchisor shall mean an entity which controls, is controlled by, or is under common control with, Franchisor; and (iii) an “**affiliate**” of Franchisee shall mean an entity which controls, is controlled by, or is under common control with, Franchisee.

Section 18.04 - Contest of Franchisor’s Ownership Rights: Franchisee acknowledges ownership by Franchisor of the building designs, layouts, decorative schemes, identifying colors and combinations, menus, specifications, standards, management, methods, operating procedures, and other concepts embodied in the Tim Hortons System, and covenants that both during and subsequent to the term of this Agreement or any renewal thereof, regardless of the cause of termination or expiration, Franchisee shall not, either directly or indirectly, contest or aid others in contesting the ownership and rights of Franchisor in any aspect of the Tim Hortons System or the Proprietary Marks or do anything that will otherwise impair such rights including, without limitation, using or reproducing any materials copyrighted by Franchisor.

Section 18.05 - Atypical Modifications to System: Franchisee acknowledges that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor specifically reserves the right and privilege, at its sole discretion and as it may deem in the best interests of all concerned in any specific instance, to vary certain standards

for a franchised business, based upon the peculiarities of the franchised business' customer base, location, density of population, business potential, population of trade area, existing business practices or any other condition which Franchisor deems to be of importance to the successful operation of the specific franchised business. Franchisee shall not be entitled to require Franchisor to disclose or grant to Franchisee a like or similar variation.

Section 18.06 - Atypical Modifications to Agreements: Franchisee acknowledges that Franchisor has the right to enter into agreements with other franchisees that may contain provisions, conditions, and obligations that differ from those contained in this Agreement. The existence of different forms of agreement and the fact that existing or future franchisees may have different rights and obligations shall not in any manner eliminate, modify, or affect the duties of the parties to this Agreement to comply with the terms of this Agreement.

Section 18.07 - Remedy for Non-Approval: In no event shall Franchisee be entitled to make, nor shall Franchisee make, any claim, and Franchisee hereby waives any claim for money damages, nor shall Franchisee claim any money damages by way of set-off, counterclaim or defense, based upon any claim or assertion by Franchisee that Franchisor has unreasonably withheld or unreasonably delayed any consent or approval as required by this Agreement. Franchisee's sole remedy for any such claim shall be an action or proceeding to enforce any such provisions, or for specific performance, or declaratory judgment.

Section 18.08 - Franchisor's Actions: Franchisor and Franchisee acknowledge and agree that this Agreement (and the relationship of the parties which arises from this Agreement) grants Franchisor the right to make decisions, exercise discretion, and take actions and/or refrain from taking actions not inconsistent with Franchisee's explicit rights and obligations hereunder that may have a favorable or adverse affect on Franchisee's interests. Franchisee understands and agrees that Franchisor may operate and change the System and its business in any manner that is not expressly and specifically prohibited by this Agreement. Whenever Franchisor has reserved in this Agreement a right and/or discretion to take or withhold an action, or to grant or decline to grant Franchisee a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, Franchisor may make its decision or exercise its right and/or discretion on the basis of its judgment of what is in its own best interests, and/or what is in the best interests of the System, at the time the decision is made, without regard to: (a) whether Franchisor could have made or taken other reasonable or even arguably preferable alternative decisions or actions; (b) whether Franchisor's decision or action promotes its financial or other interest rather than the System's and/or Franchisee's interest; (c) whether Franchisor's decision or action applies differently to Franchisee from other franchisees; or (d) whether Franchisor's decision or action is adverse to Franchisee's individual interests or the individual interests of any other franchisees. Franchisor shall have no liability to Franchisee for any such decision or exercise of its rights.

Section 18.09 - Franchisor's Approval of Franchised Business Premises Site or Location: Regardless of whether Franchisee or Franchisor (or Franchisor's affiliate) constructs the Franchised Business, Franchisee agrees that Franchisor's offer to develop a site, approval of a site or assistance with site selection does not constitute a guarantee or assurance that the

Franchised Business will be profitable or successful and Franchisee assumes all risk associated with the profitability of any site.

ARTICLE XIX  
ACKNOWLEDGEMENTS

Section 19.00 - Acknowledgements:

- a. Franchisee acknowledges that it has conducted an independent investigation of the business franchised hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Franchisee (or, if Franchisee is a corporation or partnership, the ability of its principals) as an independent businessman and the general economic conditions, both of which are beyond Franchisor's control. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received any written or oral representation, express or implied, as to the potential sales, income, profits, or success of the business venture contemplated by this Agreement, or the past, current, or potential sales, income, profits, or success of any other Franchisee or Franchisor-owned or Franchisor-affiliate-owned Franchised Business, except for any such information (i) that might appear in Franchisor's Franchise Disclosure Document required by the Trade Regulation Rule of the Federal Trade Commission entitled "Disclosure Requirements and Prohibitions Concerning Franchising ("FDD") and (ii) appearing in the actual books and records of an existing Franchisor-owned or Franchisor-affiliate-owned Franchised Business being acquired by Franchisee simultaneously with the execution of this Agreement. Franchisee further acknowledges that it has no knowledge of any representations by Franchisor or its directors, shareholders, employees, or agents that are contrary to the terms of this Agreement and further represents to Franchisor as an inducement to its entry into this Agreement, that Franchisee has made no misrepresentations in obtaining this Agreement;
- b. Franchisee acknowledges that it has received a copy of the FDD, together with a copy of all proposed agreements relating to the sale of the franchise, at least 14 calendar days prior to the date on which this Agreement was executed, and, in addition, that Franchisor has not made any unilateral, material change to the Agreement within the seven calendar days prior to the date on which this Agreement is executed.
- c. Franchisee acknowledges that it has read and understood this Franchise Agreement, the attachments hereto, and agreements relating thereto, if any, and that Franchisee has been advised and given the opportunity to independently investigate, analyze and construe both the business opportunity being offered under this Agreement, the terms and provisions

of this Agreement and the prospects for the Franchised Business, using the services of legal counsel, accountants or other advisers of its own choosing. Franchisee has either consulted with these advisors or has deliberately declined to do so.

- d. Franchisee has been advised and given the opportunity to independently investigate, analyze and construe both the business opportunity being offered under this Agreement, the terms and provisions of this Agreement and the prospects for the franchised Business, using the services of legal counsel, accountants or other advisers of your own choosing. Franchisee has either consulted with these advisors or has deliberately declined to do so.
- e. Franchisee has carefully considered the nature and extent of the restrictions upon it set forth in this Agreement (including, without limitation, the covenants not to compete and the restrictions on assignment) and the rights and remedies conferred upon Franchisor and Franchisee under this Agreement. Franchisee acknowledges that such restrictions, rights and remedies: (a) are reasonable, including, but not limited to, their term and geographic scope; (b) are designed to preclude competition which would be unfair to Franchisor; (c) are fully required to protect Franchisor's legitimate business interests; and, (d) do not confer benefits upon Franchisor that are disproportionate to Franchisee's detriment.
- f. The covenants not to compete set forth in this Agreement are fair and reasonable, and will not impose any undue hardship on Franchisee, since Franchisee has other considerable skills, experience and education which afford Franchisee the opportunity to derive income from other endeavors.

*[signatures on following page]*



IN WITNESS WHEREOF, this Franchise Agreement has been duly executed by the authorized representatives of each party as of the day and year specified at the beginning hereof.

Addresses for Notices Pursuant to  
Agreement Section 18.01:

Franchisor:

Tim Hortons USA Inc.  
4150 Tuller Road, Suite 236  
Dublin, Ohio U.S.A. 43017  
Attention: Vice President

TIM HORTONS USA INC.  
FRANCHISOR

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

with a copy to:

Tim Hortons USA Inc.  
874 Sinclair Road  
Oakville, Ontario  
Canada L6K 2Y1  
Attention: General Counsel

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

Legal Department \_\_\_\_\_

Franchisee:

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_ and

\_\_\_\_\_

FRANCHISEE

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

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

ATTACHMENT A  
TO FRANCHISE AGREEMENT  
BETWEEN TIM HORTONS USA INC. AND

\_\_\_\_\_  
Dated \_\_\_\_\_, 201\_

GUARANTEE, INDEMNIFICATION AND ACKNOWLEDGEMENT

As an inducement to TIM HORTONS USA INC. (“Franchisor”) to execute the Franchise Agreement and any Addenda thereto (the “Franchise Agreement”) with \_\_\_\_\_, a \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_, 201\_, for the Tim Hortons Restaurant located at \_\_\_\_\_ and in consideration of Franchisor executing the Franchise Agreement and of the sum of One Dollar (\$1.00) now paid by Franchisor to \_\_\_\_\_ and \_\_\_\_\_ (together [or collectively] the “Guarantors”), the receipt and sufficiency of which is hereby acknowledged, the Guarantors jointly and severally agree as follows:

1. Guarantors shall pay or cause to be paid to Franchisor all monies payable by Franchisee under the Franchise Agreement on the days and times and in the manner therein appointed for payment thereof.
2. Guarantors shall unconditionally guarantee full performance and discharge by Franchisee of all the obligations of Franchisee under the Franchise Agreement at the times and in the manner therein provided, and agree that Article XIII of the Franchise Agreement shall be binding on the Guarantors personally, as if the Guarantors were the Franchisee under the Franchise Agreement.
3. Guarantors shall indemnify and save harmless Franchisor and its affiliates against and from all losses, damages, costs, and expenses which Franchisor and/or its affiliates may sustain, incur, or become liable for by reason of:
  - a. the failure for any reason whatsoever of Franchisee to pay the monies payable pursuant to the Franchise Agreement or to do and perform any other act, matter or thing pursuant to the provisions of the Franchise Agreement; or
  - b. any act, action, or proceeding of or by Franchisor for or in connection with the recovery of monies or the obtaining of performance by Franchisee of any other act, matter or thing pursuant to the provisions of the Franchise Agreement.

4. Franchisor shall not be obligated to proceed against Franchisee or exhaust any security from Franchisee or pursue or exhaust any remedy, including any legal or equitable relief against Franchisee, before proceeding to enforce the obligations of the Guarantors herein set out, and the enforcement of such obligations may take place before, after, or contemporaneously with, enforcement of any debt or obligation of Franchisee under the Franchise Agreement.
5. Guarantors shall faithfully, honestly, and diligently perform their duties and devote their entire working time, labor, skill and attention to the operation of the Franchised Business and will abide by all of the provisions of the Franchise Agreement. Notwithstanding the provisions of this Paragraph 5, Franchisor acknowledges that \_\_\_\_\_ has advised that he or she has other business interests and, as such, will not be devoting his or her entire working time, labor, skill and attention to the operation of the Franchised Business.
6. Without affecting the Guarantors' obligations under this Guarantee, Franchisor, without notice to the Guarantors, may extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee. Guarantors waive notice of amendment of the Franchise Agreement and notice of demand for payment or performance by Franchisee.
7. Guarantors' obligations hereunder shall remain in full force and effect, and shall be unaffected by (i) the unenforceability of the Franchise Agreement against Franchisee; (ii) the termination of any obligations of Franchisee under the Franchise Agreement by operation of law or otherwise; (iii) the bankruptcy, insolvency, dissolution, or other liquidation of Franchisee, including, without limitation, any surrender or disclaimer of the Franchise Agreement by the trustee in bankruptcy of Franchisee; (iv) Franchisor's consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor's proceedings of or against Franchisee, or by the winding-up or dissolution of Franchisee, or any other event or occurrence which would have the effect at law of terminating the existence of Franchisee's obligations prior to the termination of the Franchise Agreement; or (v) by any other agreements or other dealings between Franchisor and Franchisee having the effect of amending or altering the Franchise Agreement or Franchisee's obligations thereunder, or by any want of notice by Franchisor to Franchisee of any default of Franchisee or by any other matter, thing, act, or omission of Franchisor whatsoever.
8. This Guarantee shall terminate upon the termination or expiration of the Franchise Agreement, except that all obligations and liabilities of the Guarantors which arose from events which occurred on or before the effective date of such termination or expiration shall remain in full force and effect until satisfied or discharged by the Guarantors, and all covenants which by their terms continue in force after the expiration or termination of the Franchise Agreement shall remain in force according to their terms. Upon the death of an individual Guarantor, the

estate of such Guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death; and the obligations of any other Guarantor will continue in full force and effect.

- 9. The provisions of Article XVII of the Franchise Agreement shall apply as to any interpretation or enforcement of this Guarantee, and the provisions of Section 18.01 of the Franchise Agreement shall apply to any notice to either party, except that notices to Guarantors shall be sent as follows:

Notices to Guarantors:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ c/o Tim Hortons Restaurant  
\_\_\_\_\_  
\_\_\_\_\_ c/o Tim Hortons Restaurant  
\_\_\_\_\_  
\_\_\_\_\_ c/o Tim Hortons Restaurant  
\_\_\_\_\_

- 10. Without limiting the general provisions of the Franchise Agreement in any way, Guarantors hereby warrant that they own 100% of the Franchisee's [stock] [membership interest] and agree that they shall not sell or transfer any interest in the Franchisee during the term of the Franchise Agreement (or any extension or renewal thereof) without having first obtained the prior written consent of Franchisor as described in the Franchise Agreement.

IN WITNESS WHEREOF, the undersigned have signed this Guarantee, Indemnification and Acknowledgement as of the date of the Franchise Agreement.

GUARANTORS

\_\_\_\_\_  
Witness

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_

\_\_\_\_\_

Countersigned by Franchisor

TIM HORTONS USA INC.  
FRANCHISOR

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

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

Legal Department \_\_\_\_\_

ATTACHMENT B  
TO FRANCHISE AGREEMENT  
BETWEEN TIM HORTONS USA INC. AND

\_\_\_\_\_  
Dated \_\_\_\_\_, 201\_

TYPE OF RETAIL OUTLET FRANCHISED UNDER THIS AGREEMENT

<u>Type</u>	<u>Franchisor</u>	<u>Franchisee</u>
A. Standard Restaurant	_____	_____
B. Institutional Kiosk (Addendum Required)	_____	_____
C. Non-Institutional Kiosk (Addendum Required)	_____	_____

Legal Dept. \_\_\_\_\_

ATTACHMENT C

TO FRANCHISE AGREEMENT

BETWEEN TIM HORTONS USA INC. AND

\_\_\_\_\_  
Dated \_\_\_\_\_, 201\_

LEASE RIDER

This Lease Rider is attached to and forms a part of the lease or sublease dated \_\_\_\_\_, 201\_ , as amended or extended from time to time (the “**Lease**”), between \_\_\_\_\_, as “**Landlord**”, and \_\_\_\_\_, as “**Tenant**”, covering certain premises known as \_\_\_\_\_ (“**Leased Premises**”).

Tenant has executed or intends to execute a Franchise Agreement with Tim Hortons USA Inc., a Delaware corporation (“**Franchisor**”) for the operation of a Tim Hortons restaurant at the Leased Premises. As a requirement of the Franchise Agreement, the Lease must include the terms set forth in this Lease Rider.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Franchisor’s Notice & Cure Rights. Landlord shall send to Franchisor a copy of any default notice given to Tenant under the Lease (concurrently with the default notice given to Tenant) as a prerequisite to exercising any remedy against Tenant to terminate the Lease or Tenant’s right to possession of the Leased Premises. Franchisor shall have the right (but not the obligation) to cure any default specified in such notice, and Landlord shall not terminate the Lease or Tenant’s right to possession of the Leased Premises if Franchisor cures the default within thirty (30) days after receipt of notice from Landlord of Tenant’s default (the “**Cure Period**”); provided, however, that if the default cannot with diligence be cured by Franchisor within the Cure Period, the commencement of action by Franchisor to remedy the default within the Cure Period shall extend the Cure Period for an amount of time reasonable under the circumstances to effectuate the cure. Landlord acknowledges and agrees that by curing Tenant’s default, Franchisor does not assume, and Landlord shall not hold it responsible for, any liabilities of Tenant unless Franchisor assumes the Lease as provided in Section 4(A) below.

Landlord further agrees to (i) send to Franchisor copies of all other letters or notices sent to Tenant with respect to the Lease at the same time the letters or notices are sent to Tenant and (ii) promptly notify Franchisor if Tenant does not exercise a renewal option granted under the Lease.

2. Franchisor’s Right Upon Termination of Franchise Agreement. If the Franchise Agreement expires or is terminated, Franchisor and its agents shall have the right to (i) enter the Leased Premises to make reasonable alterations and modifications to de-identify the Leased

Premises as a Tim Hortons restaurant, including, without limitation, changing the color scheme and other distinctive design features, (ii) remove personal property from the Leased Premises that Franchisor or its affiliates owns or has a security interest in, and (iii) take any other steps reasonably necessary to protect Franchisor's rights to its trademarks, proprietary marks, trade secrets, confidential information, and distinctive forms, slogans, signs, symbols, or devices associated with the Tim Hortons system, provided, however, that Franchisor shall repair any damage to the Leased Premises resulting therefrom at its sole cost.

3. No Amendments. The Lease (including this Lease Rider) will not be amended, modified, or extended without Franchisor's prior written consent, which shall not be unreasonably withheld.

4. Assignment.

A. Upon (i) expiration or termination of the Franchise Agreement or cessation of the operation of a Tim Hortons on the Leased Premises, (ii) commencement of eviction or termination proceedings by the Landlord against the Tenant, or (iii) Tenant's failure to exercise a renewal option granted under the Lease, Franchisor (or its affiliate or assignee) shall have the right to assume Tenant's rights and obligations under the Lease by providing Landlord and Tenant with notice of such assumption. After receiving possession of the Leased Premises, the assuming party will immediately pay any delinquent rent or other sums owed under the Lease and begin to cure any other defaults susceptible to cure by assuming party under the Lease. Landlord hereby irrevocably and unconditionally consents to such assumption for operation of a Tim Hortons restaurant at the Leased Premises.

B. If the Lease is assumed as set forth in Section 4(A) above, the assuming party shall have the right to assign the Lease or sublet the Leased Premises for operation of a Tim Hortons restaurant to a licensee or franchisee duly approved by Franchisor and meeting the franchise requirements of Franchisor as of the date thereof, without first obtaining Landlord's consent and without the imposition of an assignment fee or similar charge. The assuming party shall remain liable under the Lease notwithstanding such assignment unless Landlord's prior written consent to the assignment is received. Notwithstanding anything in the Lease to the contrary, the assuming party shall have the right to retain all rent or other consideration payable under a sublease even if such rent or other consideration is in excess of the rent payable under the Lease.

C. If the Lease is assumed as set forth in Section 4(A) above, (i) any provision in the Lease restricting Tenant from locating Tim Hortons restaurants within a certain distance from the Leased Premises (i.e., a radius restriction) shall not be operative and shall be deemed deleted from the Lease; and (ii) any provision in the Lease requiring Tenant to continuously operate a business at the Leased Premises shall not be operative and shall be deemed deleted from the Lease.

5. Tenant Financing. Tenant shall have the right from time to time to grant a security interest in all or part of Tenant's equipment, furniture and trade fixtures located at the Leased



Premises (“**Personal Property**”) to third-party lenders and Franchisor. Landlord consents to all such security interest and waives any lien of Landlord against Tenant’s Personal Property (whether by statute, common law, or under the terms of the Lease). Upon request, Landlord shall execute such instruments as Tenant’s lender or Franchisor may reasonably request in connection with such waiver.

6. No Relocation Clauses. Any provision in the Lease granting Landlord the right to relocate the Leased Premises is deleted.

7. Confidentiality; Use of Franchisor’s Name. Landlord acknowledges that all information obtained by Landlord or Landlord’s agents, officers, employees or directors (collectively, “**Landlord Parties**”) relating to the unique and distinctive features of Tenant’s or Franchisor’s plans and specifications, business and operating methods, and any financial data relating to Tenant or Franchisor (collectively, “**Confidential Information**”) are of a confidential nature. Landlord shall ensure that no Confidential Information is used or disclosed by any of the Landlord Parties except as may be required by a court of law. Landlord shall not issue any press release or other public disclosure using the name, logo, or otherwise referring to Franchisor or any of its affiliates, and shall not permit any of the Landlord Parties or Landlord’s broker, press agent or other party to do so, without the prior written consent of Franchisor, to be given or withheld in Franchisor’s sole and absolute discretion. Landlord acknowledges that any unauthorized use or disclosure of Confidential Information or the issuance of any such press release or other public disclosure will cause immediate and irreparable injury to Franchisor, and that Franchisor shall be entitled to an immediate court injunction to enjoin and to restrain any unauthorized use of Franchisor’s name or logo or disclosure of Confidential Information in addition to any other remedies to which Franchisor may be entitled to at law or in equity.

8. Conflict Between Lease and Lease Rider. In the event of a conflict or inconsistency between the provisions of this Lease Rider and any other provision of the Lease or any of the exhibits or other attachments to the Lease, the provisions of this Lease Rider shall prevail and be interpreted in such a manner as to override any provision of the Lease, exhibits or attachments that would prevent the spirit and letter of this Lease Rider from being given full force and effect.

9. Notices. All notices and other communications required to be sent to Franchisor by this Lease Rider shall be in writing and sent to: Tim Hortons USA Inc., 4150 Tuller Road, Suite 236, Dublin, Ohio, 43017, Attention: Development Department with a copy to Tim Hortons USA Inc., 4150 Tuller Road, Suite 236, Dublin, Ohio, 43017, Attention: Legal Department. Notices and other communications shall be deemed to have been given, delivered, received, and effective as follows: by personal delivery – at the time of delivery; by recognized overnight delivery service – on the next business day following the date on which the notice or other communication was deposited with the overnight delivery service for next business day service.

10. Third Party Beneficiary. Franchisor is an intended third party beneficiary of this Lease Rider and as such is entitled to enforce the provisions of this Lease Rider.

11. Counterparts. This Lease Rider may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

[No Further Text. Signature Pages Follow.]

LANDLORD:

\_\_\_\_\_

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

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

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

[Insert appropriate notary acknowledgement]

TENANT:

\_\_\_\_\_

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

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

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

[Insert appropriate notary acknowledgement]

**EXHIBIT F**  
**ADDENDUM FOR NON-INSTITUTIONAL KIOSK**

TIM HORTONS USA INC.

ADDENDUM FOR NON-INSTITUTIONAL KIOSKS

This Addendum for Non-Institutional Kiosks (the "**Addendum**") is made and entered into on \_\_\_\_\_, 201\_, by and between TIM HORTONS USA INC. ("**Franchisor**") and \_\_\_\_\_ ("**Franchisee**").

**RECITALS**

- A. Franchisor and Franchisee have entered into a franchise agreement (the "**Agreement**") pursuant to which Franchisee has acquired the right to operate a Tim Hortons Franchised Business.
- B. Franchisor and Franchisee wish to modify the Agreement in order to address the special marketing and operational features of a non-institutional kiosk.
- C. All capitalized terms not otherwise defined in this Addendum shall have the same meaning as in the Agreement.

**The parties agree as follows:**

1. Section 1.00: This Section is modified by inserting the words "to be located in accordance with the floor plan attached as Schedule A" after the words "Franchised Business" in the first (1<sup>st</sup>) sentence in the Section.

2. **[alternate provision only for Franchised Business designed to provide a limited-menu offering, without a drive thru, and/or with non-exclusive seating.]**

Section 2.00: This Section is modified by substituting the word and number "five (5)" for the word and number "ten (10)" in this Section.

3. Section 4.00: This Section is modified by deleting the words and number "Thirty-Five Thousand Dollars (\$35,000)" and replacing them with the following words and number:  
\_\_\_\_\_.

4. Section 5.01: This Section is modified by inserting the words "designated manager or" before the word "principal" where first used within the parenthetical in the first (1<sup>st</sup>) sentence in the Section. **[alternate provision only for Franchised Business designed to provide a full-menu offering.]**

5. Section 5.01: This Section is deleted in its entirety. **[alternate provision only for Franchised Business designed to provide a limited-menu offering.]**

6. Section 5.03: This Section is modified by inserting the words "designated manager or" before the word "principal" in the first (1<sup>st</sup>) sentence in the Section. **[alternate provision only for Franchised Business designed to provide a full-menu offering.]**

Section 5.03: This Section is modified by changing the Section heading from "Additional Training" to "Training" and by inserting the words "or designated manager" after the word "principal" in the first (1<sup>st</sup>) sentence in the Section. **[alternate provision only for Franchised Business designed to provide a limited-menu offering.]**

7. Section 5.04: This Section is modified by deleting the existing Section 5.04 and replacing it with the following new Section 5.04:

"Section 5.04 - Use of Premises: Franchisee shall use the Franchised Business Premises solely for the operation of the Franchised Business and keep the Franchised Business open for business and in normal operation during the regular business hours of the premises upon which the Franchised Business Premises is located, subject to applicable laws and regulations regulating hours of business, and shall not use or permit the use of the Franchised Business Premises for any other purpose or activity."

8. **[alternate provision only where applicable.]**

Section 5.06: This Section is modified by inserting the following words at the beginning of the Section:

"Franchisee shall purchase finished bakery products, such as donuts, muffins, and Timbits, from an existing franchisee of Franchisor. Additionally,"

9. Section 8.04: This Section is modified by deleting the words and number "Two Thousand Five Hundred Dollars (\$2,500.00)," and replacing them with the following words and number: \_\_\_\_\_.

10. Sections 9.00, 9.01, 9.04, 9.05, 9.06, and 9.07: The obligations imposed on Franchisee and documents referenced in these Sections shall be with respect to the Franchised Business.

11. Section 12.01: Subsection f. is modified by inserting the words "designated manager or" before the word "any" in this Subsection; and Subsection j. is modified by deleting the existing Subsection and inserting the following in lieu thereof: "j. If Franchisee or designated manager or any principal of Franchisee fails to successfully complete the training required in Article V;".

12. Section 13.00: This Section is modified by inserting the following language at the end of the current Section:

"Franchisee covenants that during the term of this Agreement and any renewals thereof, it will provide a manager who has been fully trained by Franchisor and who will faithfully, honestly, and diligently perform his duties and devote his labor, skill, and attention to the operation of the Franchised Business in accordance with the terms of this Agreement; further, that it will not allow its manager, during the term of this Agreement, to perform any other profession, trade, or calling for compensation of any type without Franchisor's prior written approval."

13. This Addendum is an integral part of the Agreement. Except as modified or supplemented by this Addendum, the terms of the Agreement are ratified and confirmed.

IN WITNESS WHEREOF, this Addendum has been duly executed by the authorized representatives of each party as of the day and year specified in the first paragraph of this Addendum.

TIM HORTONS USA INC.  
FRANCHISOR

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

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

Legal Department \_\_\_\_\_

FRANCHISEE

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

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



Schedule A

Floor Plan for Franchised Business Premises

Initials

\_\_\_\_ Franchisor  
\_\_\_\_ Franchisee

**EXHIBIT G**  
**ADDENDUM FOR INSTITUTIONAL KIOSK**

TIM HORTONS USA INC.

ADDENDUM FOR INSTITUTIONAL KIOSKS

This Addendum for Institutional Kiosks (the "**Addendum**") is made and entered into on \_\_\_\_\_, 201\_\_, by and between TIM HORTONS USA INC. ("**Franchisor**") and \_\_\_\_\_ ("**Franchisee**").

**RECITALS**

- A. Franchisor and Franchisee have entered into a franchise agreement (the "**Agreement**") pursuant to which Franchisee has acquired the right to operate a Tim Hortons Franchised Business.
- B. Franchisor and Franchisee wish to modify the Agreement in order to address the special marketing and operational features of an institutional kiosk.
- C. All capitalized terms not otherwise defined in this Addendum shall have the same meaning as in the Agreement.

**The parties agree as follows:**

1. Section 1.00: This Section is modified by inserting the words "to be located in accordance with the floor plan attached as Schedule A" after the words "Franchised Business" in the first (1<sup>st</sup>) sentence in the Section.

2. **[alternate provision only for Franchised Business designed to provide a limited-menu offering, without a drive thru, and/or with non-exclusive seating.]**

Section 2.00: This Section is modified by substituting the word and number "five (5)" for the word and number "ten (10)" in this Section.

3. Section 4.00: This Section is modified by deleting the words and number "Thirty-Five Thousand Dollars (\$35,000)" and replacing them with the following words and number:  
\_\_\_\_\_.

4. Section 5.01: This Section is modified by inserting the words "designated manager or" before the word "principal" where first used within the parenthetical in the first (1<sup>st</sup>) sentence in the Section. **[alternate provision only for Franchised Business designed to provide a full-menu offering.]**

Section 5.01: This Section is deleted in its entirety: **[alternate provision only for Franchised Business designed to provide a limited-menu offering.]**

5. Section 5.03: This Section is modified by inserting the words "designated manager or" before the word "principal" in the second (2<sup>nd</sup>) line of the Section. **[alternate provision only for Franchised Business designed to provide a full-menu offering.]**

Section 5.03: This Section is modified by changing the Section heading from "Additional Training" to "Training" and by inserting the words "or designated manager" after the word "principal" in the first (1<sup>st</sup>) sentence in the Section. **[alternate provision only for Franchised Business designed to provide a limited-menu offering.]**

6. Section 5.04: This Section is modified by deleting the existing Section 5.04 and replacing it with the following new Section 5.04:

"Section 5.04 - Use of Premises: Franchisee shall use the Franchised Business Premises solely for the operation of the Franchised Business and keep the Franchised Business open for business and in normal operation during the regular business hours of the premises upon which the Franchised Business Premises is located, subject to applicable laws and regulations regulating hours of business, and shall not use or permit the use of the Franchised Business Premises for any other purpose or activity."

7. **[alternate provision only where applicable.]**

Section 5.06: This Section is modified by inserting the following words at the beginning of the Section:

"Franchisee shall purchase finished bakery products, such as donuts, muffins, and Timbits, from an existing franchisee of Franchisor. Additionally,"

8. Section 8.04: This Section is modified by deleting the words and number "Two Thousand Five Hundred Dollars (\$2,500.00)," and replacing them with the following words and number: \_\_\_\_\_.

9. Sections 9.00, 9.01, 9.04, 9.05, 9.06 and 9.07: The obligations imposed on Franchisee and documents referenced in these Sections shall be with respect to the Franchised Business.

10. Section 11.01: This Section is modified by deleting the existing Section 11.01 and replacing it with the following new Section 11.01:

"Section 11.01 - No Transfer by Franchisee: Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee's (or, if Franchisee is a corporation, limited liability company, or partnership, its principals') business skill, financial, and personal character. Accordingly, neither Franchisee nor any immediate or remote successor to any part of Franchisee's interest in this Agreement, nor any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in Franchisee, in this Agreement, or in all or substantially all of the assets of the Franchised Business, shall sell, encumber, assign, transfer, convey, pledge,

merge, or give away any direct or indirect interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business. Any purported assignment or transfer shall be null and void and shall constitute a material breach of this Agreement, for which Franchisor may immediately terminate without opportunity to cure pursuant to Section 12.01 of this Agreement."

11. Sections 11.02; 11.04; 11.05; 11.06; 11.07; 11.09; 11.10; and 11.11: These Sections are deleted in their entirety.

12. Section 12.01: This Section is modified as follows:

a. The existing Subsection c. is deleted, and is replaced with the following new subsection c.:

"c. If any purported assignment is made contrary to the terms of Article XI hereof;"

b. Subsection d is deleted in its entirety.

c. Subsection f. is modified by inserting the words "designated manager or" before the word "any" in this Subsection.

d. The existing Subsection j. is deleted, and is replaced with the following new Subsection j:

"j. If Franchisee or designated manager or any principal of Franchisee fails to successfully complete the training required in Article V;"

13. Section 13.00: This Section is modified by inserting the following language at the end of the Section:

"Franchisee covenants that during the term of this Agreement and any renewals thereof, it will provide a manager who has been fully trained by Franchisor and who will faithfully, honestly, and diligently perform his duties and devote his labor, skill, and attention to the operation of the Franchised Business in accordance with the terms of this Agreement; further, that it will not allow its manager, during the term of this Agreement, to perform any other profession, trade, or calling for compensation of any type without Franchisor's prior written approval."

14. Section 13.01: This Section is modified by deleting existing Subsection a. and replacing it with the following new Subsection a.:

"a. own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any Competing Business (as that term is defined below) other than another Franchised Business. For

the purpose of this Agreement, "Competing Business" means any business or enterprise whose sales of coffee and/or donuts and/or muffins and/or Timbits or similar items (either alone or in any combination thereof) constitute 50% or more of that business or enterprise's gross annual sales. Examples of a competing business or enterprise which would violate this restrictive covenant are Dunkin Donuts and Starbucks."

15. Section 13.02: This Section is modified by deleting existing Section 13.02 and replacing it with the following new Section 13.02:

"Section 13.02 - Non-Competition After the Term of the Agreement: Franchisee covenants that except as otherwise approved in writing by Franchisor, Franchisee shall not, for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement (regardless of the cause for termination) and continuing for one (1) year thereafter (and in the case of any violation of this covenant, for one (1) year after the violation ceases) either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, or legal entity, own, maintain, advise, operate, engage in, make loans to, be employed by, provide assistance to, or have any interest in (as owner or otherwise) or relationship or association with any Competing Business.

Notwithstanding the foregoing, Franchisor acknowledges and agrees that this Section 13.02 shall not prevent Franchisee after the expiration or termination of this Agreement from selling or from allowing the sale at \_\_\_\_\_ of generic, non-branded products including without limitation coffee, donuts, muffins, and other baked goods."

16. This Addendum is an integral part of the Agreement. Except as modified or supplemented by this Addendum, the terms of the Agreement are ratified and confirmed.

IN WITNESS WHEREOF, this Addendum has been duly executed by the authorized representatives of each party as of the day and year specified at the beginning hereof.

TIM HORTONS USA INC.  
FRANCHISOR

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

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

Legal Department \_\_\_\_\_

FRANCHISEE

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

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

Schedule A

Floor Plan for Franchised Business Premises

Initials

\_\_\_\_ Franchisor  
\_\_\_\_ Franchisee



**EXHIBIT H**  
**STANDARD FORM LEASE**

**LEASE**

THIS LEASE (“Lease”) is made on \_\_\_\_\_, 201\_\_

BETWEEN:

TIM DONUT U.S. LIMITED, INC.,  
a Florida corporation

(the “**Landlord**”)

- and -

\_\_\_\_\_,  
a \_\_\_\_\_

(the “**Tenant**”).

Background

A. The Landlord is the owner of the land more particularly described in Schedule A attached hereto, which lands together with the building situate thereon from time to time are referred to as the “**Leased Premises**”.

B. Tim Hortons USA Inc. (“**THUSA**”), the Landlord’s affiliate, and the Tenant have executed contemporaneously with this Lease a Franchise Agreement (the “**Franchise Agreement**”) dated \_\_\_\_\_, 201\_\_ to operate a Tim Hortons Restaurant on the Leased Premises.

C. The Landlord has agreed with the Tenant to lease to Tenant the Leased Premises as altered or improved from time to time pursuant to the terms hereof and the Franchise Agreement.

D. The Tenant desires to lease the Leased Premises from the Landlord.

E. The guarantors identified in the Guarantee of Lease attached hereto (“**Guarantors**”) have agreed to guarantee the performance of this Lease by the Tenant.

F. The Landlord has agreed to lease the Leased Premises to the Tenant upon the terms and conditions herein contained.

## Agreement

In consideration of the rents, covenants and agreements set forth in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Landlord and the Tenant hereby agree as follows:

1. Term of Lease. The Landlord leases to the Tenant, and the Tenant leases from the Landlord, the Leased Premises. The initial term of the Lease shall be for \_\_\_\_\_ ( ) years, commencing on the date that the Leased Premises opens for business to the public (the “**Commencement Date**”). If the Tenant takes possession of, or performs work in, the Leased Premises prior to the Commencement Date, such early occupancy shall be subject to all of the terms and conditions of this Lease, except for the payment of rent, which will commence on the Commencement Date.

2. Right of Renewal. The Tenant shall have a further right to renew this Lease for two (2) further successive term(s) of five (5) years each from the expiration date of the initial term of this Lease. Each renewal term shall be subject to the same terms and conditions contained in this Lease except that there shall be only one (1) further five (5) year renewal privilege applicable during the first renewal term, if elected, and no further renewal privileges shall be applicable in any second renewal term, if elected. The Tenant shall give to the Landlord written notice of its intention to renew at least six (6) months, but not more than twelve (12) months, prior to the expiration of the initial term, or the first renewal term, as the case may be, provided that such right to renew shall be conditional upon the following:

- (a) the Tenant successfully renewing its Franchise Agreement with THUSA;
- (b) the Tenant not being in default under this Lease; and
- (c) the Tenant duly and regularly paying its rent as set out in this Lease.

In the event any of these conditions are not satisfied, this option to renew shall be null and void.

3. Rent.

(a) Gross Sales Defined. The definition of “Gross Sales” as set out in paragraph 4.03 of the Franchise Agreement executed between THUSA and the Tenant shall be incorporated mutatis mutandis into this Lease.

(b) Rent. The Tenant shall pay to the Landlord each and every month of the initial term and each renewal term, as rent for the Leased Premises, eight and one-half percent (8½%) of monthly Gross Sales.

(c) Payment of Rent. Within ten (10) days following the last day of each month, the Tenant agrees to furnish the Landlord with written reports in the Landlord's standard form, verified by the Tenant's accountant, setting out the Gross Sales for each month and calculating the percentage rent for each month, together with a check for rent and additional rent, if any.

(d) Definition of Rent. All payments to be made by the Tenant to the Landlord pursuant to the provisions of this Lease shall be deemed to be "rent" under this Lease. Additionally, all payments to be made by the Tenant as Franchisee to THUSA as Franchisor under the provisions of the Franchise Agreement shall be deemed to be "rent" under this Lease.

4. Tenant's Records. For the purpose of ascertaining the amount payable as percentage rent and permitting verification by the Landlord, the Tenant will keep on the Leased Premises or at another location approved by the Landlord for a period of not less than five (5) years following the end of each lease year:

(a) original or duplicate books and records showing all information required to properly ascertain and verify Gross Sales for the lease year, including but not limited to inventory records and receipts of merchandise at the Leased Premises and all sales and other transactions on or from the Leased Premises by the Tenant and any other person conducting business on or from the Leased Premises; and

(b) sales tax returns with respect to the Lease year and all pertinent original sales records including but not limited to:

(i) cash register tapes, including tapes from permanent and temporary registers;

(ii) serially numbered sales slips;

(iii) the originals of all mail orders to the Leased Premises;

(iv) the original records of all telephone orders to the Leased Premises;

(v) settlement report sheets of transactions with assignees, subtenants, concessionaires, licensees and other persons conducting business on or from the Leased Premises;

(vi) the original records showing that merchandise returned by customers was purchased at the Leased Premises by the customers;

(vii) receipts or other records of merchandise taken out on approval;

(viii) all other sales records, if any, which would normally be examined by an independent accountant pursuant to ordinarily accepted auditing standards in the State of Ohio in performing an audit of the Tenant's sales; and

(ix) the records specified in subclauses (i) to (viii) of the assignees, subtenants, concessionaires, licensees and other persons conducting business on or from the Leased Premises.

The Tenant and all other persons conducting business on or from the Leased Premises will record at the time of sale and in the presence of the customer (except in the case of a mail or telephone order) all receipts from sales and other transactions whether for cash or credit in a cash register or in cash registers having a cumulative total and sealed in a manner approved by the Landlord and having other features as approved or required by the Landlord.

5. Audit of Tenant's Books by Landlord. The Landlord, its employees and accountants at all times during business hours may audit the books and records of the sales and other records of the Tenant and all other persons conducting business on or from the Leased Premises necessary to verify Gross Sales. If an audit discloses an understatement of Gross Sales of two percent (2%) or more of Gross Sales for the period for which the audit was made, the Tenant promptly will pay to the Landlord as additional rent the cost of the audit, the deficiency in rent and interest as provided in paragraph 40, and the Landlord may terminate this Lease upon five (5) days' notice to the Tenant unless the understatement was due to inadvertent clerical error. In the event that there are two (2) or more understatements of Gross Sales during the term of this Lease, the Landlord shall have the right to terminate this Lease upon 5 days notice notwithstanding any reason for such understatement. A report on the audit made by the Landlord's auditor from time to time will be final and binding upon all the parties to this Lease.

The acceptance by the Landlord of payment of percentage rent is without prejudice to the Landlord's right to an audit of the books and records of Gross Sales and other papers required to be kept under paragraph 4.

6. Taxes. The Tenant shall pay to the Landlord, as additional rent, all amounts related to real estate taxes and assessments, both general and special, which shall be levied or assessed by lawful taxing authorities against the Leased Premises during the term or any renewal term of this Lease (all of such taxes and assessments, excluding Sales Taxes as defined in Paragraph 7, are collectively referred to as "**Taxes**"). The Landlord shall pay to the taxing authority the Taxes as they become due and immediately re-bill the Tenant for the full amount of Taxes paid, which will be collected from the Tenant's A/R account within thirty (30) days of posting. The Taxes for the first and last year of the term of this Lease shall be prorated between the Landlord and the Tenant in accordance with the period of time Tenant was in possession of the Leased Premises. The Tenant shall immediately forward to the Landlord all bills for Taxes related to the Leased

Premises that the Tenant receives directly from the taxing authorities so that Taxes can be paid prior to delinquency.

7. Sales Taxes. The Tenant shall pay to the Landlord an amount equal to any and all goods and services taxes, sales taxes, value added taxes, business transfer taxes, or any other taxes imposed on the Landlord with respect to rent payable by the Tenant to the Landlord under this Lease, or in respect of the rental of space under this Lease, whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax, or otherwise (herein called "**Sales Taxes**"). It is the intention of the parties that the Landlord shall be fully reimbursed by the Tenant with respect to any and all Sales Taxes at the full tax rate applicable from time to time in respect of the Rent or the rental space without reference to any tax credits available to the Landlord. The amount of the Sales Taxes so payable by the Tenant shall be calculated by the Landlord in accordance with applicable law and shall be paid to the Landlord at the same time as the amounts to which such Sales Taxes apply are payable to the Landlord under the terms of this Lease or upon demand at such other time or times as the Landlord from time to time determines. Despite any other section or clause in this Lease, the amount payable by the Tenant under this paragraph shall not be deemed to be rent, but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for recovery of rent under this Lease.

8. Additional Costs; Net Lease. The Tenant shall pay to the Landlord, as additional rent, all costs, expenses and obligations of any nature relating to the Leased Premises that the Landlord may be required to pay by virtue of the Landlord's interest in the Leased Premises, such as common area maintenance charges and merchant's association's dues (collectively, "**Additional Costs**"). The Additional Costs for the first and last year of the term of the Lease shall be prorated between the Landlord and the Tenant in accordance with the period of time each party was in possession of the Leased Premises. This Lease is a net lease. The rent and additional rent due under this Lease shall be absolutely net to the Landlord and this Lease shall yield, net to the Landlord, the rent and additional rent provided in this Lease. The Tenant waives and renounces all existing and future claims or offsets against the rent or additional rent due hereunder and agrees to pay such rent and additional rent regardless of any claim or offset that may be asserted by the Tenant or on its behalf.

9. Use of Leased Premises. The Tenant will use and occupy the Leased Premises solely for the purpose of operating, conducting and carrying on, in and from the whole of the Leased Premises, the business of a restaurant under the "**Tim Hortons System**" and using the "**Proprietary Marks**" as both such terms are defined in the Franchise Agreement (such restaurant business is hereinafter referred to as a "**Tim Hortons Restaurant**"). The Tenant agrees not to use or permit the Leased Premises to be used, in whole or in part, for any other purpose. The Tenant agrees to carry on business only under the name of "Tim Hortons" or "Tim Hortons Café & Bake Shop".

10. Utilities; Personal Property Taxes. The Tenant shall pay all utility charges, including without limitation, all water, sanitary sewer, storm sewer, gas, electric, telephone and internet charges in connection with the use and occupation of the Leased Premises, the cost of its own janitor services and window cleaning, and pay all taxes, duties, assessments and license fees whatsoever, whether municipal or otherwise, now or hereafter charged, assessed or levied upon or in respect of the personal property, income, business or other activity of the Tenant in connection with the Leased Premises, and to indemnify the Landlord from and against all loss, costs, charges and expenses occasioned by or arising out of any and every such tax, duty, assessment or license fee, in default whereof the Landlord may, after ten (10) days' prior notice to the Tenant, pay the same and add the amount thereof to the rent payable hereunder, provided that the Tenant shall have the right to contest in good faith the legality of any such tax, duty, assessment or fee and the Landlord shall cooperate with the Tenant to the extent reasonably necessary for the Tenant to fully prosecute any such action.

11. Maintenance. The Tenant shall keep the Leased Premises and all fixtures, machinery and equipment contained therein and forming part thereof in first class condition and repair and make good any damage thereto. The Tenant shall carry out and make all repairs and replacements for which it is responsible, in a good and workmanlike manner and with due diligence and dispatch. If the Tenant shall neglect with reasonable promptness, or shall refuse to make, or cause to be made, such repairs, the Landlord may make or cause such repairs to be made. All expenses incurred and expenditures made by or on behalf of the Landlord under this provision together with a service charge of fifteen percent (15%) thereof shall be forthwith paid by the Tenant as additional rent, and if the Tenant fails to pay the same, the Landlord may add the same to the Tenant's rent and recover the same by all remedies available to the Landlord for the recovery of rent in arrears. In the event that any mechanics lien is filed against the Leased Premises as a result of any work or act of the Tenant, the Tenant, at its sole cost and expense, shall discharge or bond off the same within thirty (30) days from the filing, or notification by the Landlord of the filing, of such mechanics lien. If the Tenant fails to discharge said mechanics' lien within the required time period, the Landlord may pay or bond off such lien without inquiring into the validity or merits of such lien and all amounts so paid by the Landlord shall be paid by the Tenant as additional rent.

12. Entry to View State of Repair. The Landlord may enter and view the state of repair of the Leased Premises at any time during the term of this Lease.

13. Condition of Leased Premises on Surrender. The Tenant shall surrender the Leased Premises upon the expiration or termination of the term hereof or any renewal thereof in the condition in which the Tenant is required to maintain same.

14. Insurance. The Tenant shall procure and maintain in full force and effect during the term of the Lease and any renewals thereof, at the Tenant's own expense, the following insurance policy or policies protecting the Tenant, the Landlord, their respective officers, directors,

partners, agents and employees and every mortgagee of the Leased Premises with respect to the Leased Premises and the Tenant's use and occupation thereof:

(a) All Risks property insurance, including flood and earthquake coverage, on a full replacement cost basis, covering the Leased Premises as well as property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant within the Leased Premises including, without limitation, stock in trade, all furniture, fixtures, plate glass and equipment including any additions or improvements thereof;

(b) Rental Income and/or Business interruption insurance on a gross profits form to provide coverage for all rent obligations as defined in this Lease;

(c) If applicable, Broad Form Boiler and Machinery insurance covering all boilers, pressure vessels and HVAC equipment within the Leased Premises in an amount not less than the full replacement cost thereof;

(d) Commercial General Liability insurance on an occurrence basis with combined single limits of not less five million dollars (\$5,000,000.00) inclusive for personal injury, bodily injury (including death) and property damage for any one occurrence or series of occurrences arising from one cause. The policy shall provide for, without limitation, all premises and operations of the Tenant, liability for products and completed operations, non-owned automobile, contingent employer's liability, contractual liability and liability specifically assumed under this Lease. The policy shall contain cross liability and severability of interests clauses;

(e) Workers Compensation insurance as required by the State in which the Leased Premises is located; and

(f) Such other insurance as the Landlord or the Landlord's mortgagee reasonably requests from time to time.

All insurance required to be maintained by the Tenant pursuant to this paragraph shall meet the following conditions:

1. Each policy shall be written with an insurance company or companies licensed in the State where the Tenant is conducting business and be acceptable to the Landlord in its reasonable discretion.



2. With respect to the insurance required to be maintained pursuant to subparagraphs (a), (b) and (c), such insurance shall name the Landlord (and where applicable the Landlord's mortgagees) as a loss payee as its interests may appear and shall include a waiver of subrogation in favor of the Landlord (and where applicable Landlord's mortgagees). With respect to the insurance required to be maintained pursuant to subparagraph (d), such insurance shall name the Landlord as an additional insured.

3. Each policy shall be primary and non-contributing with any other insurance maintained by the Landlord or the Landlord's mortgagee.

4. Each policy shall contain an undertaking by the insurer to endeavor to provide the Landlord with thirty (30) days advance written notice to the Landlord of any adverse material change, cancellation or termination.

Prior to the commencement of the Term of the Lease and annually thereafter, the Tenant shall provide a certificate of insurance or certificates of insurance evidencing the insurance as required to be maintained by the Tenant under this Lease. Any acceptance of delivery of such certificates does not constitute approval or agreement by the Landlord that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements and shall not diminish the Landlord's rights under this Lease.

15. Damage or Destruction.

(a) In the event of damage or destruction of the Leased Premises by fire or other casualty against which the Landlord is insured, the rent provided to be paid hereunder or a proportionate part thereof, according to the nature and extent of the damage to the Leased Premises, shall not abate for the first one hundred eighty (180) days but shall abate following such time period until the Leased Premises shall have been rebuilt or made fit for the purposes of the Tenant. Notwithstanding the foregoing, in the event that, using reasonable diligence, the Leased Premises are incapable of being rebuilt or made reasonably fit for occupancy within one hundred and eighty (180) days from the date of damage or destruction, then the Landlord may terminate this Lease on written notice given within forty-five (45) days after the occurrence of such damage or destruction.

(b) In the event of such damage or destruction occurring in the last year of the term hereof or any renewal thereof so that the Leased Premises are incapable of being rebuilt or made reasonably fit for occupancy within thirty (30) days from the date of damage or destruction, the Landlord may terminate this Lease on written notice given within twenty (20) days after the occurrence of such damage or destruction.

(c) In the event that any mortgagee or other person entitled thereto shall not consent to the payment to the Landlord of the proceeds of any insurance policy for the purpose of rebuilding or restoring the building or the Leased Premises, the Landlord may terminate this Lease on written notice.

(d) Upon the termination of this Lease, as hereinbefore provided, rent and any other liabilities of the Tenant shall be apportioned and paid to the date on which the damage or destruction occurred and the Tenant shall forthwith deliver up possession of the Leased Premises.

(e) The certificate of the Landlord's architect as to the length of time required, using reasonable diligence, to rebuild or restore the building or the Leased Premises, or as to when the Leased Premises or any portion thereof are reasonably fit for occupancy by the Landlord shall be conclusive and binding upon the Landlord and the Tenant and there shall be no appeal therefrom.

16. Condemnation. If the entire Leased Premises shall be taken by condemnation or if so much of the Leased Premises or the appurtenances thereof or the means of ingress and egress to and from the Leased Premises shall be taken that it shall not be practical or feasible to use the untaken premises in the operation of the Tenant's business (as determined by the Landlord acting reasonably), at the rent and subject to the covenants and conditions of this Lease, this Lease shall, upon vesting of title in the taker, terminate and the rents and additional rents shall be adjusted to the date of such termination. In such event the Landlord and the Tenant shall each be entitled to receive from the award or compensation for said premises the value of their respective interests therein. If after a partial taking, this Lease shall continue, the Landlord shall restore any structural damage to the Leased Premises resulting from such taking, and shall be reimbursed therefor from the award or compensation.

17. Indemnification. The Tenant covenants that the Landlord and its agents and employees shall not in any event whatsoever be liable or responsible in any way for any personal injury or death that may be suffered or sustained by the Tenant or any employee of the Tenant or any other person who may be upon the Leased Premises or for any loss or damage or injury to any property belonging to the Tenant or to its employees or to any other person while such property is on the Leased Premises, and in particular, (but without limiting the generality of the foregoing) the Landlord shall not be liable for any damage to any such property caused by steam, water, rain or snow, which may leak into, issue or flow from any part of the building or adjoining premises, or from the water, steam, sprinkler or drainage pipes or plumbing works of the same, or from any other place or quarter, or for any damage caused by or attributable to the condition or arrangement of any electrical or other wiring or for any damage caused by anything done or omitted to be done by the Tenant.

The Tenant will indemnify and save harmless the Landlord from any and all liabilities, fines, suits, claims, demands, costs and actions of any kind or nature whatsoever to which the

Landlord shall or may become liable for, or suffer by reason of any breach, violation or non-performance by the Tenant of any covenant, term or provision hereof, or by reason of any injury, loss, damage or death occasioned to or suffered by any person or persons, or any property by reason of any act, neglect or default on the part of the Tenant, or any of its agents, customers, employees, servants, contractors, licensees or invitees, in or about the Leased Premises or any part thereof; such indemnification in respect of any such breach, violation, non-performance, damage to property, loss, injury or death occurring during the term of this Lease shall survive any termination of this Lease, anything in this Lease to the contrary notwithstanding.

18. Compliance with Law. The Tenant shall comply with and fulfill the provisions and requirements of all laws, ordinances, orders, and regulations of applicable governmental authorities, including without limitation those relating to public health, sanitation and safety (collectively “**Laws**”) relating to the use of the Leased Premises. Upon request being made or notice being given by the proper authorities charged with the enforcement of the Laws to the Tenant or to the Landlord requiring compliance with or rectification of any infraction of any such Laws, the Tenant shall immediately comply with the demand contained in such request or notice, and in default thereof, the Landlord may procure to be done any work necessary to comply therewith and may charge the cost thereof against the Tenant, and shall have the same right to recover the monies so paid as if the same were arrears of rent reserved in respect of the Leased Premises. The Tenant shall obtain, keep in full force and effect, and strictly comply with all governmental licenses and permits required for the Tenant’s use and occupancy of the Leased Premises and operation of the Tim Hortons Restaurant.

19. Fixtures. The Tenant shall, at the commencement, and throughout the term of this Lease and/or any renewal thereof at the expense of the Tenant, install and maintain all necessary lighting fixtures, trade fixtures, furniture and equipment in the Leased Premises, necessary for the business of the Tenant, the same to be of high quality and good appearance.

20. Refuse. The Tenant shall not allow any refuse, garbage or other loose or objectionable materials to accumulate on or about the Leased Premises, will at all times keep the Leased Premises in a clean and wholesome condition, and shall be responsible for the removal of all garbage or loose or objectionable materials emanating from the Leased Premises. The Tenant shall not dispose of any trash or garbage in or about the Leased Premises except in areas provided therefor by the Landlord.

21. Loading and Unloading. The Tenant shall take all reasonable precautions to ensure that loading and unloading of merchandise, supplies, materials or chattels shall be made only through or by means of doorways and openings designated by the Landlord.

22. Conduct and Hours of Business. The Tenant covenants to operate and conduct its business in a high-class and reputable manner and to conduct its business in the Leased Premises

during such hours as set out in Paragraph 5.04 of the Franchise Agreement entered into between THUSA and the Tenant.

23. Subordination to Mortgages. The Tenant agrees that it will, at the request of the Landlord from time to time, subordinate this Lease and all the Tenant's rights hereunder in favor of any mortgage or mortgages covering the Leased Premises which the Landlord may arrange and make from time to time and the Tenant agrees that it will execute all subordination agreements and any other documents or assurances which may be required by the Landlord from time to time to give effect to this provision. If seven (7) days after the date of a request by the Landlord to execute any agreements, documents or assurances, the Tenant has not executed and delivered them to the Landlord, the Tenant hereby irrevocably appoints the Landlord as the Tenant's attorney with full power and authority to execute such instruments in the name of the Tenant, provided always that every mortgagee to whose mortgage this Lease is subordinated shall consent in writing to this Lease and permit the Tenant to continue in quiet possession of the Leased Premises and otherwise in accordance with the terms and conditions hereof so long as the Tenant is not in default hereunder.

24. Heat. The Tenant covenants to heat the Leased Premises so as, at all times, to protect the Leased Premises and all of its contents from damage by cold or frost.

25. Installation and Removal of Fixtures. The Tenant may install in and upon the Leased Premises such trade fixtures and equipment as the Tenant requires for a Tim Hortons Restaurant and all such trade fixtures and equipment so installed, whether before or after the commencement of the term hereof shall be and remain the property of the Tenant which the Tenant may remove at the end of the term or the renewal term as the case may be, subject to the Franchise Agreement; provided that the Tenant shall make good any damage caused by such installation or removal. Further, the Tenant shall not remove any heating or air-conditioning equipment, or restroom facilities and equipment, or other fixtures related to the operation of the Tim Hortons Restaurant building forming part of the Leased Premises. Notwithstanding any other provisions in the Franchise Agreement or this Lease, all equipment, furnishings, installations and fixtures placed or installed on the Leased Premises at the expense of the Landlord, whether as an initial installation or a replacement thereof, shall remain the property of the Landlord.

26. Landlord's Lien. To secure the payment of all rent and additional rent due and to become due under this Lease, the faithful performance of this Lease by the Tenant and to secure all other indebtedness and liabilities of the Tenant to the Landlord now existing or hereafter incurred, the Tenant hereby grants to the Landlord a lien and security interest on all furniture, furnishings, trade fixtures, equipment and other personal property (collectively, "**Personal Property**") to which the Tenant has legal title and which is placed in the Leased Premises. The Tenant further agrees that if the Tenant vacates the Leased Premises while any rent owing under this Lease is unpaid, the Landlord, in addition to any remedy otherwise provided by law or in this Lease, may

seize and sell the Personal Property at any place to which the Tenant or any other person may have removed them in the same manner as if the Personal Property had remained at the Leased Premises.

27. Re-Entry; Default. If the Tenant (i) fails to pay rent due hereunder within five (5) days after the same are due; (ii) fails to observe or perform any of its other obligations under this Lease within fifteen (15) days after receipt of written notice from the Landlord; or (iii) defaults on any of the terms of the Franchise Agreement, the Landlord, at its election, may declare the term of this Lease ended and, with or without process of law, re-enter, expel and remove the Tenant and all persons occupying the Leased Premises under the Tenant (using such force as may be necessary) and repossess and enjoy the Leased Premises. Such re-entry and repossession shall not cause a forfeiture of the rents to be paid or terminate the covenants to be performed by the Tenant during the full term of the Lease.

Upon the expiration of the term of this Lease by reason of the events described in the paragraph above, or if the Lease or the Tenant's right to possession is terminated, the Landlord, at its option, may relet the Leased Premises for the account of the Tenant and apply any rent received first to the payment of expenses the Landlord incurred in reletting the Leased Premises (including, but not limited to, repossession costs, reasonable attorneys fees and expenses, alteration costs and expenses of preparation for such reletting), and then to the satisfaction of the Tenant's obligations under this Lease. Any reletting may be for the remainder of the term of this Lease or for a shorter or longer period. Regardless of whether the Leased Premises are relet, the Tenant shall pay to the Landlord all rent and other charges required to be paid by the Tenant up to the time of termination of this Lease or recovery of possession the Premises by the Landlord, as applicable. Thereafter, at the Landlord's option, the Tenant shall, until the end of the then current term or renewal term be liable to the Landlord for, and shall pay to the Landlord, as agreed current damages: (i) all rent and other sums that would be payable under this Lease by the Tenant in the absence of such reentry or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of the Tenant. The Tenant shall pay such current damages on the days on which rent would be payable under this Lease and the Landlord shall be entitled to recover the same from the Tenant on each such day. For the purpose of this Section, it shall be deemed that the percentage rent for any period after any default and entry by the Landlord would have been at the monthly rate thereafter equal to the highest percentage rent that the Tenant was obligated to pay to the Landlord under this Lease. Nothing in this Lease will limit the Landlord's right to prove and obtain the maximum amount of damages allowed by any statute or rule of law that governs the proceeding in which such damages are to be proved.

28. Holding Over. The Tenant will not hold over beyond the expiration or sooner termination of the term of this Lease. If the Tenant does hold over without any agreement in writing in respect thereof, such continued possession shall create a monthly tenancy subject, so far as they are applicable to a monthly tenancy, to the terms and conditions of this Lease and to payment of the rent set forth herein except that the monthly base rent shall be twice the monthly

rate paid during the last year of the term, and said tenancy may be terminated at any time by either party by thirty (30) days' notice to the other party. The Landlord's acceptance of any rent after holding over begins does not renew this Lease. This paragraph does not waive the Landlord's rights of re-entry or any other right in this Lease resulting from the Tenant's breach of this Lease.

29. Nuisance. The Tenant covenants not to carry on in the Leased Premises any activity which shall be a nuisance.

30. Alterations by Tenant. The Tenant shall not make alterations, additions or improvements to the Leased Premises without the prior written consent of the Landlord, which consent may be granted at the sole and unfettered discretion of the Landlord or may be unreasonably withheld.

Upon the termination of this Lease, all alterations, additions and improvements may, at the sole option of the Landlord, become the property of the Landlord without payment being made therefor and shall remain upon the Leased Premises.

Notwithstanding the foregoing, if requested by the Landlord, the Tenant will remove from the Leased Premises any or all alterations, additions, and improvements brought upon or affixed to the Leased Premises and make good any damage caused thereby.

31. Landlord May Perform Covenants. If the Tenant shall fail to perform any of the covenants or obligations of the Tenant, under or in respect of this Lease, the Landlord may, at the expense of the Tenant, from time to time in its discretion perform or cause to be performed any of such covenants or obligations or any part thereof and for such purpose may do such things as may be requisite, including without limiting the foregoing, entering upon the Leased Premises and doing such things upon or in respect of the Leased Premises or any part thereof as the Landlord may consider requisite or necessary.

32. Assigning and Subletting. Except for assignments or transfers permitted under Article XI of the Franchise Agreement entered into between THUSA and the Tenant, the Tenant shall not, during the term of this Lease or any renewal term, assign, sublet or transfer the Leased Premises or any part thereof or share the possession or occupancy of the Leased Premises or any part thereof or assign any of the benefits or obligations of this Lease to any person or persons whomsoever, without having first obtained the consent in writing of the Landlord, which consent may be arbitrarily withheld. No such consent shall relieve the Tenant or Guarantor of their liabilities for the due observance of all or any of its covenants and obligations hereunder.

For purposes of this paragraph, if the Tenant is a partnership, any sale or transfer of any partnership interest, or the transfer of all or any portion of the general partnership or managing partnership interest in the Tenant shall be deemed to be a prohibited assignment of this Lease within the meaning of this paragraph 32. If the Tenant is a corporation or limited liability company, then the sale, issuance or transfer of any stock or membership interest of the Tenant or

of any entity that directly or indirectly controls the Tenant that results in a change in the voting control of the Tenant or the entity that controls the Tenant shall be deemed to be a prohibited assignment of this Lease within the meaning of this paragraph 32.

If the Landlord withholds, delays or refuses to give consent to any request for transfer or assignment of this Lease, whether or not the Landlord is entitled to do so, the Landlord shall not be liable for any losses or damages in any way resulting therefrom and the Tenant shall not be entitled to terminate this Lease or exercise any other remedy whatsoever in respect thereof except to seek the order of a court of competent jurisdiction compelling the Landlord to grant any such consent which the Landlord is obliged to grant pursuant to the terms of this Lease.

33. Delays. Whenever and to the extent that the Landlord is unable to fulfill or shall be delayed or restricted in fulfillment of any obligation under this Lease, including the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the materials, goods, equipment, service, utility or labor required to enable the Landlord to fulfill such obligation or by reason of any statute, law or regulation or order, the Landlord shall be relieved from the fulfillment of such obligation during the period of such delay, (and the Tenant is not to be entitled to any compensation for any inconvenience, nuisance or discomfort thereby occasioned) and the Landlord covenants that it will, when the cause of the delay is removed, proceed to complete any necessary work with all diligence to completion.

34. Transfer by Landlord. The term Landlord as used in this Lease so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Leased Premises, and in the event of any transfer or transfers of ownership, the Landlord herein named, and in case of any subsequent transfers or conveyances, the then vendor or transferor, shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations on the part of the Landlord contained in this Lease thereafter to be performed, provided that:

(a) any funds in the hands of such Landlord or the then vendor or transferor at the time of such transfer, in which the Tenant has an interest, shall be turned over to the purchaser or transferee and any amount then due and payable to the Tenant by the Landlord or the then vendor or transferor under any provision of this Lease, shall be paid to the Tenant; and

(b) upon any such transfer, the purchaser or transferee shall be deemed to have assumed, subject to the limitations of this paragraph, all of the terms, covenants and conditions in this Lease contained to be performed on the part of the Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.

Notwithstanding anything to the contrary provided in this Lease, the Tenant shall look solely to the Leased Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by the Landlord of any of the terms and conditions of this Lease to be performed by the Landlord, or any other matter in connection with this Lease or the Leased Premises, such exculpation of liability to be absolute and without any exception whatsoever.

35. Estoppel.

(a) The Tenant covenants and agrees with the Landlord that it will, if and whenever required by the Landlord and at the Landlord's expense, consent to and become a party to any instrument relating to this Lease which may be required by or on behalf of any purchaser, bank or mortgagee from time to time of the Leased Premises; provided, always, that the rights of the Tenant as set out in this Lease shall not be altered or varied by the terms of such instrument or document.

(b) The Tenant shall, without charge, at any time and from time to time, within ten (10) days after request by the Landlord, certify by written instrument duly executed, acknowledged and delivered to the Landlord or any other person, firm or corporation specified by the Landlord:

(i) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

(ii) whether or not there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions of this Lease upon the part of the Tenant to be performed or complied with and, if so, specifying the nature of same; and

(iii) the dates, if any, to which the net rent, percentage rent, and additional rent, if any, and any other charges hereunder have been paid.

36. Quiet Enjoyment. The Leased Premises are subject to all easements, encumbrances, restrictions, and conditions of record and all building code and zoning restrictions. The Landlord covenants that the Tenant shall and may peacefully and quietly have, hold, occupy, possess and enjoy the Leased Premises for the term herein provided without interference by anyone claiming by, through or under Landlord; provided the Tenant pays the rent and keeps, observes and performs all of the other covenants terms of this Lease.

37. No Recordation. It is understood and agreed that this Lease shall not be recorded against the title to the Leased Premises but that upon the request of either party hereto the other party will join in the execution of a Memorandum of Lease for the purpose of recordation.



38. Notice. Any and all notices required or permitted under this Lease shall be in writing and shall be personally delivered, mailed by certified mail, return receipt requested, or dispatched by recognized overnight delivery service, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Landlord: Tim Donut U.S. Limited, Inc.  
4150 Tuller Road, Suite 236  
Dublin, Ohio 43017  
Attention: Legal Department

with a copy to: Tim Donut U.S. Limited, Inc.  
874 Sinclair Road  
Oakville, Ontario  
Canada L6K 2Y1  
Attention: General Counsel

Tenant: \_\_\_\_\_  
c/o Tim Hortons Restaurant  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Guarantors: \_\_\_\_\_  
c/o Tim Hortons Restaurant  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices shall be deemed to have been received as follows: by personal delivery – at the time of delivery; by recognized overnight delivery service – on the next business day following the date on which the notice was given to the overnight delivery service for next business day service; or by certified mail – the earlier of the actual date of delivery or three (3) days after the date of mailing.

39. Remedies Cumulative. No remedy herein conferred upon or reserved to the Landlord or the Tenant shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The exercise of the right of termination by the Landlord will not be construed to eliminate any right of the Landlord to damages on account of a default by the Tenant.

40. Interest on Arrears. If any payment of monies due under the terms of this Lease are not made on their respective due dates as defined in this Lease, the Tenant agrees to pay interest on

such outstanding payment at the rate of five percent (5%) over the “prime rate” of the The Huntington National Bank as set from time to time calculated from the due date on a per diem basis compounded monthly until date of payment.

41. Termination of the Franchise Agreement. In the event that the Tenant’s Franchise Agreement dated \_\_\_\_\_, 201\_ with THUSA is terminated for any reason whatsoever, this Lease shall be terminated forthwith and upon such termination the Landlord shall have the right to re-enter and take immediate possession of the Leased Premises.

42. Lease Contingent on Franchise Agreement. The Tenant acknowledges and agrees that the execution of the Franchise Agreement by both THUSA and the Tenant shall constitute a condition precedent to the effectiveness and validity of this Lease.

43. Other Uses. Notwithstanding anything in this Lease contained to the contrary, the Landlord shall have the absolute right in its unfettered discretion to lease parts of the Leased Premises, other than the space occupied by the Tim Hortons Restaurant, to other tenants. In the event of such leasing, the Tenant shall be required to pay its pro rata share of the common area and operating costs for the Leased Premises, excluding the Tenant’s building for which the Tenant shall remain absolutely responsible for all costs related thereto. The Tenant’s pro rata share shall be a fraction, the numerator of which is the area of the Tenant’s building and the denominator of which is the area of all buildings erected within the lands described in Schedule A, including the Tenant’s building. A certificate of the Landlord’s architect or engineer certifying an “area” shall be final and there shall be no appeal therefrom. In the event of the Landlord leasing any part of the lands described in Schedule A to another tenant, the words “**Leased Premises**” in this lease shall exclude any such portion leased to or occupied by other tenants.

44. Hazardous Materials. The Tenant shall not use or allow the Leased Premises to be used for the release, storage, use, treatment, disposal or other handling of any Hazardous Materials (as defined below), without the prior consent of the Landlord, except that construction materials (other than asbestos or polychlorinated biphenyls), office equipment and cleaning solutions, and other maintenance materials that are or contain Hazardous Materials may be used, generated, handled or stored on the Leased Premises, provided such use, generation, handling and storage is incident to and reasonably necessary for the operation and maintenance of the Leased Premises and is in compliance with all applicable Environmental Laws (as defined below). The Tenant shall comply with all Environmental Laws governing the release, discharge, emission, or disposal by the Tenant of any Hazardous Materials on the Leased Premises, as well as all due care and continuing obligation plans and operations and maintenance plans established for the Leased Premises. The Tenant shall indemnify, defend and hold Landlord harmless from and against all liens, claims, demands, judgments, damages, penalties, fines, costs, losses or expenses (including reasonable attorneys’, consultants’ and experts’ fees) that arise as a result of (i) the presence, suspected presence or discharge of Hazardous Materials from, on or in the Leased

Premises caused by the actions of the Tenant and first occurring during the Tenant's possession of the Leased Premises or (ii) the Tenant's failure to comply with all due care and continuing obligation plans and operations and maintenance plans established for the Leased Premises. Without limiting the generality of the foregoing, this indemnification by the Tenant shall include costs incurred in connection with any site investigation and any remedial, removal or restoration work resulting from the events indemnified against. The provisions of this Section shall survive the termination or expiration of this Lease.

**"Hazardous Materials"** means any toxic or hazardous waste, material or substance, including hydrocarbons, all as defined by applicable federal, state or local laws, statutes or ordinances.

**"Environmental Laws"** means all federal, state, or local laws, codes, ordinances, regulations, permits or licensing conditions with respect to Hazardous Materials in effect now or at any time hereafter.

45. Miscellaneous.

(a) Modification; Waiver. Any amendment, change or modification of this Lease shall be void unless in writing and signed by all parties to this Lease. No failure or delay by any party to this Lease in exercising any right, power or privilege under this Lease, and no course of dealing between or among any of the parties, shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise of such right, power or privilege.

(b) Relationship of Parties. Nothing contained in this Lease shall be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between the Landlord and the Tenant other than that of landlord and tenant.

(c) Severability. If any provision of this Lease is deemed or held to be illegal, invalid or unenforceable, this Lease shall be considered divisible and inoperative as to such provision to the extent it is deemed to be illegal, invalid or unenforceable, and in all other respects this Lease shall remain in full force and effect.

(d) Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties to this Lease and their respective heirs, personal representatives, successors and permitted assigns.

(e) Headings. The headings in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease.

(f) Entire Agreement. This Lease, the documents referred to herein, and the exhibits attached hereto (if any) constitute the entire and complete agreement between the parties concerning the subject matter hereof and supersede all prior agreements between the parties, no other representations having induced the Tenant to execute this Lease. The Tenant acknowledges that it is neither aware of nor relying upon any oral or written representation or understanding which is contrary to the terms and conditions of this Lease or the contents of any document furnished to the Tenant.

(g) Applicable Law. This Lease shall be governed by, and construed in accordance with, the laws of the State in which the Leased Premises are located without regard to conflict of laws principles.

(h) Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

(i) Exhibits. Each exhibit and schedule (if any) attached to and referred to in this Lease is incorporated by reference as though set forth in full where referred to (by letter or description) in this Lease.

(j) Waiver of Jury Trial and Punitive Damages. THE TENANT AND THE LANDLORD IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING. THE TENANT AND THE LANDLORD HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT.

*[No further text on this page; signature page follows.]*

This Lease has been duly executed by the authorized representatives of each party as of the day and year specified at the beginning hereof.

**LANDLORD:**

TIM DONUT U.S. LIMITED, INC.

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

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

Legal Department: \_\_\_\_\_

**TENANT:**

\_\_\_\_\_

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

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



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively of \_\_\_\_\_, a \_\_\_\_\_, who are known to me as the person(s) and members/officers described in and who executed the foregoing instrument on behalf of said limited liability company/corporation, and who acknowledged that they signed the instrument on behalf of the limited liability company/corporation by proper authority, and the instrument was the act of the limited liability company/corporation for the purpose therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public

**SCHEDULE A**

Legal Description of Land



## GUARANTEE OF LEASE

To induce the Landlord to execute and deliver the annexed Lease (the “**Lease**”) and in consideration of the execution and delivery thereof by the Landlord, the undersigned, jointly and severally if more than one (individually and collectively referred to as the “**Guarantor**”) as principal and not as surety hereby covenants with the Landlord that:

1. The Guarantor unconditionally and absolutely guarantees (i) the due and punctual payment of all amounts, whether for rent or otherwise, which are now or hereafter become due and payable from the Tenant under the Lease without deduction for any claim, setoff or counterclaim of the Tenant or the Guarantor, and (ii) the due and punctual performance and observance by the Tenant of all the terms, covenants and conditions of the Lease, whether according to the present terms of the Lease, or pursuant to any extension of time or to any modification of the terms, covenants and conditions of the Lease, now or at any time hereafter made or granted.

2. The Guarantor is jointly and severally bound with the Tenant for the fulfillment of all covenants, obligations and agreements of the Tenant under the Lease. In the enforcement of its rights hereunder the Landlord may proceed against the Guarantor as if the Guarantor were named as the Tenant under the Lease.

3. The Landlord shall not be required to proceed against the Tenant or to proceed against or to exhaust any security given by the Tenant or to pursue any other remedy whatsoever which may be available to the Landlord before proceeding against the Guarantor, and the Guarantor hereby waives any right to require the Landlord to do so.

4. The Guarantor’s obligations hereunder shall remain in full force and effect, and shall be unaffected by (i) the unenforceability of the Lease against the Tenant; (ii) the termination of any obligations of the Tenant under the Lease by operation of law or otherwise; (iii) the bankruptcy, insolvency, dissolution, or other liquidation of the Tenant, including, without limitation, any surrender or disclaimer of the Lease by the trustee in bankruptcy of the Tenant; (iv) the Landlord’s consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor’s proceedings of or against the Tenant, or by the winding-up or dissolution of the Tenant, or any other event or occurrence which would have the effect at law of terminating the existence of the Tenant’s obligations prior to the termination of the Lease or (v) by any other agreements or other dealings between the Landlord and the Tenant having the effect of amending or altering the Lease or the Tenant’s obligations hereunder, or by any want of notice by the Landlord to the Tenant of any default of the Tenant or by any other matter, thing, act, or omission of the Landlord whatsoever.

5. No neglect or forbearance of the Landlord in endeavoring to obtain payment of the rent reserved in the Lease or other payments required to be made under the provisions of the

Lease as and when they become due, no delay of the Landlord in taking any steps to enforce performance or observance of the several covenants, obligations or agreements contained in the Lease to be performed or observed by the Tenant, no extension or extensions of time which may be given by the Landlord from time to time to the Tenant, and no other act or failure to act of or by the Landlord shall release, discharge or in any way reduce the obligations of the Guarantor under its covenants herein contained.

IN WITNESS WHEREOF the Guarantor has executed this Guarantee of Lease at \_\_\_\_\_ as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Guarantor

\_\_\_\_\_  
\_\_\_\_\_, Guarantor

**ACKNOWLEDGEMENTS**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the \_\_\_\_ day of \_\_\_\_\_, 201\_, before me personally appeared \_\_\_\_\_, who was known to me that *he/she* was the person described in and who executed the foregoing instrument, and who acknowledged that *he/she* executed the foregoing instrument for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me personally appeared \_\_\_\_\_, who was known to me that *he/she* was the person described in and who executed the foregoing instrument, and who acknowledged that *he/she* executed the foregoing instrument for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public

**EXHIBIT I**  
**STANDARD FORM SUBLEASE**

**SUBLEASE**

THIS SUBLEASE (“**Sublease**”) is made on \_\_\_\_\_, 201\_\_

BETWEEN:

TIM DONUT U.S. LIMITED, INC.,  
a Florida corporation

(the “**Sublandlord**”)

- and -

\_\_\_\_\_,  
a \_\_\_\_\_

(the “**Subtenant**”).

Background

A. By that certain Lease [*confirm name of document*] dated \_\_\_\_\_,  
\_\_\_\_\_ (the “**Head Lease**”), \_\_\_\_\_ (the  
“**Headlandlord**”) leased to the Sublandlord as tenant the premises commonly known as  
\_\_\_\_\_, as further described in the Head Lease (the “**Leased  
Premises**”).

B. The Subtenant acknowledges having received and read and understood the Head  
Lease between the Headlandlord and the Sublandlord.

C. Tim Hortons USA Inc. (“**THUSA**”), the Sublandlord’s affiliate, and the Subtenant  
have executed contemporaneously with this Sublease a franchise agreement (the “**Franchise  
Agreement**”) dated \_\_\_\_\_, 201\_\_, under which the Subtenant will operate a Franchised  
Business as that term is defined in the Franchise Agreement, subject to the terms of the Franchise  
Agreement and this Sublease.

D. The Subtenant desires to lease the Leased Premises from the Sublandlord.

E. The guarantors identified in the Guarantee of Sublease attached hereto  
 (“**Guarantors**”) have agreed to guarantee the performance of this Sublease by the Subtenant.

F. The Sublandlord has agreed to lease the Leased Premises to the Subtenant upon the  
terms and conditions herein contained.

Agreement

In consideration of the rents, covenants and agreements set forth in this Sublease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. Sublease of Premises; Head Lease. The Sublandlord subleases to the Subtenant, and the Subtenant leases from the Sublandlord, the Leased Premises. The Sublandlord transfers and delegates to the Subtenant, and the Subtenant accepts, assumes and agrees to perform for the benefit of the Sublandlord and to be bound by, every obligation and covenant of the Sublandlord as tenant contained in the Head Lease. Notwithstanding the foregoing, the provisions of the Head Lease shall be (a) superseded by any term or condition of this Sublease requiring any particular act be rendered to the Sublandlord rather than the Headlandlord; (b) supplemented by the additional terms and conditions set forth in this Sublease; and (c) modified by this Sublease to the extent that this Sublease imposes a greater obligation on the Subtenant than is placed on the Sublandlord under the Head Lease or greater rights are given to the Sublandlord under the Head Lease than are given to the Subtenant in this Sublease.

2. Term of Sublease. The initial term of the Sublease shall be for \_\_\_\_\_ ( ) years, less a day, commencing on the date that Subtenant first opens the Leased Premises for business to the public pursuant to the Franchise Agreement (the “**Commencement Date**”); subject, however, to earlier termination as of date the Head Lease expires or terminates. If the Subtenant takes possession of, or performs work in, the Leased Premises prior to the Commencement Date, such early occupancy shall be subject to all of the terms and conditions of this Sublease, except for the payment of rent, which will commence on the Commencement Date.

3. Right of Renewal. The Subtenant shall have a further right to renew this Sublease for two (2) further successive term(s) of five (5) years each from the expiration date of the initial term of this Sublease. Each renewal term shall be subject to the same terms and conditions contained in this Sublease except that there shall be only one (1) further five (5) year renewal privilege applicable during the first renewal term, if elected, and no further renewal privileges shall be applicable in any second renewal term, if elected. The Subtenant shall give to the Sublandlord written notice of its intention to renew at least six (6) months, but not more than twelve (12) months prior to the expiration of the initial term, or the first renewal term, as the case may be, provided that such right to renew shall be conditional upon the following:

- (a) the Subtenant successfully renewing its Franchise Agreement with THUSA;
- (b) the Subtenant not being in default under this Sublease;
- (c) the Subtenant duly and regularly paying its rent as set out in this Sublease; and
- (d) the Sublandlord having the right to occupy the Leased Premises under the Head Lease for the entire renewal term.

In the event any of these conditions are not satisfied, the option to renew shall be null and void.

Notwithstanding anything contained in this paragraph to the contrary, the term of the renewal period in no event shall exceed the term of the Head Lease, less a day. The Subtenant acknowledges and agrees that the Sublandlord's decision to renew its Head Lease and, if so, the length of any renewal term as well as the other terms and conditions of a renewal Head Lease, shall be at the Sublandlord's sole discretion, based solely on the Sublandlord's evaluation of its own business interests, rather than those of the Subtenant.

4. Rent.

(a) Gross Sales Defined. The definition of "Gross Sales" as set out in paragraph 4.03 of the Franchise Agreement executed between THUSA and the Subtenant shall be incorporated *mutatis mutandis* into this Sublease.

(b) Rent. The Subtenant shall pay to the Sublandlord each and every month of the initial term and each renewal term, as rent for the Leased Premises, eight and one-half percent (8½%) of monthly Gross Sales.

(c) Payment of Rent. Within ten (10) days of the last day of each month, the Subtenant agrees to furnish the Sublandlord with written reports in the Sublandlord's standard form, verified by the Subtenant's accountant, setting out the Gross Sales for each month and calculating the percentage rent for each month, together with a check for rent and additional rent, if any.

(d) Payment of Additional Rent. The Subtenant shall also pay all additional rent as defined in the Head Lease and all other amounts payable by the Sublandlord under the Head Lease.

(e) Definition of Rent. All payments to be made by the Subtenant to the Sublandlord pursuant to the provisions of this Sublease shall be deemed to be "rent" under this Sublease. Additionally, all payments to be made by the Subtenant as Franchisee to THUSA as Franchisor under the provisions of the Franchise Agreement shall be deemed to be "rent" under this Sublease.

5. Subtenant's Records. For the purpose of ascertaining the amount payable as percentage rent and permitting verification by the Sublandlord, the Subtenant will keep on the Leased Premises or at another location approved by the Sublandlord for a period of not less than five (5) years following the end of each lease year:

(a) original or duplicate books and records showing all information required to properly ascertain and verify Gross Sales for the lease year, including but not limited to inventory records and receipts of merchandise at the Leased Premises and all sales and other transactions on or

from the Leased Premises by the Subtenant and any other person conducting business on or from the Leased Premises; and

(b) sales tax returns with respect to the Sublease year and all pertinent original sales records including but not limited to:

- (i) cash register tapes, including tapes from permanent and temporary registers;
- (ii) serially numbered sales slips;
- (iii) the originals of all mail orders to the Leased Premises;
- (iv) the original records of all telephone orders to the Leased Premises;
- (v) settlement report sheets of transactions with assignees, subtenants, concessionaires, licensees and other persons conducting business on or from the Leased Premises;
- (vi) the original records showing that merchandise returned by customers was purchased at the Leased Premises by the customers;
- (vii) receipts or other records of merchandise taken out on approval;
- (viii) all other sales records, if any, which would normally be examined by an independent accountant pursuant to ordinarily accepted auditing standards in the State of Ohio in performing an audit of the Subtenant's sales; and
- (ix) the records specified in subclauses (i) to (viii) of the assignees, subtenants, concessionaires, licensees and other persons conducting business on or from the Leased Premises.

The Subtenant and all other persons conducting business on or from the Leased Premises will record at the time of sale and in the presence of the customer (except in the case of a mail or telephone order) all receipts from sales and other transactions whether for cash or credit in a cash register or in cash registers having a cumulative total and sealed in a manner approved by the Sublandlord and having other features as approved or required by the Sublandlord.

6. Audit of Subtenant's Books by Sublandlord. The Sublandlord, its employees and accountants at all times during business hours may audit the books and records of the sales and other records of the Subtenant and all other persons conducting business on or from the Leased Premises necessary to verify Gross Sales. If an audit discloses an understatement of Gross Sales of two percent (2%) or more of Gross Sales for the period for which the audit was made, the Subtenant promptly will pay to the Sublandlord as additional rent the cost of the audit, the deficiency in rent and interest as provided in paragraph 40, and the Sublandlord may terminate this Sublease upon five (5) days' notice to the Subtenant unless the understatement was due to inadvertent clerical error. In the event that there are two (2) or more understatements of Gross



Sales during the term of this Sublease, the Sublandlord shall have the right to terminate this Sublease upon 5 days' notice notwithstanding any reason for such understatement. A report on the audit made by the Sublandlord's auditor from time to time will be final and binding upon all the parties to this Sublease.

The acceptance by the Sublandlord of payment of percentage rent is without prejudice to the Sublandlord's right to an audit of the books and records of Gross Sales and other papers required to be kept under paragraph 5.

7. Taxes. The Subtenant shall pay to the Sublandlord, as additional rent, all amounts related to real estate taxes and assessments, both general and special, levied or assessed by lawful taxing authorities against the Leased Premises during the term or any renewal term of this Sublease (all of such taxes and assessments, excluding Sales Taxes as defined in Paragraph 8, are collectively referred to as "**Taxes**"). The Sublandlord shall pay to the taxing authority the Taxes as they become due and immediately re-bill the Subtenant for the full amount of Taxes paid, which will be collected from the Subtenant's A/R account within thirty (30) days of posting. The Taxes for the first and last year of the term of this Sublease shall be prorated between the Sublandlord and the Subtenant in accordance with the period of time Subtenant was in possession of the Leased Premises. The Subtenant shall immediately forward to the Sublandlord all bills for Taxes related to the Leased Premises that the Subtenant receives directly from the taxing authorities so that Taxes can be paid prior to delinquency.

8. Sales Taxes. The Subtenant shall pay to the Sublandlord an amount equal to any and all goods and services taxes, sales taxes, value added taxes, business transfer taxes, or any other taxes imposed on the Sublandlord with respect to rent payable by the Subtenant to the Sublandlord under this Sublease, or in respect of the rental of space under this Sublease, whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax, or otherwise (herein called "**Sales Taxes**"). It is the intention of the parties that the Sublandlord shall be fully reimbursed by the Subtenant with respect to any and all Sales Taxes at the full tax rate applicable from time to time in respect of the rent or the rental space without reference to any tax credits available to the Sublandlord. The amount of the Sales Taxes so payable by the Subtenant shall be calculated by the Sublandlord in accordance with the applicable law and shall be paid to the Sublandlord at the same time as the amounts to which such Sales Taxes apply are payable to the Sublandlord under the terms of this Sublease or upon demand at such other time or times as the Sublandlord from time to time determines. Despite any other section or clause in this Sublease, the amount payable by the Subtenant under this paragraph shall be deemed not to be rent, but the Sublandlord shall have all of the same remedies for the rights of recovery of such amount as it has for recovery of rent under this Sublease.

9. Additional Costs; Net Lease. The Subtenant shall pay to the Sublandlord, as additional rent, all costs, expenses and obligations of any nature relating to the Leased Premises that the Sublandlord may be required to pay by virtue of the Sublandlord's interest in the Leased Premises, such as common area maintenance charges and merchant's association's dues (collectively, "**Additional Costs**"). The Additional Costs for the first and last year of the term of the Sublease shall be prorated between the Sublandlord and the Subtenant in accordance with the

period of time each party was in possession of the Leased Premises. This Sublease is a net lease. The rent and additional rent due under this Sublease shall be absolutely net to the Sublandlord and this Sublease shall yield, net to the Sublandlord, the rent and additional rent provided in this Sublease. The Subtenant waives and renounces all existing and future claims or offsets against the rent or additional rent due hereunder and agrees to pay such rent and additional rent regardless of any claim or offset that may be asserted by the Subtenant or on its behalf.

10. Use of the Leased Premises. The Subtenant will use and occupy the Leased Premises solely for the purpose of operating, conducting and carrying on, in and from the whole of the Leased Premises, the business of a restaurant under the “**Tim Hortons System**” and using the “**Proprietary Marks**” as both such terms are defined in the Franchise Agreement (such restaurant business is referred to as a “**Tim Hortons Restaurant**”). The Subtenant agrees not to use or permit the Leased Premises to be used, in whole or in part, for any other purpose. The Subtenant agrees to carry on business only under the name of “Tim Hortons” or “Tim Hortons Café & Bake Shop”.

11. Utilities; Personal Property Taxes. The Subtenant shall pay all utility charges, including without limitation, all water, sanitary sewer, storm sewer, gas, electric, telephone and internet charges in connection with the use and occupation of the Leased Premises, the cost of its own janitor services and window cleaning, and pay all taxes, duties, assessments and license fees whatsoever, whether municipal or otherwise, now or hereafter charged, assessed or levied upon or in respect of the personal property, income, business or other activity of the Subtenant in connection with the Leased Premises, and to indemnify the Sublandlord from and against all loss, costs, charges and expenses occasioned by or arising out of any and every such tax, duty, assessment or license fee, in default whereof the Sublandlord may, after ten (10) days’ prior notice to the Subtenant, pay the same and add the amount thereof to the rent payable hereunder, provided that the Subtenant shall have the right to contest in good faith the legality of any such tax, duty, assessment or fee and the Sublandlord shall cooperate with the Subtenant to the extent reasonably necessary for the Subtenant to fully prosecute any such action.

12. Leasehold Improvements; Maintenance.

(a) The Sublandlord shall have caused the leasehold improvements described in the Head Lease to be constructed on the Leased Premises. The provisions of this paragraph shall supercede the provisions in the Head Lease relating to construction of leasehold improvements.

(b) In the absence of maintenance provisions in the Head Lease, the Subtenant agrees to keep the Leased Premises and all fixtures, machinery and equipment contained therein and forming part thereof in first class condition and repair and make good any damage thereto. The Subtenant shall carry out and make all repairs and replacements for which it is responsible, in a good and workmanlike manner and with due diligence and dispatch. If the Subtenant shall neglect with reasonable promptness, or shall refuse to make, or cause to be made, such repairs, the Sublandlord may make or cause such repairs to be made. All expenses incurred and expenditures made by or on behalf of the Sublandlord under this provision together with a service charge of fifteen percent (15%) thereof shall be forthwith paid by the Subtenant as

additional rent, and if the Subtenant fails to pay the same, the Sublandlord may add the same to the Subtenant's rent and recover the same by all remedies available to the Sublandlord for the recovery of rent in arrears. In the event that any mechanics lien is filed against the Leased Premises as a result of any work or act of the Subtenant, the Subtenant, at its sole cost and expense, shall discharge or bond off the same within thirty (30) days from the filing, or notification by the Sublandlord of the filing, of such mechanics lien. If the Subtenant fails to discharge said mechanics' lien within the required time period, the Sublandlord may pay or bond off such lien without inquiring into the validity or merits of such lien and all amounts so paid by the Sublandlord shall be paid by the Subtenant as additional rent.

13. Entry to View State of Repair. The Sublandlord may enter and view the state of repair of the Leased Premises at any time during the term of this Sublease.

14. Condition of Leased Premises on Surrender. The Subtenant shall surrender the Leased Premises upon the expiration or termination of the term hereof or any renewal thereof in the condition in which the Subtenant is required to maintain same.

15. Insurance. The Subtenant shall procure and maintain in full force and effect during the Term of the Sublease and any renewals thereof, at the Subtenant's own expense, the following insurance policy or policies protecting the Subtenant, the Sublandlord, the Headlandlord (if required by the Head Lease), their respective officers, directors, partners, agents and employees and every mortgagee of the Leased Premises with respect to the Leased Premises and the Subtenant's use and occupation thereof:

(a) All Risks property insurance, including flood and earthquake coverage, on a full replacement cost basis, covering the Leased Premises as well as property of every description and kind owned by the Subtenant, or for which the Subtenant is legally liable, or which is installed by or on behalf of the Subtenant within the Leased Premises including, without limitation, stock in trade, all furniture, fixtures, plate glass and equipment including any additions or improvements thereof;

(b) Rental Income and/or Business interruption insurance on a gross profits form to provide coverage for all Rent obligations as defined in this Sublease;

(c) If applicable, Broad Form Boiler and Machinery insurance covering all boilers, pressure vessels and HVAC equipment within the Leased Premises in an amount not less than the full replacement cost thereof;

(d) Commercial General Liability insurance on an occurrence basis with combined single limits of not less five million dollars (\$ 5,000,000.00) inclusive for personal injury, bodily injury (including death) and property damage for any one occurrence or series of occurrences arising from one cause. The policy shall provide for, without limitation, all premises and

operations of the Subtenant, liability for products and completed operations, non-owned automobile, contingent employer's liability, contractual liability and liability specifically assumed under this Sublease. The policy shall contain cross liability and severability of interests clauses;

(e) Workers Compensation insurance as required by the State in which the Leased Premises is located; and

(f) Such other insurance as the Headlandlord, Sublandlord or the Sublandlord's mortgagee reasonably requests from time to time.

All Insurance required to be maintained by the Subtenant pursuant to this paragraph shall meet the following conditions:

1. Each policy shall be written with an insurance company or companies licensed in the State where the Subtenant is conducting business and be acceptable to the Sublandlord in its reasonable discretion.

2. With respect to the insurance required to be maintained pursuant to subparagraphs (a), (b) and (c), such insurance shall name the Sublandlord (and where applicable the Sublandlord's mortgagees) as a loss payee as its interests may appear and shall include a waiver of subrogation in favor of the Sublandlord (and where applicable Sublandlord's mortgagees). With respect to the insurance required to be maintained pursuant to subparagraph (d), such insurance shall name the Sublandlord and Headlandlord as an additional insured.

3. Each policy shall be primary and non-contributing with any other insurance maintained by the Sublandlord or the Sublandlord's mortgagee.

4. Each policy shall contain an undertaking by the insurer to endeavor to provide the Sublandlord with thirty (30) days advance written notice to the Sublandlord of any adverse material change, cancellation or termination.

5. Prior to the commencement of the Term of the Sublease and annually thereafter, the Subtenant shall provide a certificate of insurance or certificates of insurance evidencing the insurance as required to be maintained by the Subtenant under this Sublease. Any acceptance of delivery of such certificates does not constitute approval or agreement by the Sublandlord that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements and shall not diminish the Sublandlord's rights under this Sublease.

16. Indemnification. The Subtenant covenants that the Sublandlord and its agents and employees shall not in any event whatsoever be liable or responsible in any way for any personal injury or death that may be suffered or sustained by the Subtenant or any employee of the Subtenant or any other person who may be upon the Leased Premises or for any loss or damage or injury to any property belonging to the Subtenant or to its employees or to any other person while such property is on the Leased Premises, and in particular (but without limiting the generality of the foregoing), the Sublandlord shall not be liable for any damage to any such property caused by steam, water, rain or snow, which may leak into, issue or flow from any part of the building or adjoining premises, or from the water, steam, sprinkler or drainage pipes or plumbing works of the same, or from any other place or quarter, or for any damage caused by or attributable to the condition or arrangement of any electrical or other wiring or for any damage caused by anything done or omitted to be done by the Subtenant.

The Subtenant will indemnify and save harmless the Sublandlord from any and all liabilities, fines, suits, claims, demands, costs and actions of any kind or nature whatsoever to which the Sublandlord shall or may become liable for, or suffer by reason of any breach, violation or non-performance by the Subtenant of any covenant, term or provision hereof, or by reason of any injury, loss, damage or death occasioned to or suffered by any person or persons, or any property by reason of any act, neglect or default on the part of the Subtenant, or any of its agents, customers, employees, servants, contractors, licensees or invitees, in or about the Leased Premises or any part thereof. Subtenant's obligation to indemnify in respect of any such breach, violation, non-performance, damage to property, loss, injury or death occurring during the term of this Sublease shall survive any termination of this Sublease, anything in this Sublease to the contrary notwithstanding.

17. Compliance with Law. The Subtenant shall comply with and fulfill the provisions and requirements of all laws, ordinances, orders, and regulations of applicable governmental authorities, including those relating to public health, sanitation and safety (collectively "**Laws**") relating to the use of the Leased Premises. Upon request being made or notice being given by the proper authorities charged with the enforcement of the Laws to the Subtenant or to the Sublandlord requiring compliance with or rectification of any infraction of any such Laws, the Subtenant shall immediately comply with the demand contained in such request or notice, and in default thereof, the Sublandlord may procure to be done any work necessary to comply therewith and may charge the cost thereof against the Subtenant, and shall have the same right to recover the monies so paid as if the same were arrears of rent reserved in respect of the Leased Premises. The Subtenant shall obtain, keep in full force and effect, and strictly comply with all governmental licenses and permits required for the Subtenant's use and occupancy of the Leased Premises and operation of the Tim Hortons Restaurant.

18. Fixtures. The Subtenant shall, at the commencement, and throughout the term of this Lease and/or any renewal thereof at the expense of the Subtenant, install and maintain all necessary lighting fixtures, trade fixtures, furniture and equipment in the Leased Premises, necessary for the business of the Subtenant, the same to be of high quality and good appearance.

19. Refuse. The Subtenant shall not allow any refuse, garbage or other loose or objectionable materials to accumulate on or about the Leased Premises, will at all times keep the Leased Premises in a clean and wholesome condition, and shall be responsible for the removal of all garbage or loose or objectionable materials emanating from the Leased Premises. The Subtenant shall not dispose of any trash or garbage in or about the Leased Premises except in areas provided therefor by the Sublandlord.

21. Loading and Unloading. The Subtenant shall take all reasonable precautions to ensure that loading and unloading of merchandise, supplies, materials or chattels shall be made only through or by means of doorways and openings designated by the Sublandlord.

22. Conduct and Hours of Business. The Subtenant covenants to operate and conduct its business in a high-class and reputable manner and to conduct its business in the Leased Premises during such hours as set out in Paragraph 5.04 of the Franchise Agreement entered into between THUSA and the Subtenant.

23. Subordination to Mortgages. The Subtenant agrees that it will, at the request of the Sublandlord from time to time, subordinate this Sublease and all the Subtenant's rights hereunder in favor of any mortgage or mortgages covering the Leased Premises which the Sublandlord may arrange and make from time to time and the Subtenant agrees that it will execute all subordination agreements and any other documents or assurances which may be required by the Sublandlord from time to time to give effect to this provision. If seven (7) days after the date of a request by the Sublandlord to execute any agreements, documents or assurances, the Subtenant has not executed and delivered them to the Sublandlord, the Subtenant hereby irrevocably appoints the Sublandlord as the Subtenant's attorney with full power and authority to execute such instruments in the name of the Subtenant, provided always that every mortgagee to whose mortgage this Sublease is subordinated shall consent in writing to this Sublease and permit the Subtenant to continue in quiet possession of the Leased Premises and otherwise in accordance with the terms and conditions hereof so long as the Subtenant is not in default hereunder.

24. Heat. The Subtenant covenants to heat the Leased Premises so as, at all times, to protect the Leased Premises and all of its contents from damage by cold or frost.

25. Installation and Removal of Fixtures. The Subtenant may install in and upon the Leased Premises such trade fixtures and equipment as the Subtenant requires for a Tim Hortons Restaurant and all such trade fixtures and equipment so installed, whether before or after the commencement of the term hereof shall be and remain the property of the Subtenant which the Subtenant may remove at the end of the term or the renewal term as the case may be, subject to the Franchise Agreement; provided that the Subtenant shall make good any damage caused by such installation or removal. Further, the Subtenant shall not remove any heating or air-conditioning equipment, or restroom facilities and equipment, or other fixtures related to the operation of the Tim Hortons Restaurant building forming part of the Leased Premises. Notwithstanding any other provisions in the Franchise Agreement or this Lease, all equipment, furnishings, installations and fixtures placed or installed on the Leased Premises at the expense

of the Sublandlord, whether as an initial installation or a replacement thereof, shall remain the property of the Sublandlord.

26. Landlord's Lien. To secure the payment of all rent and additional rent due and to become due under this Sublease, the faithful performance of this Sublease by the Subtenant and to secure all other indebtedness and liabilities of the Subtenant to the Sublandlord now existing but hereafter incurred, the Subtenant hereby grants to the Sublandlord a lien and security interest on all furniture, furnishings, trade fixtures, equipment and other personal property (collectively, "**Personal Property**") to which the Subtenant has legal title and which is placed in the Leased Premises. The Subtenant further agrees that if the Subtenant vacates the Leased Premises while any rent owing under this Sublease is unpaid, the Sublandlord, in addition to any remedy otherwise provided by law or in this Sublease, may seize and sell the Personal Property at any place to which the Subtenant or any other person may have removed them in the same manner as if the Personal Property had remained at the Leased Premises.

27. Re-Entry; Default. If the Subtenant (i) fails to pay rent due hereunder within five (5) days after the same are due; (ii) fails to observe or preform any of its other obligations under this Sublease within fifteen (15) days after receipt of written notice from the Sublandlord; or (iii) defaults on any of the terms of the Franchise Agreement, the Sublandlord, at its election, may declare the term of this Sublease ended and, with or without process of law, re-enter, expel and remove the Subtenant and all persons occupying the Leased Premises under the Subtenant (using such force as may be necessary) and repossess and enjoy the Leased Premises. Such re-entry and repossession shall not cause a forfeiture of the rents to be paid or terminate the covenants to be performed by the Subtenant during the full term of the Sublease.

Upon the expiration of the term of this Sublease by reason of the events described in the paragraph above, or if the Sublease or the Subtenant's right to possession is terminated, the Sublandlord, at its option, may relet the Leased Premises for the account of the Subtenant and apply any rent received first to the payment of expenses the Sublandlord incurred in reletting the Leased Premises (including, but not limited to, repossession costs, reasonable attorneys' fees and expenses, alteration costs and expenses of preparation for such reletting), and then to the satisfaction of the Subtenant's obligations under this Sublease. Any reletting may be for the remainder of the term of this Sublease or for a shorter or longer period. Regardless of whether the Leased Premises are relet, the Subtenant shall pay to the Sublandlord all rent and other charges required to be paid by the Subtenant up to the time of termination of this Sublease or recovery of possession the Premises by the Sublandlord, as applicable. Thereafter, at the Sublandlord's option, the Subtenant shall, until the end of the then current term or renewal term be liable to the Sublandlord for, and shall pay to the Sublandlord, as agreed current damages: (i) all rent and other sums that would be payable under this Sublease by the Subtenant in the absence of such reentry or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of the Subtenant. The Subtenant shall pay such current damages on the days on which rent would be payable under this Sublease and the Sublandlord shall be entitled to recover the same from the Subtenant on each such day. For the purpose of this Section, it shall be deemed that the percentage rent for any period after any default and entry by the Sublandlord

would have been at the monthly rate thereafter equal to the highest percentage rent that the Subtenant was obligated to pay to the Sublandlord under this Sublease. Nothing in this Sublease will limit the Sublandlord's right to prove and obtain the maximum amount of damages allowed by any statute or rule of law that governs the proceeding in which such damages are to be proved.

28. Holding Over. The Subtenant will not hold over beyond the expiration or sooner termination of the term of this Sublease. If the Subtenant does hold over without any agreement in writing in respect thereof, such continued possession shall create a monthly tenancy subject, so far as they are applicable to a monthly tenancy, to the terms and conditions of this Sublease and to payment of the rent set forth herein except that the monthly base rent shall be twice the monthly rate paid during the last year of the term, and said tenancy may be terminated at any time by either party by thirty (30) days' notice to the other party. The Sublandlord's acceptance of any rent after holding over begins does not renew this Sublease. This paragraph does not waive the Sublandlord's rights of re-entry or any other right in this Sublease resulting from the Subtenant's breach of this Sublease.

29. Nuisance. The Subtenant covenants not to carry on in the Leased Premises any activity which shall be a nuisance.

30. Alterations by Subtenant. The Subtenant shall not make alterations, additions or improvements to the Leased Premises without the prior written consent of the Sublandlord, which consent may be granted at the sole and unfettered discretion of the Sublandlord or may be unreasonably withheld.

31. Sublandlord May Perform Covenants. If the Subtenant shall fail to perform any of the covenants or obligations of the Subtenant, under or in respect of this Sublease, the Sublandlord may, at the expense of the Subtenant, from time to time in its discretion perform or cause to be performed any of such covenants or obligations or any part thereof and for such purpose may do such things as may be requisite, including without limiting the foregoing, entering upon the Leased Premises and doing such things upon or in respect of the Leased Premises or any part thereof as the Sublandlord may consider requisite or necessary.

32. Assigning and Subletting. Except for assignments or transfers permitted under Article XI of the Franchise Agreement entered into between THUSA and the Subtenant, the Subtenant shall not, during the term of this Sublease or any renewal term, assign, sublet or transfer the Leased Premises or any part thereof or share the possession or occupancy of the Leased Premises or any part thereof or assign any of the benefits or obligations of this Sublease to any person or persons whomsoever, without having first obtained the consent in writing of the Sublandlord, which consent may be arbitrarily withheld. No such consent shall relieve the Subtenant or Guarantor of their liabilities for the due observance of all or any of its covenants and obligations hereunder.

For purposes of this paragraph, if the Subtenant is a partnership, any sale or transfer of any partnership interest, or the transfer of all or any portion of the general partnership or



managing partnership interest in the Subtenant shall be deemed to be a prohibited assignment of this Sublease within the meaning of this paragraph. If the Subtenant is a corporation or limited liability company, then the sale, issuance or transfer of any stock or membership interest of the Subtenant or of any entity that directly or indirectly controls the Subtenant that results in a change in the voting control of the Subtenant or the entity that controls the Subtenant shall be deemed to be a prohibited assignment of this Sublease within the meaning of this paragraph.

If the Sublandlord withholds, delays or refuses to give consent to any request for transfer or assignment of this Sublease, whether or not the Sublandlord is entitled to do so, the Sublandlord shall not be liable for any losses or damages in any way resulting therefrom and the Subtenant shall not be entitled to terminate this Sublease or exercise any other remedy whatsoever in respect thereof except to seek the order of a court of competent jurisdiction compelling the Sublandlord to grant any such consent which the Sublandlord is obliged to grant pursuant to the terms of this Sublease.

33. Delays. Whenever and to the extent that the Sublandlord is unable to fulfill or shall be delayed or restricted in fulfillment of any obligation under this Sublease, including the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the materials, goods, equipment, service, utility or labor required to enable the Sublandlord to fulfill such obligation or by reason of any statute, law or regulation or order, the Sublandlord shall be relieved from the fulfillment of such obligation during the period of such delay, (and the Subtenant is not to be entitled to any compensation for any inconvenience, nuisance or discomfort thereby occasioned) and the Sublandlord covenants that it will, when the cause of the delay is removed, proceed to complete any necessary work with all diligence to completion.

34. Transfer by Sublandlord. The term Sublandlord as used in this Lease so far as covenants or obligations on the part of the Sublandlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the leasehold interest in the Leased Premises, and in the event of any transfer or transfers of ownership of such interest, the Sublandlord herein named, and in case of any subsequent transfers or conveyances, the then vendor or transferor, shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations on the part of the Sublandlord contained in this Sublease thereafter to be performed, provided that:

(a) any funds in the hands of such Sublandlord or the then vendor or transferor at the time of such transfer, in which the Subtenant has an interest, shall be turned over to the purchaser or transferee and any amount then due and payable to the Subtenant by the Sublandlord or the then vendor or transferor under any provision of this Sublease, shall be paid to the Subtenant; and

(b) upon any such transfer, the purchaser or transferee shall be deemed to have assumed, subject to the limitations of this paragraph, all of the terms, covenants and conditions in this Sublease contained to be performed on the part of the Sublandlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.

Notwithstanding anything to the contrary provided in this Sublease, the Subtenant shall look solely to the Leased Premises for the satisfaction of each and every remedy of Subtenant in the event of any breach by the Sublandlord of any of the terms and conditions of this Sublease to be performed by the Sublandlord, or any other matter in connection with this Sublease or the Leased Premises, such exculpation of liability to be absolute and without any exception whatsoever.

35. Estoppel.

(a) The Subtenant covenants and agrees with the Sublandlord that it will, if and whenever required by the Sublandlord and at the Sublandlord's expense, consent to and become a party to any instrument relating to this Sublease which may be required by or on behalf of the Headlandlord, any purchaser, bank or mortgagee from time to time of the Leased Premises; provided, always, that the rights of the Subtenant as set out in this Sublease shall not be altered or varied by the terms of such instrument or document.

(b) The Subtenant shall, without charge, at any time and from time to time, within ten (10) days after request by the Sublandlord, certify by written instrument duly executed, acknowledged and delivered to the Sublandlord or any other person, firm or corporation specified by the Sublandlord:

(i) that this Sublease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

(ii) whether or not there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions of this Lease upon the part of the Subtenant to be performed or complied with and, if so, specifying the nature of same; and

(iii) the dates, if any, to which the net rent, percentage rent, and additional rent, if any, and any other charges hereunder have been paid.

36. Quiet Enjoyment. The Leased Premises are subject to all easements, encumbrances, restrictions, and conditions of record and all building code and zoning restrictions. The Sublandlord covenants that the Subtenant shall and may peacefully and quietly have, hold, occupy, possess and enjoy the Leased Premises for the term herein provided without interference by anyone claiming by, through or under Sublandlord; provided the Subtenant pays the rent and keeps, observes and performs all of the other covenants terms of this Sublease.

37. No Recordation. It is understood and agreed that neither this Sublease nor any memorandum of sublease shall be recorded against the title to the Leased Premises.

38. Notices. Any and all notices required or permitted under this Sublease shall be in writing and shall be personally delivered, mailed by certified mail, return receipt requested, or dispatched by recognized overnight delivery service, to the respective parties at the following

addresses unless and until a different address has been designated by written notice to the other party:

Sublandlord: Tim Donut U.S. Limited, Inc.  
4150 Tuller Road, Suite 236  
Dublin, Ohio 43017  
Attention: Legal Department

with a copy to: Tim Donut U.S. Limited, Inc.  
874 Sinclair Road  
Oakville, Ontario  
Canada L6K 2Y1  
Attention: General Counsel

Subtenant: \_\_\_\_\_  
c/o Tim Hortons Restaurant  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices shall be deemed to have been received as follows: by personal delivery – at the time of delivery; by overnight delivery service – on the next business day following the date on which the notice was given to the overnight delivery service for next business day delivery; and by certified mail – the earlier of the actual date of delivery or three (3) days after the date of mailing.

39. Remedies Cumulative. No remedy herein conferred upon or reserved to the Sublandlord or the Subtenant shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The exercise of the right of termination by the Sublandlord will not be construed to eliminate any right of the Sublandlord to damages on account of a default by the Subtenant.

40. Interest on Arrears. If any payment of monies due under the terms of this Sublease are not made on their respective due dates as defined in this Sublease, the Subtenant agrees to pay interest on such outstanding payment at the rate of five percent (5%) over the “prime rate” of the The Huntington National Bank as set from time to time calculated from the due dates on a per diem basis compounded monthly until the date of payment.

41. Termination of Franchise Agreement. In the event that THUSA terminates the Franchise Agreement for any reason whatsoever, this Sublease shall be deemed to have been terminated on the same date as the termination of the Franchise Agreement and the Sublandlord shall have the right to re-enter and to take immediate possession of the Leased Premises.

42. Sublease Contingent on Franchise Agreement. The Subtenant acknowledges and agrees that the execution of the Franchise Agreement by both THUSA and the Subtenant shall constitute a condition precedent to the effectiveness and validity of this Sublease.

43. Other Uses. Notwithstanding anything in this Sublease contained to the contrary, the Sublandlord shall have the absolute right in its unfettered discretion to lease parts of the Leased Premises, other than the space occupied by the Tim Hortons Restaurant, to other tenants. In the event of such leasing, the Subtenant shall be required to pay its pro rata share of the common area and operating costs for the Leased Premises, excluding the Subtenant's building for which the Subtenant shall remain absolutely responsible for all costs related thereto. The Subtenant's pro rata share shall be a fraction, the numerator of which is the area of the Subtenant's building and the denominator of which is the area of all buildings erected within the lands described in Schedule A, including the Subtenant's building. A certificate of the Sublandlord's architect or engineer certifying an "area" shall be final and there shall be no appeal therefrom. In the event of the Sublandlord leasing any part of the lands described in Schedule A to another tenant, the words "**Leased Premises**" in this lease shall exclude any such portion leased to or occupied by other tenants.

44. Hazardous Materials. The Subtenant shall not use or allow the Leased Premises to be used for the release, storage, use, treatment, disposal or other handling of any Hazardous Materials (as defined below), without the prior consent of the Sublandlord, except that construction materials (other than asbestos or polychlorinated biphenyls), office equipment and cleaning solutions, and other maintenance materials that are or contain Hazardous Materials may be used, generated, handled or stored on the Leased Premises, provided such use, generation, handling and storage is incident to and reasonably necessary for the operation and maintenance of the Leased Premises and is in compliance with all applicable Environmental Laws (as defined below). The Subtenant shall comply with all Environmental Laws governing the release, discharge, emission, or disposal by the Subtenant of any Hazardous Materials on the Leased Premises, as well as all due care and continuing obligation plans and operations and maintenance plans established for the Leased Premises. The Subtenant shall indemnify, defend and hold Sublandlord harmless from and against all liens, claims, demands, judgments, damages, penalties, fines, costs, losses or expenses (including reasonable attorneys', consultants' and experts' fees) that arise as a result of (i) the presence, suspected presence or discharge of Hazardous Materials from, on or in the Leased Premises caused by the actions of the Subtenant and first occurring during the Subtenant's possession of the Leased Premises or (ii) the Subtenant's failure to comply with all due care and continuing obligation plans and operations and maintenance plans established for the Leased Premises. Without limiting the generality of the foregoing, this indemnification by the Subtenant shall include costs incurred in connection with any site investigation and any remedial, removal or restoration work resulting from the events indemnified against. The provisions of this Section shall survive the termination or expiration of this Sublease.

**"Hazardous Materials"** means any toxic or hazardous waste, material or substance, including hydrocarbons, all as defined by applicable federal, state or local laws, statutes or ordinances.

“**Environmental Laws**” means all federal, state, or local laws, codes, ordinances, regulations, permits or licensing conditions with respect to Hazardous Materials in effect now or at any time hereafter.

45. Miscellaneous.

(a) Modification; Waiver. Any amendment, change or modification of this Sublease shall be void unless in writing and signed by all parties to this Sublease. No failure or delay by any party to this Sublease in exercising any right, power or privilege under this Sublease, and no course of dealing between or among any of the parties, shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise of such right, power or privilege.

(b) Relationship of Parties. Nothing contained in this Sublease shall be deemed or construed, either by the parties to this Sublease or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between the Sublandlord and the Subtenant other than that of landlord and tenant.

(c) Severability. If any provision of this Sublease is deemed or held to be illegal, invalid or unenforceable, this Sublease shall be considered divisible and inoperative as to such provision to the extent it is deemed to be illegal, invalid or unenforceable, and in all other respects this Sublease shall remain in full force and effect.

(d) Successors and Assigns. This Sublease shall be binding upon and inure to the benefit of the parties to this Sublease and their respective heirs, personal representatives, successors and permitted assigns.

(e) Headings. The headings in this Sublease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Sublease.

(f) Entire Agreement. This Sublease, the documents referred to herein, and the exhibits attached hereto (if any) constitute the entire and complete agreement between the parties concerning the subject matter hereof and supersede all prior agreements between the parties, no other representations having induced the Subtenant to execute this Sublease. The Subtenant acknowledges that it is neither aware of nor relying upon any oral or written representation or understanding which is contrary to the terms and conditions of this Sublease or the contents of any document furnished to the Subtenant.

(g) Applicable Law. This Sublease shall be governed by, and construed in accordance with, the laws of the State in which the Leased Premises are located without regard to conflict of laws principles.

(h) Counterparts. This Sublease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

(i) Exhibits. Each exhibit and schedule (if any) attached to and referred to in this Sublease is incorporated by reference as though set forth in full where referred to (by letter or description) in this Sublease.

(j) Waiver of Jury Trial and Punitive Damages. THE SUBTENANT AND THE SUBLANDLORD IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING. THE SUBTENANT AND THE SUBLANDLORD HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT.

*[No further text on this page; signature page follows.]*

This Sublease has been duly executed by the authorized representatives of each party as of the day and year specified at the beginning hereof.

**SUBLANDLORD:**

TIM DONUT U.S. LIMITED, INC.

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

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

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

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

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

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

Legal Department: \_\_\_\_\_

**SUBTENANT:**

\_\_\_\_\_

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

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

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

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

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

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





STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively of \_\_\_\_\_, a \_\_\_\_\_, who are known to me as the person(s) and members/officers described in and who executed the foregoing instrument on behalf of said limited liability company/corporation, and who acknowledged that they signed the instrument on behalf of the limited liability company/corporation by proper authority, and the instrument was the act of the limited liability company/corporation for the purpose therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public

## GUARANTEE OF SUBLEASE

To induce the Sublandlord to execute and deliver the annexed Sublease (the “**Sublease**”) and in consideration of the execution and delivery thereof by the Sublandlord, the undersigned, jointly and severally if more than one (individually and collectively referred to as the “**Guarantor**”) as principal and not as surety hereby covenants with the Sublandlord that:

1. The Guarantor unconditionally and absolutely guarantees (i) the due and punctual payment of all amounts, whether for rent or otherwise, which are now or hereafter become due and payable from the Subtenant under the Sublease without deduction for any claim, setoff or counterclaim of Subtenant or Guarantor, and (ii) the due and punctual performance and observance by Subtenant of all the terms, covenants and conditions of the Sublease, whether according to the present terms of the Sublease, or pursuant to any extension of time or to any modification of the terms, covenants and conditions of the Sublease, now or at any time hereafter made or granted.
2. The Guarantor is jointly and severally bound with the Subtenant for the fulfillment of all covenants, obligations and agreements of the Subtenant under the Sublease. In the enforcement of its rights hereunder the Sublandlord may proceed against the Guarantor as if the Guarantor were named as the Subtenant under the Sublease.
3. The Sublandlord shall not be required to proceed against the Subtenant or to proceed against or to exhaust any security given by the Subtenant or to pursue any other remedy whatsoever which may be available to the Sublandlord before proceeding against the Guarantor, and the Guarantor hereby waives any right to require the Sublandlord to do so.
4. The Guarantor’s obligations hereunder shall remain in full force and effect, and shall be unaffected by (i) the unenforceability of the Sublease against the Subtenant; (ii) the termination of any obligations of the Subtenant under the Sublease by operation of law or otherwise; (iii) the bankruptcy, insolvency, dissolution, or other liquidation of the Subtenant, including, without limitation, any surrender or disclaimer of the Sublease by the trustee in bankruptcy of the Subtenant; (iv) the Sublandlord’s consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor’s proceedings of or against the Subtenant, or by the winding-up or dissolution of the Subtenant, or any other event or occurrence which would have the effect at law of terminating the existence of the Subtenant’s obligations prior to the termination of the Sublease or (v) by any other agreements or other dealings between the Sublandlord and the Subtenant having the effect of amending or altering the Sublease or the Subtenant’s obligations hereunder, or by any want of notice by the Sublandlord to the Subtenant of any default of the Subtenant or by any other matter, thing, act, or omission of the Sublandlord whatsoever.
5. No neglect or forbearance of the Sublandlord in endeavoring to obtain payment of the rent reserved in the Sublease or other payments required to be made under the provisions of the Sublease as and when they become due, no delay of the Sublandlord in taking any steps to enforce performance or observance of the several covenants, obligations or agreements contained

in the Sublease to be performed or observed by the Subtenant, no extension or extensions of time which may be given by the Sublandlord from time to time to the Subtenant, and no other act or failure to act of or by the Sublandlord shall release, discharge or in any way reduce the obligations of the Guarantor under its covenants herein contained.

IN WITNESS WHEREOF the Guarantor has executed this Guarantee of Sublease at \_\_\_\_\_ as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Guarantor

\_\_\_\_\_  
\_\_\_\_\_, Guarantor

**ACKNOWLEDGEMENTS**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me personally appeared \_\_\_\_\_, who was known to me that he/she was the person described in and who executed the foregoing instrument, and who acknowledged that he/she executed the foregoing instrument for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, SS:

The undersigned, a Notary Public in and for the above state and county, hereby certifies that on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me personally appeared \_\_\_\_\_, who was known to me that he/she was the person described in and who executed the foregoing instrument, and who acknowledged that he/she executed the foregoing instrument for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public

**EXHIBIT J**  
**TIM CARD ADDENDUM AND PARTICIPATION AGREEMENT**

## **TIM CARD™ ADDENDUM**

THIS TIM CARD ADDENDUM (“Addendum”) is made as of the date executed by the parties below and supplements, amends and forms part of the Franchise Agreement (hereinafter “Franchise Agreement”) entered into among the Franchisor, the Franchisee and the Guarantors (as defined on the execution page).

WHEREAS Franchisor, Franchisee and Guarantors have entered into the Franchise Agreement with respect to the operation of the Tim Hortons Shop located at the premises municipally described on the execution page hereof;

AND WHEREAS, pursuant to the Franchise Agreement, Franchisee operates a Tim Hortons Shop;

AND WHEREAS Franchisor has elected to implement a program (the “Program”) to offer stored value cards (each, a “Tim Card”) and related services to customers of Tim Hortons Shops, which such cards can be used by customers to purchase goods and services at participating Tim Hortons Shops which Program shall include the Program fees described herein;

AND WHEREAS Franchisee acknowledges that the Program is part of the TIM HORTONS SYSTEM and that Franchisee must participate in the Program;

AND WHEREAS, in order to participate in the Program, Franchisee shall enter into a Participation Agreement (the “Participation Agreement”) with ValueLink, LLC, aka First Data Prepaid Services, the operator of the Program (“Program Provider”) as well as this Addendum and to offer the Program on the terms and conditions set forth in the Participation Agreement and in this Addendum;

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

### **ARTICLE 1** **PROGRAM PARTICIPATION**

- 1.1 Program Participation: Program Rules and Procedures. Franchisee shall participate in the Program and comply with the terms and conditions of the Franchise Agreement, the Participation Agreement and this Addendum. In this regard, Franchisee acknowledges and agrees that:
- (a) all Tim Cards, hardware, software, peripherals and other equipment and materials used in connection with the Program (the “Program Equipment”) shall form part of the TIM HORTONS SYSTEM as defined in the Franchise Agreement and that all terms and conditions of the Franchise agreement applicable to the TIM HORTONS SYSTEM shall apply to the Program Equipment;
  - (b) the trademark TIM CARD, the design of the Tim Card, and all other trademarks, trade names, trade dress and other distinguishing features relating to the Program (the “Program Marks”) shall constitute TIM HORTONS TRADEMARKS as defined in the Franchise agreement and that all terms and conditions of the Franchise agreement applicable to the TIM HORTONS TRADEMARKS shall apply to the Program Marks;

- (c) all terms and conditions of the Franchise Agreement relating to marketing, advertising and promotion shall apply to the marketing, advertising and promotion of the Program; and
- (d) Franchisee shall comply with all processes and procedures relating to the use of Program Equipment and the operation of the Program as set forth in this Addendum, the Confidential Operating Manual or otherwise provided by Franchisor from time to time.

Management of Program Funds. Franchisee shall permit Franchisor or its designee and/or Program Provider to manage the funds collected from customers relating to Tim Card loads. Such management shall include collection of funds received from customers who have loaded Tim Cards in Tim Hortons Restaurants or over the Internet, and maintenance of such funds in an account set up by Franchisor, movement of funds from Franchisor's account to the accounts of Franchisees to pay for products or services purchased by customers at Tim Hortons Restaurants using Tim Cards, and collection from each participating Franchisee of fees due in respect of the operation of the Program. In addition, Franchisee must co-operate in the maintenance, management and reconciliation of such funds. The processes, procedures and rules governing funds management are set forth in Schedule 1.2 to this Addendum. Franchisor may modify the processes, procedures and rules set forth in Schedule 1.2 from time to time in its discretion upon notice to Franchisee. Franchisee hereby consents to the management of Program funds by Franchisor and Program Provider in accordance with Schedule 1.2, and shall comply with its obligations set forth in the Schedules hereto as such Schedules or the Program may be modified by Franchisor from time to time.

## **ARTICLE 2** **PROGRAM FEES**

- 2.1 Program Fees. Franchisee shall pay the fees relating to the Program set forth in Schedule 2.1.
- 2.2 Currency. All fees set forth in Schedule 2.1 are in Canadian dollars.
- 2.3 Taxes. All fees set forth in Schedule 2.1 are exclusive of applicable taxes. Franchisee shall pay all applicable taxes on such fees, if any.

## **ARTICLE 3** **TERMINATION OR EXPIRY**

- 3.1 Co-Terminus with Participation Agreement and Franchise Agreement. This Addendum shall automatically terminate upon the termination or expiration of the Participation Agreement or the Franchise Agreement (whichever occurs earlier) unless terminated earlier as contemplated herein.
- 3.2 Termination by Franchisor. Subject to any settlement funds owing as described in Section 1.2, Franchisee acknowledges that Franchisor may terminate the operation of the Program and this Addendum at any time without liability to Franchisee.

3.3 Obligations Upon Termination or Expiration. Upon the termination or expiration of this Addendum:

- (a) Franchisee shall immediately cease: (i) accepting Tim Cards in its Tim Hortons Restaurant; and (ii) processing of loads of Tim Cards;
- (b) Franchisee shall immediately return all Tim Cards in its possession to Franchisor;
- (c) all Program fees due and payable by Franchisee shall be collected by Franchisor from Franchisee's account and Franchisor shall perform any necessary reconciliations for any amounts due and owing to the Franchisee pursuant hereto;
- (d) Franchisee shall immediately return to Franchisor all Program materials, including, without limitation, marketing materials, training materials and any confidential or proprietary information of Franchisor or Program Provider in its possession; and
- (e) Franchisee shall cooperate with Franchisor and comply with Franchisor's instructions with respect to the return, deletion or removal of any software or other information, materials or intellectual property relating to the Program.

**ARTICLE 4**  
**ADDITIONAL TERMS AND CONDITIONS**

4.1 Claims Under Participation Agreement. Franchisee acknowledge and agrees that, with respect to any claim that it is considering pursuing under the Participation Agreement, Franchisee shall comply with and be bound by the requirements set forth in Section 13.3 of the Participation Agreement. Franchisee further acknowledges and agrees that Franchisor may elect, in its sole discretion, whether or not to pursue a claim against Program Provider on behalf of Franchisee pursuant to Section 13.3.

Franchisor shall have no liability to Franchisee for any breach of the Participation Agreement by Program Provider, and Franchisee's remedies for any such breach shall be against Program Provider only.

4.2 Consent to Collection, Use and Disclosure of Information of Franchisee. Franchisee acknowledges that as a Program Provider to Franchisor and as the operator of the Program, Program Provider shall be entitled to collect, use, disclose and otherwise handle information including Franchisee's contact and commercial banking information (whether received from Franchisee or from Franchisor) for purposes relating to the operation of the Program. Franchisee further acknowledges and agrees that such information may be used, stored or processed outside of the United States of America for such purposes.

4.3 Responsibility of Program Provider. Franchisee acknowledges and agrees that the Program is being operated by the Program Provider, and that the only representations, warranties, conditions and covenants relating to the Program (including, without limitation, its availability, reliability and quality) are those from Program Provider set forth in the Participation Agreement between Franchisee and Program Provider. There are no additional representations, warranties, covenants or conditions from Franchisor relating to the Program.



- 4.4 Further Assurances. Franchisee will execute and deliver all such further documents and instruments and do all acts and things as Franchisor may reasonably require to effectively carry out, better evidence or perfect the full intent and meaning of this Addendum.

Without limiting the preceding sentence, Franchisee agrees that, at Franchisor's request, Franchisee will cause its Guarantors to execute this Addendum. The parties hereto acknowledge that execution hereof by the Franchisor and Franchisee shall bind the executing parties to the terms hereof notwithstanding: (1) any provisions to the contrary in the Franchise agreement; or (2) failure by any Guarantor(s) to execute this Addendum.

- 4.5 This Agreement may be executed by facsimile transmission and in several counterparts, each of which so executed will be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
- 4.6 The Article, Section Headings, Titles and nomenclature herein are for convenience only and shall not affect the construction of the terms of this Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**SIGNATURE PAGES IMMEDIATELY FOLLOW**

**IN WITNESS WHEREOF**, the parties have caused this Addendum to be executed by their authorized representatives as of the date set forth below.

**Authorization and Agreement:**

**Part 1 – To be Completed by Tim Hortons USA Inc.**

Franchisor's Signatures	
Signature: _____ Name: _____ Title: _____	Signature: _____ Name: _____ Title: _____
Legal Department	

**Part 2 - To be Completed by Restaurant Owner**

Franchisee's Signature (for the Franchisee Company/ Legal Entity )	
Name of Franchisee: _____ <small>Company/Legal Entity of Franchisee (which can be found on your most recent franchise agreement for the restaurant)</small>	Municipal Address of Restaurant: Street # _____ Street Name _____ City _____ State _____ Zip Code _____
Restaurant Number: _____ <small>One Restaurant # per Agreement Only</small>	
<b>Signing Officer 1:</b> (Insert signature, name and title of the officer signing on behalf of the Franchisee e.g. "John Smith, Title – President")  Signature: _____ <small>(Please Sign)</small>  Name: _____ <small>(Please Print)</small>  Title: _____ <small>(Please Print)</small>  Date: _____ <small>(Please Print)</small>	<b>Signing Officer 2:</b> (Insert signature, name and title of other officer if also required to bind Franchisee e.g. "Jane Smith, Title – Treasurer")  Signature: _____ <small>(Please Sign)</small>  Name: _____ <small>(Please Print)</small>  Title: _____ <small>(Please Print)</small>  Date: _____ <small>(Please Print)</small>

### Part 3 - To be completed by Restaurant Guarantors

<b>Guarantors Signatures (Where Guarantors are persons e.g. Mr. John Smith)</b>	
<b>Restaurant Number:</b> _____ (One Restaurant # per Agreement Only)	
<b>Guarantor 1:</b> (Insert signature, name and date of guarantor listed on the restaurant's franchise agreement)  <b>Signature:</b> _____ (Please Sign)  <b>Name:</b> _____ (Please Print)  <b>Date:</b> _____ (Please Print)	<b>Guarantor 2:</b> (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  <b>Signature:</b> _____ (Please Sign)  <b>Name:</b> _____ (Please Print)  <b>Date:</b> _____ (Please Print)
<b>Guarantor 3:</b> (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  <b>Signature:</b> _____ (Please Sign)  <b>Name:</b> _____ (Please Print)  <b>Date:</b> _____ (Please Print)	<b>Guarantor 4:</b> (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  <b>Signature:</b> _____ (Please Sign)  <b>Name:</b> _____ (Please Print)  <b>Date:</b> _____ (Please Print)
<b>Guarantor 5:</b> (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  <b>Signature:</b> _____ (Please Sign)  <b>Name:</b> _____ (Please Print)  <b>Date:</b> _____ (Please Print)	<b>Guarantor 6:</b> (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  <b>Signature:</b> _____ (Please Sign)  <b>Name:</b> _____ (Please Print)  <b>Date:</b> _____ (Please Print)

## Part 4 - To be completed by Restaurant Guarantors

### Guarantors Signatures (Where Guarantors are Corporations or other)

Restaurant Number: \_\_\_\_\_

One Restaurant # per Agreement Only)

Name of Guarantor: \_\_\_\_\_

(Print: Guarantor Company/Legal Entity (which can be found on your most recent franchise agreement for the restaurant)

**Signing Officer 1:** (Insert signature, name and date of officer signing on behalf of the Guarantor)

Signature: \_\_\_\_\_  
(Please Sign)

Name: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_  
(Please Print)

**Signing Officer 2:** (If applicable, insert signature, name and date of other officer signing on behalf of the Guarantor)

Signature: \_\_\_\_\_  
(Please Sign)

Name: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_  
(Please Print)

Name of Guarantor: \_\_\_\_\_

(If Applicable, include other Guarantor Company/Legal Entity (which can be found on your most recent franchise agreement for the restaurant)

**Signing Officer 1:** (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)

Signature: \_\_\_\_\_  
(Please Sign)

Name: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_  
(Please Print)

**Signing Officer 2:** (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)

Signature: \_\_\_\_\_  
(Please Sign)

Name: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_  
(Please Print)

## SCHEDULE 1.2

### MANAGEMENT OF PROGRAM FUNDS

Franchisor is using a centralized approach to manage the movement of Program funds. In this approach, Franchisee must deposit funds from Tim Card loads to Franchisee's bank account. Funds are moved between Franchisee's bank account and a Franchisor-controlled central bank account ("Float Account") on every business day (i.e. Monday to Friday). All fund movements are managed by the Program Provider through its settlement process (described below) on Franchisor's behalf, meaning that the funds are moved by Program Provider between the Franchisee's bank account and the Float account.

The balance on the Float account represents the difference between Tim Card net loads on the one hand, and net redemptions on the other.

All interest and returns on the funds in the Float account are contributed to the Tim's National Advertising Program Inc. i.e. the Adfund on a monthly basis to further support advertising initiatives.

From Franchisee's perspective, the process works as follows:

Customers activate and load a **Tim Card**- that is, a customer comes into a Restaurant and puts for example, \$20 on a **Tim Card**. This represents a deposit to the "Float Account" from the Restaurant's bank account. Other customers come in to purchase product with their cards. This represents a withdrawal from the "Float Account" and becomes a deposit into the Restaurant's bank account to pay for the product.

On every business day the net amount of all the deposits and withdrawals for the day are either pushed or pulled from the "Float Account".

There is a 2 business day processing period on the actual funds movement.

Example 1 of the daily net settlement is as follows:

Total Redemptions (product purchases) for Monday	\$ 500
Total Loads for Monday	\$(300)
Net Settlement deposited to Restaurant's bank on Wednesday	\$ 200

Example 2 of the daily net settlement is as follows:

Total Redemptions (product purchases) for Monday	\$ 300
Total Loads for Monday	\$(500)
Net Settlement withdrawal from Restaurant's bank on Wednesday	\$(200)

#### Reconciliation

- It is Franchisee's obligation to reconcile the amount settled daily (excludes Saturday & Sunday) with the bank statement to ensure the amounts match, in addition to performing the normal end of day reconciliations at the POS terminal level.

### Monthly Fees

- In addition to the daily settlements, there will be a pull from the Franchisee's bank account once a month (on the last Friday) of the following fees: (1) Transaction Fees charged to an individual Restaurant based on the transactions that occur in a Restaurant via the POS (2) Tim Card Transaction fees for web loads (Type 2 Transaction Fees as described in Schedule 2.1) (3) Credit Card transaction fees for web loads. These are further described in Schedule 2.1. These are pooled costs (not Restaurant specific) which are invoiced monthly and spread across the participating Restaurants based on the Restaurant's number of Transactions relative to the total pool of monthly Transactions. To illustrate, if Restaurant 1 has processed 50 transactions for the month and the number of transactions for the month is 5,000 chain-wide, then Store's portion of the monthly bill is 1%.
- Fees are calculated for the month, two months previous to the billing. For example fees for January will be billed the last Friday in March.

It is the Franchisee's obligation to ensure that its bank account contains sufficient funds at all times to cover any "pull" to the Float account (including pulls to cover the daily pull in respect of Tim Card loads, and Transaction Fees and all other fees payable by Franchisee in respect of the Program). Franchisor shall have the right to suspend any net amount owing to Franchisee in the event that Franchisee is in breach of the Franchise agreement.

Also, in order to facilitate the management of the daily and monthly settlements, all participating Franchisees will have to provide their banking information to Tim Hortons USA Inc. in order to initiate EFTs and allow for net settlement as described above.

**SCHEDULE 2.1**  
**PROGRAM FEES**

**FEE SCHEDULE**

**ALL FEES ARE IN CANADIAN DOLLARS AND DO NOT INCLUDE APPLICABLE TAXES. Fees will be charged in Canadian dollars based on a conversion rate set by the Franchisor on a monthly basis.**

The Program Fees below are divided into two categories.

Type 1 Fees are defined as those fees charged to an individual Restaurant based on the transactions that occur in a Restaurant via the POS. Type 1 Fees are included in the daily fees settlement process described in Schedule 1.2

Type 2 Fees are defined as pooled costs (not restaurant specific) which are billed monthly to an individual restaurant based on the amount of Transactions of that individual Restaurant prorated against the total number of Transactions of all participating Tim Hortons restaurants. For example, if a restaurant has processed 50 Transactions for the month and the total number of Transactions for the month in the chain is 5000, then that store will pay 1% of the total shared pooled costs.

Each section below indicates which type of fee is applicable.

**1.) TRANSACTION FEES:**

A “Transaction” is defined as any of the following transactions performed with the Tim Card:

- Activation (initial loading of \$)
- Reload (adding more \$)
- Redemption (buying product)
- Void
- Transaction History Enquiry
- Balance Transfer/Adjustment/Merge
- Report lost/stolen (not available in Restaurant. Customer must call the Help Desk to put hold on Card-Type 2Fee)
- Refund (not available in Restaurant. Customer must call Help Desk to refund Type 2 Fee)

Transaction Fees are charged for all transactions that occur either in the Tim Hortons Restaurants (Type 1 Fee) or by way of the Tim Hortons webpage (Type 2 Fee).

<b>Tier</b>	<b>Annual Transaction Volume</b>	<b>Fee Per Transaction</b>
I	Up to 24,999,999	\$0.03668
II	25,000,000 – 44,999,999	\$0.03623
III	45,000,000 – 69,999,999	\$0.03566
IV	70,000,000 – 99,999,999	\$0.03541
V	100,000,000 – 129,999,999	\$0.03522
VI	130,000,000 – 159,999,999	\$0.03483

VII	160,000,000 – 199,999,999	\$0.03411
VIII	200,000,000 and up	\$0.03382

The above Fees are inclusive of the service fees for the Store reporting tools, daily funds settlement and billing processes.

Transaction volumes are calculated across all stores chain wide per Transaction. At the beginning of the Program, all Tim Hortons stores will start at Tier II pricing (i.e. \$0.03623). If in the first or second years of the Program, the total number of transactions of all Tim Hortons stores exceed the Transaction volumes and reach another Tier, Franchisee will receive a credit equal to difference between the rate applicable for actual Transaction volume and the rate which was applied.

In the third, fourth or fifth years, at the time that we hit the higher Tier, billing will immediately be at the lower rate. For example, if, on September 20 of the third contract year, Tim Hortons reaches 175,000,000 Transactions, the Transactions over 175,000,000 during September would continue to be charged at the Tier VI rate, but starting October 1, the Tier VII pricing would apply.

The first year of the Program will be deemed to end on January 31, 2009. Each subsequent year of the Program will commence on February 1<sup>st</sup> of that subsequent year.

## 2.) CREDIT CARD TRANSACTION FEES FOR WEB LOADS

Credit Card Transaction Fees for Web loads (which is a Type 2 Fee) are based on a % Discount Rate shown in the table below. The “Average Web Load Transaction Size” is calculated monthly by dividing the total volume of VISA and MasterCard Web loads in the previous month by the total number of VISA and MasterCard Web load transactions during that month. The total cost for the month is then calculated as follows:

For VISA: Total Billed Cost = “Average Web Load Transaction Size” x % VISA Discount Rate Fee (corresponding to “Average Web Load Transaction Size” in chart below) x total number of VISA Web Load transactions during the month.

For MasterCard: Total Billed Cost = “Average Web Load Transaction Size” x % MasterCard Discount Rate Fee (corresponding to “Average Web Load Transaction Size” in chart below) x total number of MasterCard Web load transactions during the month.

Average Web Load Transaction Size	MasterCard Discount Rate	VISA Discount Rate
\$10.00 to \$12.49	1.32%	1.65%
\$12.50 to \$14.99	1.26%	1.36%
\$15.00 to \$24.99	1.20%	1.20%
\$25.00 to \$34.99	1.39%	1.39%
\$35.00 to \$44.99	1.50%	1.50%
\$45.00 to \$54.99	1.55%	1.55%
\$55.00 to \$200.00	1.75%	1.75%

The Visa and MasterCard discount rates are subject to change if the underlying rate charged by Visa and/or MasterCard is amended.



Franchisor reserves the right to amend the methods of payment and the participating credit and debit associations.

Fee attributable to services provided in order to authorize, process and settle credit and debit transactions, if any, may be in addition to the fees noted above.

**FIRST DATA PREPAID SERVICES**  
**PARTICIPATION AGREEMENT**  
**(LOCATIONS IN THE UNITED STATES)**

This Participation Agreement, dated as on the last date of the Signature Page below, (this "**Participation Agreement**"), is between ValueLink, LLC, doing business as First Data Prepaid Services ("**FDPS**"), and the individual, corporation, partnership, or other form of legal entity on the Signature Page below, ("**Participating Franchisee**"). Unless otherwise indicated herein, "**Party**" or "**Parties**" refer to FDPS and/or Participating Franchisee.

**RECITALS**

**WHEREAS**, Tim Hortons USA Inc. ("**Tim Hortons USA**") and FDPS entered into that certain Stored Value Card Processing Agreement, dated December 5, 2007 (the "**United States Agreement**"), pursuant to which Tim Hortons USA shall make stored value cards available for sale or other distribution to Tim Hortons USA Customers, which cards can be used to purchase goods and services at Designated Locations ("**Cash Card Program**" or the "**Program**") and FDPS owns and operates a central database that stores specific information relative to each such card and provides authorization of transactions based on the current value of such cards and related services;

**WHEREAS**, Participating Franchisee desires to participate in the Program and Tim Hortons USA has approved Participating Franchisee to participate in the Program; and

**WHEREAS**, Participating Franchisee will engage FDPS to provide, and FDPS has agreed to provide to Participating Franchisee, the Services, as defined below, for the Program in accordance with the terms of this Participation Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual representations, covenants and agreements contained in this Participation Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS; INTERPRETATION**

**1.1 Definitions**

For the purposes of this Participation Agreement, the following commonly-used terms have the meanings set forth below. Certain other terms are defined elsewhere in this Participation Agreement and are used with the meanings there ascribed to them.

- (a) "**Applicable Law**" means any law, rule, statute, regulation, by-law, order, ordinance, protocol, code, guideline, treaty, policy, notice, direction or judicial, arbitral, administrative, ministerial or departmental judgment, award, decree, treaty, directive, or other requirement or guideline published or in force at any time during the Term or Assistance Period which applies to or is otherwise intended to govern

or regulate any Person (including either or both Parties), property, transaction, activity, event or other matter, including any rule, order, judgment, directive or other requirement or guideline issued by any Legislative or Regulatory Authority and Privacy Laws.

- (b) **"Association"** means a group of card issuer banks that facilitates the use of payment cards, such as the systems operated by MasterCard International Inc. and Visa International, Inc. Association also includes Interac and any other debit networks for which Tim Hortons USA's card processor chooses to process.
- (c) **"Business Day"** means any day, Monday to Friday, excluding federal holidays.
- (d) **"Canadian Agreement"** means the Stored Value Card Processing Agreement dated as of June 27, 2007 between The TDL Group Corp. and FDPS, separate from the United States Agreement, with respect to Tim Horton's operations and locations in Canada.
- (e) **"Canadian Participation Agreements"** means all the Participation Agreements executed between FDPS and Tim Horton's Franchisees in Canada.
- (f) **"Card"** means a Tim Hortons USA-issued plastic card with a magnetic stripe or bar code or virtual card that accesses Card Data.
- (g) **"Card Authorization Equipment"** means all POS devices, telecommunications facilities, web interfaces and other equipment operated by Participating Franchisee required for the electronic transmission of Card Data from Designated Locations to FDPS.
- (h) **"Card Data"** means the Card number, Transaction record, transactional history, current value of each Card and, to the extent that such information was provided in any particular Transaction, any associated Tim Hortons USA Customer Information.
- (i) **"Cardholder"** means any Tim Hortons USA Customer possessing or using a Card or Card number.
- (j) **"Cash Card Program"** and **"Program"** have the meaning ascribed to them in the preamble to this Participation Agreement.
- (k) **"Confidential Information"** of a Party means any and all material and/or information of a Party or any of its Affiliates or licensors (the **"Disclosing Party"**) which has or will come into the possession or knowledge of the other Party (the **"Receiving Party"**) in connection with or as a result of entering into this Participation Agreement, including information concerning the Disclosing Party's past, present or future customers, suppliers, technology, or business. For the purposes of this definition, "information" and "material" includes know-how, data, patents, copyrights, trade secrets, specifications, processes, business rules, tools, business processes, techniques, programs, designs, formulae, marketing,

advertising, financial, commercial, sales or programming materials, equipment configurations, System access codes and passwords, software, source code, written materials, compositions, drawings, diagrams, computer programs, studies, works in progress, visual demonstrations, ideas, concepts, and other data, in oral, written, graphic, electronic, or any other form or medium. Without limiting the foregoing, all Tim Hortons USA Customer Information and Card Data will constitute Confidential Information of Tim Hortons USA.

Notwithstanding the foregoing, "Confidential Information" does not include information or material:

- (i) which is publicly available when it is received by or becomes known to the Receiving Party or which subsequently becomes publicly available through no fault of the Receiving Party (but only after it becomes publicly available);
  - (ii) which is already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind;
  - (iii) which is independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party; or
  - (iv) which is received by the Receiving Party in good faith without an obligation of confidence of any kind from a third Person who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received.
- (l) "**Content**" means works, data, text, information, audio, video, graphics, routing scripts, advertisements, graphical user interface elements and designs, photography, and other works, in any form or medium whatsoever.
  - (m) "**Database**" means the information repository software owned and operated by FDPS.
  - (n) "**Designated Location**" means any place (including a store, direct marketing program or Internet site) where Tim Hortons USA, its Affiliates and/or Participating Franchisees issue Cards or accept Transactions using Cards, or authorizes others to issue Cards or accept Transactions using Cards, together with any FDPS call center or IVR.
  - (o) "**Disabling Code**" means any clock, timer, counter, computer virus, worm, Software lock, drop dead device, Trojan horse routine, trap door, time bomb, or any other codes, designs, routines or instructions that may be used to access, modify, replicate, distort, delete, damage or disable any Hardware, Software, System or

Content of Tim Hortons USA, any Tim Hortons USA Affiliate or a Participating Franchisee.

- (p) **"Disclosing Party"** has the meaning ascribed to it in Section 1.1(k).
- (q) **"Documentation"** means instructions, manuals, drawings, notes, charts and other information relating to the development, use, Installation, implementation, integration, configuration, operation, modification, maintenance or support of Hardware or Software.
- (r) **"Enhancements"** means upgrades, updates, modifications or additions, including those resulting in improvements or new features, processes, functions, services or performance metrics.
- (s) **"FDPS"** has the meaning ascribed to it in the preamble to this Participation Agreement.
- (t) **"FDPS Affiliate"** means a legal entity which directly or indirectly owns, controls, is owned by, or is under common ownership or control with FDPS. For this purpose, control means the power, whether by ownership of voting securities, by contract or otherwise, to direct the management and operations of an entity.
- (u) **"FDPS Indemnitees"** means FDPS and FDPS Affiliates and their respective employees, officers, directors, shareholders, contractors, agents and representatives.
- (v) **"FDPS Intellectual Property"** has the meaning ascribed to it in Section 5.1.
- (w) **"Force Majeure"** means an event of fire, flood, earthquake, element of nature or act of God; acts of war, terrorism, rebellions or revolutions, riots, civil disorders or disobedience, acts of vandalism or other unlawful acts; or any other similar event beyond the commercially reasonable control of a Party. The failure of supply of materials or services by third Persons and strikes, lockouts or other industrial disputes will be deemed to be within the commercially reasonable control of the applicable Party and not an event of Force Majeure.
- (x) **"Franchisee"** means a Party operating a Tim Hortons store in the United States being either: (i) Tim Hortons (New England), Inc., the THD Group Partnership or any other Tim Hortons' USA Affiliate; or (ii) the Party operating a Tim Hortons store pursuant to a license agreement or operating agreement with Tim Hortons USA or a Tim Hortons USA Affiliate.
- (y) **"Frustrated Party"** has the meaning ascribed to it in Section 15.1(a).
- (z) **"Hardware"** means hardware, mainframes, personal computers, servers, client/server stations, network equipment, routers, semi-conductor chips, embedded Software, communication lines and other equipment.

- (aa) **"Installation"** means all activities required to be taken in order to render the Card Authorization Equipment operational in accordance with the applicable Specifications, including all assembly, configuration, integration, interconnection and testing, and **"Install"** and **"Installed"** have corresponding meanings.
- (bb) **"Intellectual Property Rights"** means: (i) any and all proprietary rights in any jurisdiction provided under: (a) patent law; (b) copyright law (including moral rights); (c) trade-mark law; (d) design patent or industrial design law; (e) semiconductor chip or mask work law; or (f) any other statutory provision or common law principle applicable to this Participation Agreement, including trade secret law, which may provide a right in either Hardware, Software, Systems, Content, Documentation, Confidential Information, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of such Hardware, Software, Systems, Content, Documentation, Confidential Information, ideas, formulae, algorithms, concepts, inventions, processes or know-how; (ii) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing; and (iii) all licenses and waivers and benefits of waivers of the intellectual property rights set out in 1.1(bb)(i) and (ii) above, all future income and proceeds from the intellectual property rights set out in 1.1(bb)(i) and (ii) above, and all rights to damages and profits by reason of the infringement of any of the intellectual property rights set out in 1.1(bb)(i) and (ii) above.
- (cc) **"Legislative or Regulatory Authority"** means: (i) any federal or state legislature, federal or state government, federal or state governmental department, agency, commission, board, tribunal, dispute resolution panel or body, bureau, official, or court or other law, rule or regulation-making entity; and (ii) any regulatory authority, self-regulatory organization or other entity having or purporting to have jurisdiction over Tim Hortons USA, FDPS or any Person, property, transaction, activity, event or other matter related to this Agreement, including the Associations.
- (dd) **"Losses"** means all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
- (ee) **"Marks"** means trade-marks, service marks, designs, logos, trade names, domain names, meta-tags or other distinguishing features.
- (ff) **"Participating Franchisee Indemnitees"** means Participating Franchisee and its respective employees, officers, directors, shareholders, contractors, agents and representatives.
- (gg) **"Person"** means any individual, corporation, partnership, governmental body, association or unincorporated organization.
- (hh) **"Personal Information"** means information about identifiable individual or other information that is subject to any Privacy Law.

- (ii) **"POS"** means a stand-alone or integrated point of sale terminal (including its operating software), device or system certified to FDPS specifications in order to be able to process certain Transactions with Cards under the Cash Card Program.
- (jj) **"Privacy Laws"** means any federal, provincial or other applicable statute, law or regulation of any Legislative or Regulatory Authority in any jurisdiction relating to the collection, use, storage and/or disclosure of information about an identifiable individual.
- (kk) **"Receiving Party"** has the meaning ascribed to it in Section 1.1(k).
- (ll) **"Services"** means all services provided by FDPS pursuant to this Participation Agreement, including, without limitation, those services described in described in Article 2 of this Participation Agreement and the Termination Assistance Services.
- (mm) **"Software"** means scripts, programs, macros, computer programs, application programming and other interfaces, tools and other instructions and sets of instructions for Hardware to follow, including, without limitation, SQL and other query languages, hyper text mark-up language ("html") and other computer mark-up languages.
- (nn) **"Specifications"** means the attributes, functions and requirements set forth in the specification documentation for the Stored Value Card Processing System.
- (oo) **"Stored Value Card Processing System"** means FDPS' proprietary Transaction processing system, including all Specifications, Hardware, Software, Systems, interfaces and Content owned and/or operated by FDPS to deliver the Services or the Program and including, without limitation, the Database and any Enhancements to any of the above.
- (pp) **"System"** means any combination of Hardware and Software, including any telecommunications lines or other networking devices used to link such combination of Hardware and Software.
- (qq) **"Term"** has the meaning ascribed to it in Article 7.
- (rr) **"Termination Assistance Services"** has the meaning ascribed to it in Section 8.3.
- (ss) **"Tim Hortons USA"** has the meaning ascribed to it in the preamble to this Participation Agreement.
- (tt) **"Tim Hortons USA Affiliate"** means a legal entity which directly or indirectly owns, controls, is owned by, or is under common ownership or control with Tim Hortons USA. For this purpose, control means the power, whether by ownership of voting securities, by contract or otherwise, to direct the management and operations of an entity.

- (uu) **"Tim Hortons USA Customer"** means any customer of Tim Hortons USA, any Tim Hortons USA Affiliate or a Participating Franchisee.
- (vv) **"Tim Hortons USA Customer Information"** means: (i) all Personal Information relating to a Tim Hortons USA Customer, to the extent such information is provided to FDPS, however, all Cards are processed anonymously, and no Personal Information is submitted to the Stored Value Card Processing System unless a Tim Hortons USA Customer specifically provides Personal Information pursuant to the Services provided by FDPS in the Addenda to this Participation Agreement; and (ii) any and all other information relating to a Tim Hortons USA Customer: (a) that was provided, collected or generated as part of the use or operation of the Stored Value Card Processing System or the provision of the Services or in order to comply with any Applicable Law; or (b) that otherwise became known to either Party as a result of the provision by FDPS of the Services.
- (ww) **"Transaction"** has the meaning ascribed to it in Exhibit A.
- (xx) **"Transaction Fees"** has the meaning ascribed to it in Exhibit A.
- (yy) **"United States Participation Agreements"** means all the Participation Agreements executed between FDPS and Tim Hortons' Franchisees in the United States.

## 1.2 Interpretation

References to any statute or regulations means such statute or regulations as amended at the time and include any successor legislation or regulations. Except as otherwise stated, reference to articles, sections, exhibits and addenda mean the articles, sections, exhibits and addenda of this Participation Agreement. The exhibits and addenda of this Participation Agreement are hereby incorporated by reference into and will be deemed a part of this Participation Agreement. Unless the context requires otherwise, words importing the singular include the plural and *vice versa* and words importing gender include all genders. The terms "including" and "include" will mean "including, without limitation" and "include, without limitation", respectively.

## 1.3 Currency

Unless otherwise indicated herein, all amounts referred to in this Participation Agreement and the Exhibits hereto are in Canadian dollars.

## ARTICLE 2 FDPS RESPONSIBILITIES

FDPS will provide the following Services in connection with Cash Card Program:

### 2.1 Database

FDPS will maintain a Database of Card Data.



## **2.2 Authorization**

FDPS will respond to Transaction authorization requests and process Transactions received by the Stored Value Card Processing System (“**Authorization**”). For successful Authorizations, FDPS will adjust the Card balance by the amount authorized. Authorizations for Transactions initiated from the POS or on-line will be provided in real time; Authorizations of Transactions other than from the POS or on-line will be provided through batch processing. Authorizations will be based on the available Card balance recorded in the Database. FDPS is not responsible for determining whether Transactions are fraudulent, improper or otherwise unauthorized, however, FDPS is responsible for any improper Authorization, resulting from any error in the Database.

## **2.3 IVR; Call Center**

- (a) **Interactive Voice Response System:** FDPS will operate an automated interactive voice response system (“**IVR**”) for use by Cardholders, Tim Hortons USA, Tim Hortons USA Affiliates and Participating Franchisees. The IVR is accessible through a toll free telephone number, twenty-four (24) hours per day, seven (7) days per week, for the processing of Transactions as specified by Tim Hortons USA.
- (b) **Call Center:** FDPS will staff a call center with live operators twenty-four (24) hours per day, seven (7) days per week (Christmas Day excluded), for the resolution of Cardholder and store level inquiries and processing of Transactions as specified by Tim Hortons USA.
- (c) **Franchisee Support Help Desk:** FDPS will also staff a help desk with live operators, Monday through Friday, from 8:00 am to 8:00 pm ET, excluding holidays, through a toll free telephone number that will be provided to Tim Hortons USA and the Participating Franchisees. Operators shall provide customer support, notably in reporting and reconciliation related to the Settlement Services. Accordingly, the Franchise Support Help Desk operators shall have access to FDPS’ Settlement Services web-based tool to respond to any Participating Franchisee’s ACH inquiries.

## **2.4 Settlement and Funds Movement**

FDPS will provide the settlement and funds movement services as set forth in Exhibit B to this Participation Agreement.

### **ARTICLE 3 TIM HORTONS USA RESPONSIBILITIES**

#### **3.1 Distribution; Card Authorization Equipment**

Tim Hortons USA will recommend the Program to its Franchisees. Tim Hortons USA will distribute all Cards for use in the Program to Participating Franchisees through the distribution channels, as arranged by Tim Hortons USA. Participating Franchisee shall provide and maintain: (i) all Card Authorization Equipment required for Participating Franchisees to electronically transmit Card Data from Designated Locations to FDPS; and (ii) any development, programming or other

modifications to the Card Authorization Equipment as necessary to access and use the Services and Stored Value Card Processing System.

### **3.2 Program Procedures**

The processes and procedures by which Tim Hortons USA issues Cards and enables use of Cards at Designated Locations are also part of the Program. Tim Hortons USA is solely responsible for defining those processes and procedures, including those relating to the selling and accepting of Cards, handling merchandise returns and/or refunds, assessing service fees, and resolving disputes with Cardholders (collectively, "Program Procedures") and communicating such Program Procedures to Participating Franchisees.

### **3.3 ACH and EFT Settlement and Funds Movement**

- (a) Participating Franchisee is responsible for all settlement obligations arising from Transactions provided under the Program as set forth in Exhibit B hereto.

## **ARTICLE 4 CARD PRODUCTION AND ISSUANCE**

### **4.1 Card Production**

Participating Franchisee will obtain all Cards for the Program from Tim Hortons USA or its designee, Participating Franchisee acknowledges that Tim Hortons USA is responsible for the control and distribution of Cards to Participating Franchisee under the Program.

### **4.2 Card Issuance**

Tim Hortons USA will be the issuer of all Cards issued under the Program, with respect to all Cards that are sold at Designated Locations. Participating Franchisee shall obtain from Tim Hortons USA information with respect to the terms and conditions for the use of Cards (the "Card Terms") containing information as required by Applicable Law, including without limitation, any fees or charges associated with Transactions or inactivity, procedures to report lost or stolen Cards (if any), minimum or maximum Transaction amounts, Tim Hortons USA's policy concerning whether lost or stolen Cards will be replaced, whether the Card is redeemable for cash, and any expiration period for the Card, if applicable. Participating Franchisee will provide the Card Terms to Cardholders at Designated Locations, or in such other manner as required by Applicable Law.

## **ARTICLE 5 OWNERSHIP OF INTELLECTUAL PROPERTY**

### **5.1 Ownership of FDPS Intellectual Property**

Except as otherwise provided in the United States Agreement, Participating Franchisee acknowledges and agrees that, as between Participating Franchisee and FDPS, FDPS will own all Intellectual Property Rights in all Specifications, Hardware, Software, Systems, Documentation, Content, Marks, Confidential Information or other intellectual property (including business rules and business processes) developed by FDPS, developed for FDPS by another Person, or otherwise

provided to Participating Franchisee or used by FDPS in connection with FDPS' performance of its obligations pursuant to this Participation Agreement (the "FDPS Intellectual Property"). Participating Franchisee will acquire no rights to any FDPS Intellectual Property other than the rights expressly granted in Section 5.2.

#### **5.2 Grants of Licenses by FDPS to Participating Franchisee**

- (a) Subject to the terms and conditions of this Participation Agreement, FDPS grants to Participating Franchisee a nonexclusive, non-transferable right to use FDPS Intellectual Property, including any product or System which uses or incorporates FDPS Intellectual Property in connection with:
  - (i) the performance of its obligations under the Participation Agreement, including the right to develop a software interface between the Database and Participating Franchisee's Card Authorization Equipment, when approved by Tim Hortons USA;
  - (ii) the use and receipt by Participating Franchisee of the Services; or
  - (iii) the operation or marketing of the Program by Participating Franchisee.

#### **5.3 License Restriction**

Participating Franchisee will not copy, modify, distribute, display, rent, reverse engineer, decompile, create derivative works of, or disassemble the Specification, nor will Participating Franchisee allow anyone else to do so, except to the extent necessary for Participating Franchisee to exercise its rights and benefit from the Services and Program under this Participation Agreement or as permitted by Applicable Law.

### **ARTICLE 6 FEES; PAYMENT**

#### **6.1 Responsibility for Fees**

Transaction Fees owed by each Participating Franchisee will be collected by FDPS through the settlement process as further defined and set forth in Exhibit A.

### **ARTICLE 7 TERM**

This Participation Agreement begins when it is signed by both Parties and continues unless terminated as provided in Article 8 or for as long as the United States Agreement is in effect, which period shall be considered the "Term".

**ARTICLE 8  
TERMINATION**

**8.1 Participating Franchisee Termination Rights**

- (a) Participating Franchisee may terminate this Participation Agreement for cause, only with the prior written approval of Tim Hortons USA, by providing written notice to FDPS if:
  - (i) Participating Franchisee exercises its right of termination pursuant to a section of this Participation Agreement giving Participating Franchisee a right to terminate;
  - (ii) FDPS commits a material breach of this Participation Agreement and does not cure that breach within thirty (30) days of receipt of written notice from Participating Franchisee;
  - (iii) FDPS commits a material breach of this Participation Agreement and such breach is not capable of being cured;
  - (iv) upon the discontinuance or suspension of the business of FDPS, or where FDPS is adjudicated insolvent, or admits in writing its inability to pay its debts when due, or consents to an involuntary petition pursuant to any bankruptcy, reorganization or insolvency law of any jurisdiction or country, or if FDPS applies for, or consents to the appointment of a receiver or trustee; or
  - (v) any law or regulatory requirement applicable to Participating Franchisee comes into force that precludes Participating Franchisee from participating in the Program or using the Stored Value Card Processing System.

**8.2 FDPS Termination Rights**

- (a) FDPS may terminate this Participation Agreement for cause by providing written notice to Participating Franchisee if:
  - (i) Participating Franchisee commits a fundamental breach of this Participation Agreement and does not cure that breach within thirty (30) days of receipt of written notice from FDPS;
  - (ii) if Participating Franchisee fails to pay any undisputed amount due within fifteen (15) Business Days after receipt of notice from FDPS of the default in payment with respect to such amount due; or
  - (iii) upon the discontinuance or suspension of the business of Participating Franchisee, or where Participating Franchisee is adjudicated insolvent, or admits in writing its inability to pay its debts when due, or consents to an involuntary petition pursuant to any bankruptcy, reorganization or insolvency

law of any jurisdiction or country, or if Participating Franchisee applies for, or consents to the appointment of a receiver or trustee.

- (iv) upon termination or expiration of Participating Franchisee's franchise or license agreement with Tim Hortons USA or a Tim Hortons USA Affiliate;
- (v) upon termination or expiration of the United States Agreement and/or the Canadian Agreement; or
- (vi) if Tim Hortons USA instructs FDPS to terminate the Participation Agreement.

### **8.3 Termination Assistance Services**

Upon notice from Tim Hortons USA following the expiration or termination of this Participation Agreement, at no additional charge to Participating Franchisee, FDPS will provide termination assistance services to Participating Franchisee as instructed by Tim Hortons USA or otherwise as reasonably required in connection with Participating Franchisee's transition from the Services (the "Termination Assistance Services"). Participating Franchisees shall immediately return any and all FDPS Intellectual Property, Content, Software and/or Specifications in the possession of the Participating Franchisee upon such expiration or termination.

## **ARTICLE 9 EXCLUSIVITY**

During the Term of this Participation Agreement, FDPS will be the exclusive provider to Participating Franchisee of processing services for a stored value card that is branded solely for the Tim Hortons brand and accepted at Designated Locations. Nothing in the foregoing will restrict or prohibit Participating Franchisee from accepting any Visa, MasterCard, American Express, Discover or other universally accepted prepaid, credit or debit card or from participating in any "open network" gift card program with other merchants or third parties. An "open network" program refers to a program in which a single card is accepted by more than one unaffiliated merchants or third parties.

## **ARTICLE 10 CONFIDENTIALITY**

### **10.1 Confidentiality Covenant**

- (a) Each Party agrees that, in its capacity as a Receiving Party, it will not use Confidential Information of the Disclosing Party for any purpose, other than as may be reasonably necessary for the performance of its duties pursuant to this Participation Agreement, without the Disclosing Party's prior written consent.
- (b) Each Party agrees that, in its capacity as a Receiving Party:

- (i) it will not disclose to any third party or use any Confidential Information of the Disclosing Party except as expressly permitted in this Participation Agreement; and
  - (ii) it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the Disclosing Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance.
- (c) FDPS may disclose Confidential Information of Participating Franchisee:
- (i) to the extent required by a court of competent jurisdiction or other Legislative or Regulatory Authority or otherwise as required by Applicable Law, provided that FDPS must first give Participating Franchisee prompt notice (except where the Legislative or Regulatory Authority has expressly ordered that no notice be given) and must make reasonable efforts to obtain a protective order; or
  - (ii) on a "need-to-know" basis under an obligation of confidentiality no less stringent than those contained herein to its Affiliates, agents, consultants, subcontractors, internal and external auditors, accountants, banks and other financing sources, professional advisors and potential assignees or successors of FDPS.
- (d) Notwithstanding the foregoing, Participating Franchisee may disclose Confidential Information of FDPS:
- (i) to the extent required by a court of competent jurisdiction or other Legislative or Regulatory Authority or otherwise as required by Applicable Law, provided that Participating Franchisee must first give FDPS prompt notice (except where the Legislative or Regulatory Authority has expressly ordered that no notice be given) and must make reasonable efforts to obtain a protective order;
  - (ii) on a "need-to-know" basis under an obligation of confidentiality no less stringent than those contained herein to Tim Hortons USA, Tim Hortons USA Affiliates', agents, consultants, subcontractors, internal and external auditors, accountants, banks and other financing sources or professional advisors.
- (e) The terms and conditions of this Participation Agreement will be deemed to be the Confidential Information of each Party and, except as expressly permitted in this Participation Agreement, will not be disclosed without the written consent of the other Party.
- (f) Each Party acknowledges that its failure to comply with the provisions of this Article 10 may cause irreparable harm to the other Party which cannot be adequately compensated for in damages, and accordingly acknowledges that the

other Party will be entitled to claim, in addition to any other remedies available to it, interlocutory and permanent injunctive relief to restrain any anticipated, present or continuing breach of this Article 10.

## **ARTICLE 11 REPRESENTATIONS AND WARRANTIES**

### **11.1 Mutual Representations and Warranties**

- (a) Each Party represents and warrants to and covenants with the other Party as follows:
  - (i) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and it has the corporate capacity to enter into this Participation Agreement and to perform each of its obligations hereunder;
  - (ii) it has duly authorized, executed and delivered this Participation Agreement and this Participation Agreement constitutes a legally valid and binding obligation of it enforceable against it in accordance with its terms except as such enforcement may be limited by Applicable Law; and
  - (iii) the execution and delivery of this Participation Agreement by the Party does not, and the performance of its obligations pursuant to this Participation Agreement by the Party and the consummation of the transactions contemplated hereby and thereby will not: (x) violate or conflict with the Articles of Incorporation or By-Laws of the Party; or (y) violate any Applicable Law.

### **11.2 Additional FDPS Representations and Warranties**

- (a) FDPS represents and warrants to Participating Franchisee as follows:
  - (i) FDPS will perform its obligations hereunder in a professional and workmanlike manner and in accordance with applicable industry standards;
  - (ii) the Stored Value Card Processing System will not contain any Disabling Code;
  - (iii) the Database will operate in accordance with the Specifications therefor and FDPS will perform the Services in a manner that meets or exceeds the Service Levels (as defined in the United States Agreement, measured in the aggregate of all Franchisees participating in the Cash Card Program chain wide);
  - (iv) FDPS will not infringe upon the Intellectual Property Rights or other rights of any Person in the performance of its obligations under this Participation Agreement; and

- (v) the FDPS Intellectual Property does not infringe the Intellectual Property Rights of any Person.

## **ARTICLE 12 INDEMNIFICATION**

### **12.1 General**

Subject to the limitations set forth in Article 13, each Party will indemnify the other Party's indemnitees (the Participating Franchisee Indemnitees or the FDPS Indemnitees, as applicable) from and against any and all Losses resulting from or arising out of the indemnifying Party's failure to comply with this Participation Agreement.

### **12.2 FDPS Indemnities**

- (a) FDPS will defend, indemnify and hold the Participating Franchisee Indemnitees harmless from all Losses suffered or incurred by any of the Participating Franchisee Indemnitees as a result of any of the following:
  - (i) any breach of any representation, warranty, covenant or agreement made by FDPS in this Participation Agreement;
  - (ii) any claim, suit, action or proceeding by a Person alleging that the Stored Value Card Processing System or the Services or their use by Participating Franchisee infringes any Intellectual Property Rights of any Person;
  - (iii) any death or bodily injury, sickness, disease or injury of any kind, of any: (a) Participating Franchisee or FDPS employee, agent or representative; (b) Tim Hortons USA Customer; or (c) other Person, in each case to the extent caused by any act or omission of FDPS;
  - (iv) any claim, suit, action or proceeding alleging that Participating Franchisee has breached its obligations to any Person to the extent such breach is directly attributable to any act or omission of FDPS or any current or former FDPS Personnel; or
  - (v) any negligence, gross negligence or willful misconduct on the part of FDPS, whether as a result of an act or of an omission of FDPS or any Person for whom FDPS is responsible hereunder, including any crime, fraudulent or dishonest acts committed by FDPS or any current or former FDPS Personnel, acting alone or in collusion with others.



**ARTICLE 13**  
**LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES.**

**13.1 Limitation**

- (a) SUBJECT TO SECTION 13.2, EACH PARTY WILL BE LIABLE TO THE OTHER WITH RESPECT TO THIS AGREEMENT AND ANY OTHER OBLIGATIONS RELATED THERETO ONLY FOR DIRECT DAMAGES AND IN AN AMOUNT NOT TO EXCEED
  - I. WITH RESPECT TO FDPS \$10,000,000, WHICH AMOUNT SHALL INCLUDE ALL CLAIMS PURSUANT TO THIS AGREEMENT, THE UNITED STATES AGREEMENT, THE CANADIAN AGREEMENT AND ALL UNITED STATES PARTICIPATION AGREEMENTS AND ALL CANADIAN PARTICIPATION AGREEMENTS; AND
  - II. WITH RESPECT TO PARTICIPATING FRANCHISEE, \$25, 000.
- (b) SUBJECT TO SECTION 13.2, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS, LOST BUSINESS OPPORTUNITIES, LOST REVENUES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY THE AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

**13.2 Exclusions**

- (a) SECTION 13.1 WILL NOT APPLY TO LIMIT: (I) THE LIABILITY OF EITHER PARTY FOR A BREACH OF SECTION 10.1; (II) FDPS' LIABILITY OR OBLIGATIONS UNDER SECTION 12.2(a)(ii); OR (III) THE LIABILITY OF EITHER PARTY FOR LOSSES SUFFERED AS A RESULT OF THE INDEMNIFYING PARTY'S GROSS NEGLIGENCE, WILFUL MISCONDUCT OR FRAUD, INCLUDING, IN THE CASE OF FDPS, THE CESSATION OF ANY SERVICES.
- (b) THIS SECTION 13.2 WILL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND OR CLAIM, INCLUDING BUT NOT LIMITED TO, BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH), NEGLIGENCE, TORT OR ANY OTHER LEGAL THEORY, AND WILL SURVIVE A FUNDAMENTAL BREACH OR BREACHES AND/OR FAILURE OF ESSENTIAL PURPOSE OF THIS AGREEMENT OR OF ANY REMEDY CONTAINED HEREIN.

### **13.3 Pre-condition to Liability**

Prior to bringing any claim against FDPS under this Participation Agreement, Participating Franchisee shall provide Tim Hortons USA with written notice detailing the claim ("Notice of Claim"), and Tim Hortons USA shall have the right to pursue such claim on Participating Franchisee's behalf by providing Participating Franchisee with written notice of the same. If Tim Hortons USA elects to pursue such claim on Participating Franchisee's behalf, Participating Franchisee may participate in the claim with Tim Hortons USA at Participating Franchisee's election. Any resolution of a claim brought by Tim Hortons USA on Participating Franchisee's behalf shall be binding on Participating Franchisee. If Tim Hortons USA elects not to pursue such claim on Participating Franchisee's behalf, Participating Franchisee may pursue such claim on its own behalf, subject to Tim Hortons USA's prior written consent.

### **13.4 Disclaimer**

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF EITHER PARTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY.

## **ARTICLE 14 COMPLIANCE WITH LAW**

### **14.1 Participating Franchisee Compliance with Applicable Law**

Participating Franchisee will perform its obligations under this Participation Agreement in compliance with all Applicable Laws, which compliance will, in each case, include identifying, procuring and complying with all permits, licenses, certificates, consents, approvals, inspections and requirements or directives of any applicable Legislative or Regulatory Authority. If Participating Franchisee receives notice of an allegation by any Legislative or Regulatory Authority that Participating Franchisee, FDPS or any FDPS Affiliate has failed to comply with any Applicable Law in connection with the performance of its obligations under this Agreement, or if Participating Franchisee otherwise becomes aware that Participating Franchisee, FDPS or any FDPS Affiliate may have failed or may in the future fail to comply with any Applicable Law in connection with the performance of its obligations under this Agreement, then Participating Franchisee will immediately provide written notice to FDPS.

### **14.2 FDPS Compliance with Applicable Law**

FDPS will perform its obligations under this Participation Agreement in compliance with all Applicable Laws, which compliance will, in each case, include identifying, procuring and complying with all permits, licenses, certificates, consents, approvals, inspections and requirements or directives of any applicable Legislative or Regulatory Authority. If FDPS receives notice of an allegation by any Legislative or Regulatory Authority that FDPS, or Participating Franchisee has failed to comply with any Applicable Law in connection with the performance of its obligations under this Participation Agreement, or if FDPS otherwise becomes aware that FDPS or Participating Franchisee may have failed or may in the future fail to comply with any Applicable Law in

connection with the performance of its obligations under this Participation Agreement, then FDPS will immediately provide written notice to Participating Franchisee.

#### **14.3 Compliance with Privacy Laws**

To the extent Tim Hortons USA Customer Information is provided to FDPS, FDPS will collect, use, dispose of and otherwise handle such Tim Hortons USA Customer Information collected or accessible to FDPS in the course of performing FDPS' obligations hereunder in accordance with all applicable Privacy Laws FDPS will collect, use, dispose of and otherwise handle Tim Hortons USA Customer Information solely for the purpose of performing the Services.

### **ARTICLE 15 MISCELLANEOUS**

#### **15.1 Force Majeure**

- (a) If, by reason of Force Majeure, either Party (the "Frustrated Party") is delayed or unable, in whole or in part, to perform or comply with any of its obligations under this Participation Agreement, then, subject to the remainder of this Section 15.1 it will be relieved of liability and will not suffer prejudice for failing to perform to the extent that the inability was caused by Force Majeure (except in respect of the rights of termination granted pursuant to Section 15.1(b)), provided that it gives to the other Party prompt detailed notice of such inability. The Frustrated Party will only be relieved from performance from and after the giving of such notice. In the event of a Force Majeure, the Frustrated Party will forthwith establish and implement a workaround plan that minimizes the disruption to the other Party and will use commercially reasonable efforts to remedy the situation and remove the cause of its inability to perform as soon as possible. The Frustrated Party will give the other Party prompt notice of the cessation of Force Majeure. Participating Franchisee will have no obligation to pay the applicable fees during the period in which any of the Services are unavailable by reason of the Force Majeure.
- (b) Notwithstanding the foregoing, Participating Franchisee will have the right to terminate this Participation Agreement, forthwith upon notice to FDPS, if FDPS has failed to perform any of its obligations for a total of thirty (30) calendar days as a result of one or more events of a Force Majeure or if, as a result of a Force Majeure FDPS fails to perform any Services in any material respect and such failure is not reasonably capable of being cured within thirty (30) calendar days after such occurrence.

#### **15.2 Notices**

Notices will be effective upon receipt if they are received in writing, by registered or certified mail, postage prepaid, return receipt requested or by overnight delivery to the President and General Counsel of the other Party at its address set forth below.

### **15.3 Relationship of the Parties; Third Party Beneficiaries**

The Parties are independent contractors. Neither Party will have any authority to bind the other. This Participation Agreement is entered into solely for the benefit of FDPS and Tim Hortons USA, and will not confer any rights upon any person not expressly a party to this Participation Agreement, including Cardholders.

### **15.4 Subcontractors**

FDPS may not subcontract with third Persons to provide Services, except as provided in the United States Agreement.

### **15.5 Assignment**

FDPS may not assign all or any part of its rights or obligations under this Participation Agreement without the prior written consent of Tim Hortons USA, which may be arbitrarily withheld. FDPS may, however, assign any or all of its rights or delegate any or all of its obligations to an entity acquiring all or substantially all of its assets, or to FDPS Affiliate. Participating Franchisee may not assign all or any part of its rights or obligations under this Participation Agreement without the prior written consent of FDPS and Tim Hortons USA.

### **15.6 Governing Law**

The laws of the State of New York, excluding its rules on conflicts of laws, will govern this Participation Agreement.

### **15.7 Arbitration**

All Disputes which remain unresolved following their referral to the Dispute Resolution Procedure, will be submitted to the American Arbitration Association (the "AAA") for resolution before a panel consisting of one arbitrator. Arbitration will be conducted in accordance with the Commercial Arbitration Rules of the AAA then in effect. The decision of the arbitrators will be binding upon the Parties. Judgment upon any arbitration award or decision may be entered in any court having jurisdiction. Arbitration will be held in state in which the disputing party resides. Each Party will pay its own arbitration expenses and one-half of the fee of the arbitrators and the administrative fee of the AAA. The Federal Rules of Evidence will apply to such arbitration. The arbitrators will be required to render a decision based on the terms of this Participation Agreement and applicable law.

### **15.8 Complete Participation Agreement**

This Participation Agreement, including all Exhibits and Addenda attached hereto and incorporated herein by reference, is the complete and exclusive understanding of the Parties with respect to its subject matter. It supersedes all prior and contemporaneous proposals, understandings and communications among the Parties whether oral or written.

### **15.9 Waiver; Amendment**

To be effective, any waiver by a Party of any of its rights or any other Party's obligations under this Participation Agreement must be made in a writing signed by the Party to be charged with the waiver. No failure or forbearance by any Party to insist upon or enforce performance by any other Party of any of the provisions of this Participation Agreement or to exercise any rights or remedies under this Participation Agreement or otherwise at law or in equity will be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision, right, or remedy in that or any other instance; rather, the same will be and remain in full force and effect. A Party's waiver of a breach of any term will not be a waiver of any subsequent breach of the same or another term. The Parties may only modify or amend this Participation Agreement by a written instrument executed by a duly authorized representative of each Party.

### **15.10 Severability**

Every provision of this Participation Agreement is severable. If any provision of this Participation Agreement is held to be invalid, illegal, void or unenforceable by reason of any judicial decision, then such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision, and all other provisions of this Participation Agreement will nevertheless remain in full force and effect. In such case, the Parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

### **15.11 Survival**

Articles 5, 6 (as to fees accrued through the date of termination), 10, 11, 12, 13, 14 and 15, Section 8.3 and Exhibit A will survive termination of this Participation Agreement.

### **15.12 Counterparts**

This Participation Agreement may be executed in counterparts, each of which will be deemed an original for all purposes, but all of which when taken together will constitute one Participation Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.**

**SIGNATURE PAGE IMMEDIATELY FOLLOWS.**

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties have caused this Participation Agreement to be executed by their authorized representatives as of the date set forth below.

INSERT CORPORATE NAME AND ADDRESS OF PARTICIPATING FRANCHISEE (FROM YOUR MOST RECENT LICENSE AGREEMENT WITH TIM HORTONS USA) BELOW:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ValueLink, LLC**  
6200 South Quebec Street, Suite 310  
Greenwood Village, Colorado 80111

**Signature:** \_\_\_\_\_  
I HAVE THE AUTHORITY TO BIND THE PARTICIPATING FRANCHISEE

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_  
INSERT NAME OF OFFICER AUTHORIZED TO SIGN ON BEHALF OF PARTICIPATING FRANCHISEE

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

**Title:** \_\_\_\_\_  
INSERT TITLE OF OFFICER AUTHORIZED TO SIGN ON BEHALF OF PARTICIPATING FRANCHISEE

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

**Date:** \_\_\_\_\_  
INSERT THE DATE ON WHICH THIS AGREEMENT IS SIGNED

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

**Store Number:** \_\_\_\_\_  
INSERT STORE NUMBER

**Store Address:** \_\_\_\_\_  
INSERT THE MUNICIPAL STORE ADDRESS BELOW

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**FEE SCHEDULE**

**ALL FEES ARE IN CANADIAN DOLLARS AND DO NOT INCLUDE APPLICABLE TAXES.**

**FURTHER DETAIL WITH RESPECT TO THE ALLOCATION OF THE FEES AMONGST TIM HORTONS STORES CAN BE FOUND IN YOUR TIM CARD ADDENDUM WHICH YOU ARE SIGNING WITH TIM HORTONS USA OR ITS AFFILIATE.**

**TRANSACTION FEES:**

“Transaction” is defined as any of the following transactions performed with a Card:

- Activation
- Reload
- Redemption
- Void
- Transaction History Enquiry
- Balance Transfer/Adjustment/Merge
- Report lost/stolen Card (Not available in store. Cardholder must call the Help Desk)
- Refund (Not available in store. Cardholder must call Help Desk)

Transaction Fees are charged for all transactions that occur in any Designated Location, including, but not limited to, a Tim Hortons store, or the Tim Hortons website.

<b>Tier</b>	<b>Annual Transaction Volume</b>	<b>Total Transaction Fees</b>
I	Up to 24,999,999	\$0.03668
II	25,000,000 – 44,999,999	\$0.03623
III	45,000,000 – 69,999,999	\$0.03566
IV	70,000,000 – 99,999,999	\$0.03541
V	100,000,000 – 129,999,999	\$0.03522
VI	130,000,000 – 159,999,999	\$0.03483
VII	160,000,000 – 199,999,999	\$0.03411
VIII	200,000,000 and up	\$0.03382

The above Transaction Fees are inclusive of service fees in the amount of \$0.0099 for the settlement reporting tools, daily funds settlement (through the ACH process) and billing processes.

Transaction volumes are calculated across all stores chain wide per Transaction. For purposes of measuring Transaction volumes in accordance with this Exhibit A, Transactions performed under the

**PARTICIPATION AGREEMENT (LOCATIONS IN THE UNITED STATES)  
ACH - SCHEDULED**

US Agreement will be aggregated with the Transactions performed under the Canadian Agreement during the applicable measurement period and included in the computation of the annual Transaction volume. At the beginning of the Program, all Tim Hortons stores will start at Tier II pricing (i.e. \$0.03623). If in the first or second years of the Program, the total number of transactions of all Tim Hortons stores exceed the Transaction volumes and reach another Tier, Participating Franchisee will receive a credit equal to difference between the rate applicable for actual Transaction volume and the rate which was applied.

In the third, fourth or fifth years, at the time the higher Tier level is achieved, billing will be at the lower Tier rate on the first day of month following that in which the higher Tier was achieved. For example, if, on September 20 of the third contract year, the aggregate chain wide transaction volume reaches 175,000,000 Transactions, the Transactions over 175,000,000 during September would continue to be charged at the Tier VI rate, but starting October 1, the Tier VII pricing would apply.

The first year of the Program will be deemed to end on January 31, 2009, and until such time Tier II transaction pricing shall apply. Each subsequent year of the Program will commence on the anniversary thereof.

**IVR AND CALL CENTER FEES:**

To determine IVR Fees, FDPS tracks each call length in the number of seconds from the point of connection to the point of disconnection on the IVR. If the duration of the call is less than thirty (30) seconds, the call is considered to have duration of thirty (30) seconds. If the duration of the call is thirty (30) seconds or greater, the actual duration of the call, in seconds, is recorded. On a monthly basis, FDPS converts the total aggregate seconds of all calls into minutes by dividing such total by sixty (60).

To determine Call Center Fees, FDPS tracks each call length in the number of seconds from the time a live agent picks up the call following the caller's transfer from the IVR to the time the call is ended. On a monthly basis, FDPS converts the total aggregate seconds of all calls into minutes by dividing such total by sixty (60).

IVR and Call Center fees are additional to any applicable Transaction Fees for Transactions initiated through the IVR or Call Center. IVR and Call Center fees will be invoiced monthly.

	<b>IVR</b>	<b>CALL CENTER</b>
<b>FEE PER MINUTE</b>	\$0.2825	\$1.40

**FRANCHISE SUPPORT HELP DESK FEES:**

Franchisee Support Help Desk Fees are based on a per minute fee specific to the support and assistance to Participating Franchisees with inquiries including: Funds settlement, reconciliation and reporting; Franchisee status changes; POS support (as applicable); and miscellaneous Franchisee customer support.



To determine Franchisee Support Help Desk Fees, FDPS tracks each call length in the number of seconds from the time a live agent picks up the call to the time the call is ended. Time spent by a caller on hold will be chargeable, provided that the Franchisee Support Help Desk will not put a caller on hold in order to accept another call. On a monthly basis, FDPS converts the total aggregate seconds of all calls into minutes by dividing such total by sixty (60).

	<b>FRANCHISE SUPPORT HELP DESK</b>
<b>FEE PER MINUTE</b>	<b>\$1.40</b>

**EXHIBIT B**

**ACH (Debit and Credit) Authorization**

By providing the information requested below and signing this ACH Authorization, the undersigned Participating Franchisee hereby:

1. Authorizes Tim Hortons USA (or a Tim Hortons USA Affiliate) and FDPS, acting on behalf of Tim Hortons USA, to initiate ACH debit and credit entries to the deposit account indicated below, and to debit and credit the same to such account, as necessary or appropriate to effect any Card Transactions and all adjustments and corrections thereto, and as necessary or appropriate to effect any other transfer contemplated by the Participation Agreement, including, without limitation, any Transaction Fees;
2. In the event that any debit to the deposit account is returned for any reason, Participating Franchisee authorizes Tim Hortons USA and FDPS, acting on behalf of Tim Hortons USA, to initiate a debit to the account for the original debit amount plus any associated returned item fees; and
3. Certifies that the authorized officer indicated below has the authority to bind Participating Franchisee, and that this ACH Authorization constitutes a writing signed by Participating Franchisee.

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

Account No.: \_\_\_\_\_

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

Transit No: \_\_\_\_\_

Bank ID: \_\_\_\_\_

**PLEASE ATTACH VOIDED CHECK**

Capitalized terms used herein without definition shall have the meaning provided to such terms in the Participation Agreement.

The undersigned hereby acknowledges that it has received a copy of the ACH Settlement Process, attached hereto as Schedule 1, and acknowledges and agrees that the Schedule is part of the Participation Agreement. Without limiting the foregoing, the undersigned agrees to comply with and be bound by the rules and regulations of the National Automated Clearing House Association in effect from time to time.

This authorization is to remain in full force and effect until the Participation Agreement has terminated and Tim Hortons USA has received written notification in such time and in such manner as to afford Tim Hortons USA and FDPS, and the bank indicated above a reasonable opportunity to act on it. No such termination shall relieve the undersigned of any obligations or liabilities that accrue or relate to events that have occurred prior to such termination.

**Authorization and Agreement:**

Participating Franchisee: \_\_\_\_\_

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

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

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

E-Mail Address: \_\_\_\_\_

Company Taxpayer ID #: \_\_\_\_\_

**Schedule 1**

**To Exhibit B**

**ACH SETTLEMENT PROCESS**

1. **Additional Definitions.** For purposes of this Schedule 1, the following additional definitions shall apply:

“**Business Day**” means Monday through Friday, excluding any holidays recognized by Federal law. All time period references in the Participation Agreement to “days” other than Business Days shall be deemed to refer to calendar days.

“**Participating Franchisee Account**” means an account of each Participating Franchisee, as designated by Tim Hortons USA from time to time.

“**Processing Date**” means a Business Day during each calendar week, as designated by FDPS from time to time.

“**Tim Hortons USA Account**” means the account of Tim Hortons USA.

2. **Originating Depository Financial Institution.** FDPS shall provide a bank or other financial institution for the purpose of originating ACH transactions (“**Originating Depository Financial Institution**” or “**ODFI**”).
3. **Settlement of Funds.** FDPS will facilitate the settlement of funds among Tim Hortons USA and its Participating Franchisees and their respective Designated Locations through the ACH system, and Tim Hortons USA authorizes FDPS as Tim Hortons USA's third party service provider to initiate debit and credit entries on behalf of Tim Hortons USA and to debit and credit the Tim Hortons USA Account in furtherance of the same. Specifically, FDPS will:
  - (a) On the Processing Date, calculate the net settlement amount for each Designated Location by comparing Card purchase and re-load transactions (together with applicable fees as directed by Tim Hortons USA in writing) (collectively, “**Loads**”), performed at such Designated Location from the previous Processing Date, as agreed upon by FDPS and Tim Hortons USA from time to time (the “**Processing Period**”), against purchases made with Cards and/or any other amounts related to the settlement of funds hereunder as directed by Tim Hortons USA in writing (“**Redemptions**”) at such Designated Location during the Processing Period;
  - (b) On the Processing Date, (i) initiate ACH debits on behalf of Tim Hortons USA to the applicable Participating Franchisee Accounts for amounts owed to Tim Hortons USA by Participating Franchisees whose Designated Locations had Loads and applicable fees in excess of Redemptions during the Processing Period, (ii) initiate the reimbursement of Participating Franchisees whose Designated Locations had Redemptions in excess of Loads and applicable fees during the Processing Period by initiating an ACH transfer on behalf of Tim Hortons USA from Tim Hortons USA

Account to the applicable Participating Franchisee Accounts, and (iii) facilitate settlement of necessary adjustments as provided in Section 2.1 of the Participation Agreement by initiating ACH debits or credits on behalf of Tim Hortons USA to the applicable Tim Hortons USA Account or Participating Franchisee Accounts.

- (c) On the Processing Date, provide an exception report to Tim Hortons USA indicating Participating Franchisee Accounts for which an overdraft occurred on the previous Processing Date, or for which an uncleared negative balance exists from prior Processing Dates.
- (d) In carrying out the processes described in a and b above, FDPS will initiate up to one net credit or debit to the Participating Franchisee Account on each Processing Date. A portion of any credit may be delayed up to three Business Days (the "Waiting Period") to the extent of any ACH entry which is dishonored, rejected, reversed, returned or charged back for any reason whatsoever (collectively "Returned Items"). The ODFI may initiate re-presentments on NSF items according to the Rules. Returned Items received during the Waiting Period and any associated fees of Returned Items will be net-settled against amounts due for remittance to the Participating Franchisee Account, and no amounts will be remitted to such account until the Returned Items are cleared.

4. **ACH Initiation.**

- (a) All credits and debits shall be initiated by FDPS as described above, in each case acting on Tim Hortons USA's behalf, by the submission of a batch file of ACH payment information and instructions to the bank holding the Tim Hortons USA Account (the "Tim Hortons USA Bank").
- (b) FDPS will keep records of the flow of funds in the Tim Hortons USA Account, and will facilitate the settlement of funds related to Tim Hortons USA's Program as agent for the benefit of Tim Hortons USA.
- (c) All ACH entries shall be subject to any limitations or requirements imposed by the ODFI and the Tim Hortons USA Bank.
- (d) FDPS shall have no liability for not affecting an ACH entry if (i) there are insufficient funds in the Tim Hortons USA Account or applicable Participating Franchisee Account; (ii) FDPS reasonably suspects a breach of security; (iii) FDPS reasonably believes that an ACH entry is prohibited by applicable law; or (iv) circumstances beyond its control prevent it from affecting the entry. The foregoing is not an exclusive list of circumstances in which FDPS shall have no liability.

5. **Definition of Parties.** For all settlement transactions hereunder, FDPS shall be a "third party service provider", Tim Hortons USA shall be the "originator", the Participating Franchisee whose account is debited or credited shall be the "receiver" and the ODFI shall be the "originating depository financial institution", as those terms are defined by the rules and regulations of the National Automated Clearing House Association Rules.

**EXHIBIT K**  
**SECURITY AGREEMENT**

## SECURITY AGREEMENT

This Security Agreement (“**Agreement**”) is made as of \_\_\_\_\_, 201\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ (“**Franchisee**” or “**Debtor**”), and TIM HORTONS USA INC. (“**THUSA**” or “**Collateral Agent**”).

### RECITALS

- A. Simultaneously with the execution of this Agreement, Debtor has:
1. Executed a Franchise Agreement with THUSA;
  2. Executed a Lease [Sublease] with Tim Donut U.S. Limited, Inc. [THUSA](“**Landlord**”).
  3. Purchased the assets described in the attached Schedule A (the “**Purchased Equipment**”)[; and
  4. Executed and delivered a promissory note payable to THUSA in the amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_.00) (the “**Note**”).
- B. Debtor’s obligations under the Franchise Agreement [, and the Lease [Sublease][, and the Note] (collectively, the “**Transaction Agreements**”) and certain other agreements are to be secured pursuant to this Agreement.

The parties hereto agree as follows:

### **1. DEFINITIONS.**

- 1.1 All capitalized terms used herein without definitions shall have the respective meanings provided therefor in the respective Transaction Agreement.
- 1.2 The term “**State,**” as used herein, means the State of \_\_\_\_\_.
- 1.3 All terms defined in the Uniform Commercial Code of the State and used herein shall have the same definitions herein as specified therein. However, if a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term has the meaning specified in Article 9.
- 1.4 The term “**Obligations,**” as used herein, means all of the indebtedness, obligations and liabilities of the Debtor to any of the Secured Parties, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of any of (a) this Agreement, (b) the Transaction Agreements, (c) any promissory notes, other instruments, or other agreements executed and delivered pursuant to, or in connection with, this Agreement or the Transaction Agreements, or (d) any other instruments in favor of, or agreements with, any of the Secured Parties.

1.5 The term “**Event of Default**” shall mean the occurrence of any one of the following events of default by Debtor: (a) if Debtor fails to pay any amounts due to (i) THUSA under the Franchise Agreement, (ii) the Landlord under the Lease [Sublease], or (iii) to any Secured Party under any of the Obligations, at the time when any such amount becomes due and payable; (b) the occurrence of a default of any nature whatsoever under the Note, Lease [Sublease], or Franchise Agreement; or (c) the termination of the Lease [Sublease] or Franchise Agreement.

1.6 The term “**Secured Parties**” shall mean, collectively, THUSA, Landlord, and any other subsidiary or affiliate of THUSA which is a party to, or beneficiary of, any promissory note, other instrument, or other agreement with the Debtor.

2. **GRANT OF SECURITY INTEREST.** The Debtor hereby grants to the Collateral Agent, for the ratable benefit of the Secured Parties, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to the Collateral Agent, for the ratable benefit of the Secured Parties, the following properties, assets and rights of the Debtor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the “**Collateral**”): all personal and fixture property of every kind and nature including without limitation all goods (including inventory, equipment (including, without limitation, the Purchased Equipment) and any accessions thereto), instruments (including promissory notes), documents, accounts, chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including all payment intangibles). The Collateral Agent acknowledges that the attachment of its security interest in any commercial tort claim as original collateral is subject to the Debtor’s compliance with Section 4.7.

3. **AUTHORIZATION TO FILE FINANCING STATEMENTS.** The Debtor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Debtor is an organization, the type of organization and any organizational identification number issued to the Debtor and, (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. The Debtor agrees to furnish any such information to the Collateral Agent promptly upon the Collateral Agent’s request.



4. **OTHER ACTIONS.** To further the attachment, perfection, and first priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in the Collateral, and without limitation on the Debtor's other obligations in this Agreement, the Debtor agrees, in each case at the Debtor's expense, to take the following actions with respect to the following Collateral:
- 4.1. **Promissory Notes and Tangible Chattel Paper.** If the Debtor shall at any time hold or acquire any promissory notes or tangible chattel paper, the Debtor shall forthwith endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time specify.
- 4.2. **Deposit Accounts.** For each deposit account that the Debtor at any time opens or maintains, the Debtor shall, at the request and option of the Collateral Agent, pursuant to an agreement in form and substance satisfactory to the Collateral Agent, either (a) cause the depository bank to comply at any time with instructions from the Collateral Agent to such depository bank directing the disposition of funds from time to time credited to such deposit account, without further consent of the Debtor, or (b) arrange for the Collateral Agent to become the customer of the depository bank with respect to the deposit account, with the Debtor being permitted, only with the consent of the Collateral Agent, to exercise rights to withdraw funds from such deposit account. The provisions of this paragraph shall not apply to (i) any deposit account for which the Debtor, the depository bank and the Collateral Agent have entered into a cash collateral agreement or account control agreement specially negotiated among the Debtor, the depository bank and the Collateral Agent for the specific purpose set forth therein, or (ii) deposit accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Debtor's salaried employees.
- 4.3. **Investment Property.** If the Debtor shall at any time hold or acquire any certificated securities, the Debtor shall immediately so notify the Collateral Agent and, at the request and option of the Collateral Agent, endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time specify. If any securities now or hereafter acquired by the Debtor are uncertificated and are issued to the Debtor or its nominee directly by the issuer thereof, the Debtor shall immediately notify the Collateral Agent thereof and, at the request and option of the Collateral Agent, pursuant to an agreement in form and substance satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent as to such securities, without further consent of the Debtor or such nominee, or (b) arrange for the Collateral Agent to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by the Debtor are held by the Debtor or its nominee through a securities intermediary or commodity intermediary, the Debtor shall immediately notify the Collateral Agent thereof and, at the request and option of

the Collateral Agent, pursuant to an agreement in form and substance satisfactory to the Collateral Agent, either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply with entitlement orders or other instructions from the Collateral Agent to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Collateral Agent to such commodity intermediary, in each case without further consent of the Debtor or such nominee, or (ii) in the case of financial assets or other investment property held through a securities intermediary, arrange for the Collateral Agent to become the entitlement holder with respect to such investment property, with the Debtor being permitted, only with the consent of the Collateral Agent, to exercise rights to withdraw or otherwise deal with such investment property. The provisions of this paragraph shall not apply to any financial assets credited to a securities account for which the Collateral Agent is the securities intermediary.

- 4.4. **Collateral in the Possession of a Bailee.** If any Collateral is at any time in the possession of a bailee, the Debtor shall promptly notify the Collateral Agent thereof and, at the request and option of the Collateral Agent, shall promptly obtain an acknowledgement from the bailee, in form and substance satisfactory to the Collateral Agent, that the bailee holds such Collateral for the benefit of the Collateral Agent, and that such bailee agrees to comply, without further consent of the Debtor, with instructions from the Collateral Agent as to such Collateral.
- 4.5. **Electronic Chattel Paper and Transferable Records.** If the Debtor at any time holds or acquires an interest in any electronic chattel paper or any “transferable record,” as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Debtor shall promptly notify the Collateral Agent thereof and, at the request and option of the Collateral Agent, shall take such action as the Collateral Agent may reasonably request to vest in the Collateral Agent control, under Section 9-105 of the Uniform Commercial Code, of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.
- 4.6. **Letter-of-Credit Rights.** If the Debtor is at any time a beneficiary under a letter of credit, the Debtor shall promptly notify the Collateral Agent thereof and, at the request and option of the Collateral Agent, the Debtor shall, pursuant to an agreement in form and substance satisfactory to the Collateral Agent, either (a) arrange for the issuer and any confirmer or other nominated person of such letter of credit to consent to an assignment to the Collateral Agent of the proceeds of the letter of credit, or (b) arrange for the Collateral Agent to become the transferee beneficiaries of the letter of credit.

- 4.7 **Commercial Tort Claims.** If the Debtor shall at any time hold or acquire a commercial tort claim, the Debtor shall immediately notify the Collateral Agent in a writing signed by the Debtor of the particulars thereof and grant to the Collateral Agent in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Collateral Agent.
- 4.8. **Other Actions as to Any and All Collateral.** The Debtor further agrees, at the request and option of the Collateral Agent, to take any and all other actions the Collateral Agent may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in any and all of the Collateral, including, without limitation, (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code, to the extent, if any, that the Debtor's signature thereon is required therefor, (b) causing the Collateral Agent's name to be noted as a Collateral Agent on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Collateral Agent to enforce, the Collateral Agent's security interest in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Collateral Agent to enforce, the Collateral Agent's security interest in such Collateral, (d) obtaining governmental and other third party waivers, consents and approvals in form and substance satisfactory to Collateral Agent, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, (e) obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Collateral Agent and (f) taking all actions under any earlier versions of the Uniform Commercial Code or under any other law, as reasonably determined by the Collateral Agent to be applicable in any relevant Uniform Commercial Code or other jurisdiction, including any foreign jurisdiction.

- 5. REPRESENTATIONS AND WARRANTIES CONCERNING DEBTOR'S LEGAL STATUS.** The Debtor has previously delivered to the Collateral Agent a perfection certificate signed by the Debtor (the "**Perfection Certificate**"). The Debtor represents and warrants to the Collateral Agent as follows: (a) the Debtor's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) the Debtor is an organization of the type, and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth the Debtor's organizational identification number or accurately states that the Debtor has none; (d) the Perfection Certificate accurately sets forth the Debtor's place of business or, if more than one, its chief executive office, as well as the Debtor's mailing address, if different; (e) all other information set forth on the Perfection Certificate pertaining to the Debtor is accurate and complete; and (f) that there has been no change in any information provided in the Perfection Certificate since the date on which it was executed by the Debtor.
- 6. REPRESENTATIONS AND WARRANTIES CONCERNING COLLATERAL.** The Debtor further represents and warrants to the Collateral Agent as follows: (a) the Debtor is the owner of the Collateral, free from any right or claim or any person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement and other liens permitted by the Transaction Agreements; (b) none of the Collateral constitutes, or is the proceeds of, "farm products" as defined in Section 9-102(a)(34) of the Uniform Commercial Code of the State; (c) none of the account debtors or other persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral; (d) the Debtor holds no commercial tort claim except as indicated on the Perfection Certificate; (e) the Debtor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances; (f) all other information set forth on the Perfection Certificate pertaining to the Collateral is accurate and complete; and (g) that there has been no change in any information provided in the Perfection Certificate since the date on which it was executed by the Debtor.
- 7. COVENANTS CONCERNING COLLATERAL.** The Debtor further covenants with the Collateral Agent as follows: (a) the Collateral, to the extent not delivered to the Collateral Agent pursuant to Section 4, will be kept at those locations listed on the Perfection Certificate and the Debtor will not remove the Collateral from such locations, without providing at least thirty (30) days prior written notice to the Collateral Agent; (b) except for the security interest herein granted and any other security interest consented to in writing by the Collateral Agent, the Debtor shall be the owner of the Collateral free from any right or claim of any other person, lien, security interest or other encumbrance, and the Debtor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to the Collateral Agent; (c) the Debtor shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Collateral, or any security interest, lien or encumbrance in the Collateral in favor of any person, other than the Collateral Agent except for liens consented to in writing by the Collateral Agent; (d) the Debtor will keep

the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon; (e) the Debtor will permit the Collateral Agent, or their designee, to inspect the Collateral at any reasonable time, wherever located; (f) the Debtor will pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of such Collateral or incurred in connection with this Agreement; (g) the Debtor will continue to operate, its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances; and (h) the Debtor will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except for (i) sales of inventory in the ordinary course of business, and (ii) so long as no Event of Default has occurred and is continuing, sales or other dispositions of obsolescent items of equipment consistent with past practices.

**8. INSURANCE.** The Debtor will maintain in effect insurance in the forms and in the amounts required by the Lease [Sublease].

**9. EXPENSES OF PRESERVATION AND PROTECTION OF COLLATERAL.**

**9.1 Expenses Incurred by Collateral Agent.** In the discretion of the Collateral Agent, if the Debtor fails to do so, the Collateral Agent may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, maintain any of the Collateral, make repairs thereto and pay any necessary filing fees or insurance premiums. The Debtor agrees to reimburse the Collateral Agent on demand for all expenditures so made. The Collateral Agent shall have no obligation to the Debtor to make any such expenditures, nor shall the making thereof be construed as the waiver or cure of any default or Event of Default.

**9.2 Collateral Agent's Obligations and Duties.** Anything herein to the contrary notwithstanding, the Debtor shall remain obligated and liable under each contract or agreement comprised in the Collateral to be observed or performed by the Debtor thereunder. The Collateral Agent shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Collateral Agent of any payment relating to any of the Collateral, nor shall the Collateral Agent be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Collateral Agent in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Collateral Agent or to which the Collateral Agent may be entitled at any time or times. The Collateral Agent's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Uniform Commercial Code of the State or otherwise, shall be

to deal with such Collateral in the same manner as the Collateral Agent deal with similar property for their own account.

**10. SECURITIES AND DEPOSITS.** The Collateral Agent may at any time following and during the continuance of an Event of Default, at its option, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Whether or not any Obligations are due, the Collateral Agent may following and during the continuance of a Default and Event of Default demand, sue for, collect, or make any settlement or compromise which it deems desirable with respect to the Collateral. Regardless of the adequacy of Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Collateral Agent to the Debtor may at any time be applied to or set off against any of the Obligations.

**11. NOTIFICATION TO ACCOUNT DEBTORS AND OTHER PERSONS OBLIGATED ON COLLATERAL.** If an Event of Default shall have occurred and be continuing, the Debtor shall, at the request and option of the Collateral Agent, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Collateral Agent in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Collateral Agent or to any financial institution designated by the Collateral Agent as the Collateral Agent' agent therefor, and the Collateral Agent may itself, if a Default or an Event of Default shall have occurred and be continuing, without notice to or demand upon the Debtor, so notify account debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, the Debtor shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Debtor as trustee for the Collateral Agent without commingling the same with other funds of the Debtor and shall turn the same over to the Collateral Agent in the identical form received, together with any necessary endorsements or assignments. The Collateral Agent shall apply the proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Collateral Agent to the Obligations, such proceeds to be immediately credited after final payment in cash or other immediately available funds of the items giving rise to them.

**12. POWER OF ATTORNEY.**

**12.1 Appointment and Powers of Collateral Agent.** The Debtor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Debtor or in the Collateral Agent's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of the Debtor, without notice to or assent by the Debtor, to do the following:

- (a) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Collateral in such manner as is consistent with the Uniform Commercial Code of the State and as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at the Debtor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary or useful to protect, preserve or realize upon the Collateral and the Collateral Agent's security interest therein, in order to effect the intent of this Agreement, all at least as fully and effectively as the Debtor might do, including, without limitation, (i) upon written notice to the Debtor, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Collateral Agent so elects, with a view to causing the liquidation of assets of the issuer of any such securities, and (ii) the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral; and
- (b) to the extent that the Debtor's authorization given in Section 3 is not sufficient, to file such financing statements with respect hereto, with or without the Debtor's signature, or a photocopy of this Agreement in substitution for a financing statement, as the Collateral Agent may deem appropriate and to execute in the Debtor's name such financing statements and amendments thereto and continuation statements which may require the Debtor's signature.

12.2 **Ratification By Debtor.** To the extent permitted by law, the Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

12.3 **No Duty on Collateral Agent.** The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon it or them to exercise any such powers. The Collateral Agent shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees, agents, or affiliates shall be responsible to the Debtor for any act or failure to act, except for the Collateral Agent's gross negligence or willful misconduct.

13. **RIGHTS AND REMEDIES.** If an Event of Default shall have occurred and be continuing, the Collateral Agent, without any other notice to or demand upon the Debtor have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code of the State and any additional rights and remedies which may be provided to a secured party in any jurisdiction in which Collateral is located, including, without limitation, the right to take possession of the Collateral, and for that purpose the

Collateral Agent may, so far as the Debtor can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Collateral Agent may in its discretion require the Debtor to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of the Debtor's principal office(s) or at such other locations as the Collateral Agent may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Collateral Agent shall give to the Debtor at least five (5) days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Debtor hereby acknowledges that five (5) days prior written notice of such sale or sales shall be reasonable notice. In addition, the Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Collateral Agent's rights and remedies hereunder, including, without limitation, their right following an Event of Default to take immediate possession of the Collateral and to exercise their rights and remedies with respect thereto.

- 14. STANDARDS FOR EXERCISING RIGHTS AND REMEDIES.** To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, the Debtor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (a) to fail to incur expenses reasonably deemed significant by such Collateral Agent to prepare Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to fail to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as the Debtor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. The Debtor acknowledges that the purpose of this Section 14 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would fulfill the Collateral Agent's duties under the Uniform Commercial Code or other



law of the State or any other relevant jurisdiction in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section 14. Without limitation upon the foregoing, nothing contained in this Section 14 shall be construed to grant any rights to the Debtor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 14.

- 15. NO WAIVER BY COLLATERAL AGENT.** The Collateral Agent shall not be deemed to have waived any of their rights or remedies in respect of the Obligations or the Collateral unless such waiver shall be in writing and signed by the Collateral Agent. No delay or omission on the part of the Collateral Agent in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of the Collateral Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Collateral Agent deems expedient.
- 16. SURETYSHIP WAIVERS BY DEBTOR.** The Debtor waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Debtor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Collateral Agent may deem advisable. Neither the Collateral Agent nor any Secured Party shall have any duty as to the collection or protection of the Collateral or any income therefrom, the preservation of rights against prior party, or the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Section 9.2. The Debtor further waives any and all other suretyship defenses.
- 17. MARSHALLING.** Neither the Collateral Agent nor any Secured Party shall be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, the Debtor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the rights and remedies of the Collateral Agent or any Secured Party under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Debtor hereby

irrevocably waives the benefits of all such laws.

- 18. PROCEEDS OF DISPOSITIONS; EXPENSES.** The Debtor shall pay to the Collateral Agent on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Collateral Agent in protecting, preserving or enforcing the Collateral Agent's rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Collateral Agent may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the Uniform Commercial Code of the State, any excess shall be returned to the Debtor. In the absence of final payment and satisfaction in full of all of the Obligations, the Debtor shall remain liable for any deficiency.
- 19. OVERDUE AMOUNTS.** Until paid, all amounts due and payable by the Debtor hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue payments set forth in the Franchise Agreement.
- 20. GOVERNING LAW; CONSENT TO JURISDICTION.** THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OHIO WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS CONTAINED THEREIN. The Debtor agrees that any action or claim arising out of, or any dispute in connection with, this Agreement, any rights, remedies, obligations, or duties hereunder, or the performance or enforcement hereof or thereof, may be brought in the courts of the State of Ohio or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Debtor by mail at the address specified in Section 18.01 of the Franchise Agreement. The Debtor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.
- 21. WAIVER OF JURY TRIAL.** THE DEBTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS, REMEDIES, OBLIGATIONS, OR DUTIES HEREUNDER, OR THE PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF. Except as prohibited by law, the Debtor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Debtor (a) certifies that no Collateral Agent nor any representative, agent or attorney of the Collateral Agent has represented, expressly or otherwise, that the Collateral Agent would not, in the event of litigation, seek to enforce the foregoing waivers or other waivers contained in this Agreement, and (b) acknowledges that, in entering into the Transaction Agreements, the

Collateral Agent are relying upon, among other things, the waivers and certifications contained in this Section 21.

- 22. MISCELLANEOUS.** The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Debtor and its respective successors and assigns, and shall inure to the benefit of the Collateral Agent and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Debtor acknowledges receipt of a copy of this Agreement. Any notice required to be given by any of the Collateral Agent of a sale, lease, or other disposition of the Collateral or any other intended action by each of the Collateral Agent shall be deemed given as provided in Section 18.01 of the Franchise Agreement.

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the authorized representatives of each party as of the day and year specified at the beginning hereof.

**DEBTOR:**

**[name of company]**

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

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

We have authority to bind the \_\_\_\_\_.

**COLLATERAL AGENT:**

**TIM HORTONS USA INC.**

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

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

Legal Dept. \_\_\_\_\_

**SCHEDULE A**  
**TO SECURITY AGREEMENT**

**Description of Purchased Equipment**

(Schedule 1.01 of the Asset Purchase Agreement)

**EXHIBIT L**  
**DEPOSIT ACCOUNT CONTROL AGREEMENT**

## Deposit Account Control Agreement

This Deposit Account Control Agreement ("**Agreement**"), dated as of \_\_\_\_\_, 20\_\_ is made by and among Tim Hortons USA Inc., with an address at [\_\_\_\_\_] ("**THUSA**" or "**Collateral Agent**"), [\_\_\_\_\_] with an address at [\_\_\_\_\_] ("**Debtor**"), and [\_\_\_\_\_] with an address at [\_\_\_\_\_] ("**Bank**").

### PREAMBLE:

Debtor has granted to the Collateral Agent, for the ratable benefit of Secured Parties (as defined below), a security interest in a deposit account maintained by Bank for Debtor. The parties are entering into this Agreement to perfect Collateral Agent's security interest in that account. As used herein, "**Secured Parties**" shall mean, collectively, THUSA, Tim Donut U.S. Limited, Inc., and any other subsidiary or affiliate of THUSA which is a party to, or beneficiary of, any promissory note, other instrument, or other agreement with Debtor.

### TERMS:

1. **The Account.** Bank maintains a deposit account for Debtor, currently numbered [\_\_\_\_\_] and titled [\_\_\_\_\_] (as such account may be renumbered or retitled, the "**Account**"). All parties agree that the Account is a "deposit account" within the meaning of Article 9 of the Uniform Commercial Code of the State of [\_\_\_\_\_] (the "**UCC**").
2. **Control.** Bank will comply with instructions originated by Collateral Agent directing disposition of the funds in the Account without further consent by Debtor. Except as provided below, Bank will not permit the withdrawal or other disposition of any funds in the Account by Debtor without Collateral Agent's prior written consent. Bank may also comply with instructions directing the disposition of funds in the Account originated by Debtor or its authorized representatives until such time as Collateral Agent delivers a written notice to Bank that Collateral Agent is thereby exercising exclusive control over the Account. Such notice is referred to herein as the "**Notice of Exclusive Control.**" After Bank receives a Notice of Exclusive Control, it will cease complying with instructions concerning the Account or funds on deposit therein originated by Debtor or its representatives. Bank has not and will not agree with any third party to comply with instructions or other directions concerning the Account or the disposition of funds in the Account originated by such third party without the prior written consent of Collateral Agent and Debtor.
3. **Subordination of Bank's Security Interest.** Bank hereby subordinates all security interests, encumbrances, claims and rights of setoff it may have, now or in the future, against the Account or any funds in the Account other than in connection with the payment of Bank's customary fees and charges pursuant to its agreement with Debtor and for the reversal of provisional credits.

4. **Statements, Confirmations, and Notices of Adverse Claims.** Bank will send copies of all statements concerning the Account to each of Debtor and Collateral Agent at the addresses set forth in the heading of this Agreement. Upon receipt of written notice of any lien, encumbrance, or adverse claim against the Account or any funds credited thereto, Bank will make reasonable efforts promptly to notify Collateral Agent and Debtor thereof.
5. **Bank's Responsibility.** Except for acting on Debtor's instructions in violation of Section 2 above, Bank shall have no responsibility or liability to Collateral Agent for complying with instructions concerning the Account from Debtor or Debtor's authorized representatives which are received by Bank before Bank receives a Notice of Exclusive Control and has had reasonable opportunity to act on it. Bank shall have no responsibility or liability to Debtor for complying with a Notice of Exclusive Control or complying with instructions concerning the Account originated by Collateral Agent, and shall have no responsibility to investigate the appropriateness of any such instruction or Notice of Exclusive Control, even if Debtor notifies Bank that Collateral Agent is not legally entitled to originate any such instruction or Notice of Exclusive Control.
6. **Indemnity.** Debtor hereby agrees to indemnify and hold harmless Bank, its directors, officers, agents and employees against any and all claims, causes of action, liabilities, lawsuits, demands and damages, including without limitation, any and all court costs and reasonable attorney's fees, in any way related to or arising out of or in connection with this Agreement or any action taken or not taken pursuant hereto, except to the extent caused by Bank's gross negligence or willful misconduct or Bank's breach of any of the provisions hereof.
7. **Customer Agreement.** In the event of a conflict between this Agreement and any other agreement between the Bank and the Debtor relating to the Account, the terms of this Agreement will prevail.
8. **Termination.** This Agreement shall continue in effect until Collateral Agent has notified Bank in writing that this Agreement, or its security interest in the Account, is terminated. Upon receipt of such notice the obligations of Bank hereunder with respect to the operation and maintenance of the Account after the receipt of such notice shall terminate, Collateral Agent shall have no further right to originate instructions concerning the Account and any previous Notice of Exclusive Control delivered by Collateral Agent shall be deemed to be of no further force and effect.
9. **Complete Agreement; Amendments.** This Agreement and the instructions and notices required or permitted to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof, and supersede any prior agreement and contemporaneous oral agreements of the parties concerning its subject matter. No amendment, modification or (except as otherwise specified in Section 8 above) termination of this Agreement, nor any assignment of any rights hereunder (except to the extent contemplated under Section 12 below), shall be binding on any party hereto unless it is in writing and is signed by each of the parties hereto, and any attempt to so amend, modify, terminate or assign except pursuant to such a writing shall be null



and void. No waiver of any rights hereunder shall be binding on any party hereto unless such waiver is in writing and signed by the party against whom enforcement is sought.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the State of [ ] without regard for the conflicts of laws provisions contained therein.
11. **Severability.** To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.
12. **Successors and Assigns.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives. This Agreement may be assigned by Collateral Agent to any successor of Collateral Agent under their security agreement with Debtor, provided that written notice thereof is given by Collateral Agent to Bank.
13. **Notices.** Except as otherwise expressly provided herein, any notice, order, instruction, request, or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means and electronic confirmation of error-free receipt is received or upon receipt of notice sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth next to such party's name at the heading of this Agreement. Any party may change its address for notices in the manner set forth above.
14. **Jury Waiver.** THE DEBTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS, REMEDIES, OBLIGATIONS, OR DUTIES HEREUNDER, OR THE PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF.
15. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the authorized representatives of each party as of the day and year specified at the beginning hereof.

**DEBTOR:**

[name of company]

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

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

**BANK:**

[name of Bank]

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

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

**COLLATERAL AGENT:**

**Tim Hortons USA Inc.**

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

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

Legal Department \_\_\_\_\_

**EXHIBIT M**  
**LETTER OF INTENT**

Letter of Intent

[date]

Dear Applicant:

You have indicated that it is your desire to pursue training at this time even though a franchise has not been granted. At your request (and at your risk), we have agreed to allow you to begin training without having a signed franchise agreement, but after you have signed this Letter of Intent and paid the application fee described in paragraph 4. of this Letter of Intent. You understand that Tim Hortons USA Inc. (“THUSA”) is incurring certain expenses in allowing you to attend training under these circumstances. Therefore, you and THUSA agree as follows:

1. TRAINING REQUIREMENTS

The undersigned applicant (“Applicant”) agrees to undergo such training as THUSA in its discretion deems appropriate. Such training shall include technical training at our Oakville, Ontario training center, in-restaurant operational experience, as well as classroom training. Applicant realizes that an estimated 50 days over a 7 to 9 week period is anticipated for such training. Applicant understands that prior to the execution of agreements either party may terminate such training without any further obligation related to a Tim Hortons franchise. It is envisioned, however, that during the course of training (provided Applicant is successfully completing the training program) a completed franchise agreement, lease/sublease, and other agreements relevant to the franchise may be presented to Applicant for execution.

2. DISCLAIMER

Applicant understands and acknowledges that although a specific site may have been discussed and various information provided to the applicant, no promises or commitments have been made by THUSA as of this date regarding the granting of a franchise and that there are no assurances, promises or guarantees that Applicant will be offered or awarded a franchise. Applicant understands that no commitment concerning a franchise grant or a site shall exist until and unless all of the completed documents submitted to Applicant have been executed by both parties.

THUSA makes no representations or statements about, and provides no information concerning, the past, current, or projected sales, costs, profits or earnings of any existing or future franchised or company or affiliate-owned Tim Hortons restaurant, except as specifically disclosed in our franchise disclosure document. The only exception to this policy is to permit a prospective franchisee who is considering the purchase of an existing company or affiliate-owned restaurant to review that restaurant’s books and records. Applicant agrees that THUSA will not be bound by or liable for any representations made, or information provided, by any THUSA sales personnel, employee, officer, or agent that deviates from or expands upon the information contained in our franchise disclosure document.

3 INDEPENDENT CONTRACTOR

Applicant shall not be deemed to be a franchisee during the training period. Applicant shall be an independent contractor during the training period and thereby legally and financially responsible for the conduct of the applicant, any agents, employees or representatives. Applicant shall also be responsible for all travel, lodging, food, personal, and incidental expenses associated with training. THUSA's expense shall be limited to providing the initial training program. (See the THUSA franchise disclosure document for more details.) Contemporaneous with the execution of this Letter of Intent, Applicant shall complete the medical form attached hereto as Exhibit A.

4. APPLICATION FEE

Applicant shall deliver to THUSA upon the execution and timely return of this Letter of Intent, an application fee of Five Thousand Dollars (\$5,000.00), which application fee shall be deemed fully earned by THUSA upon its receipt, and is not refundable. If, however, THUSA and Applicant sign a Franchise Agreement, THUSA will apply the \$5,000 application fee to the amount due on any pre-opening equipment purchase, if applicable; otherwise, it shall be applied to the first payment(s) due to THUSA under the franchise agreement and lease/sublease.

5. CONFIDENTIALITY

Applicant acknowledges that the Tim Hortons System contains proprietary information about accounting, management and business operations and systems that would, if used by other persons or entities, give such persons or entities a substantial competitive advantage, which is presently enjoyed by THUSA. Whether or not Applicant and THUSA sign a franchise agreement, Applicant agrees to hold in confidence the Tim Hortons System and all parts thereof and shall not disclose them to any person or entity. Applicant shall not without THUSA's prior written consent disclose, use, or permit the use of the Tim Hortons System or any part thereof, and shall treat as confidential and as the sole property of THUSA all trade secrets, manuals, materials, or any other information, knowledge, and know-how designated for use in the Tim Hortons System and not generally known in the restaurant business.

6. FRANCHISE DISCLOSURE DOCUMENT DISCLOSURE

Applicant acknowledges that it has received a copy of the THUSA franchise disclosure document (and any required state addendum) at least 14 calendar days prior to the execution of this Letter of Intent or payment of any monies to THUSA.

Please execute and return the enclosed copy of this Letter of Intent along with your \$5,000 application fee promptly, but not before you have had the THUSA franchise disclosure document for at least 14 calendar days. The offer set forth in this Letter of Intent will become null and void as of the close of business 21 days after the date of this Letter unless, prior thereto, THUSA has received your signed copy of this Letter and your check for the application fee.

Thank you for your interest.

TIM HORTONS USA INC.

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

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

Legal Dept. \_\_\_\_\_

Subject to the terms and conditions of this Letter of Intent, which terms and conditions are acceptable to me, I desire to proceed with training.

\_\_\_\_\_  
(Applicant name) Individually

\_\_\_\_\_  
(Applicant name) Individually

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

EXHIBIT A

**TIM HORTONS**

4150 TULLER ROAD, SUITE 236, DUBLIN, OHIO 43017  
Attn: Janet Schneider – Phone: 888/376-4835 – Fax: 614/791-4235

Dear Applicant/Trainee:

During your training program with Tim Hortons, the responsibility for any accidental injuries will be assumed by you and your insurance company.

This information must be in our possession before you begin training.

YOUR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IF CANADIAN RESIDENT:** Attach a copy of your Medical Card and note if any other Medical coverage has been obtained during the 2 week training in the U.S. (i.e., Travel Ins).

Ins Carrier: \_\_\_\_\_ Policy Number: \_\_\_\_\_

**IF U.S. RESIDENT:** Complete the following information:

Insurance Carrier: \_\_\_\_\_  
Name and Address  
of Agent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Policy Number: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

**TRAINING LOCATION(S):**

- OAKVILLE TRAINING CENTER  
Training Dates: \_\_\_\_\_
  
- RESTAURANT IMMERSION  
Restaurant Location: \_\_\_\_\_  
Training Dates: \_\_\_\_\_

Please sign, date and return this form to me indicating your receipt of and agreement with this policy.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**EXHIBIT N**

**TIM HORTONS USA INC.**

**COMPLIANCE CERTIFICATION**

Tim Hortons USA Inc. (“**Tim Hortons**”) wants to be sure that the procedures followed by us and our sales representatives in connection with the offer and sale of a franchise to you have been in full compliance with the law. Please review each of the following statements carefully, initial the correct response, and sign this Certification.

1. I am planning to sign a Franchise Agreement, Operator Agreement, Letter of Intent or Amendment for Co-Branded Restaurant (collectively, “**Agreement**”) and ancillary agreements with Tim Hortons today.  

Correct                       Not Correct
  
2. I have not entered into any binding agreement with Tim Hortons concerning the purchase of this franchise or co-branded franchise prior to today.  

Correct                       Not Correct
  
3. I have not paid any money to Tim Hortons for this franchise or co-branded franchise prior to today.  

Correct                       Not Correct
  
4. I have received a copy of Tim Hortons’ Franchise Disclosure Document (“**FDD**”) dated April 1, 2014 at least 14 calendar days before today.  

Correct                       Not Correct
  
5. No material change has been made to any agreement that I am signing today that I have not yet seen or agreed to at least seven calendar days before today.  

Correct                       Not Correct
  
6. I have signed, accurately dated, and returned to a Tim Hortons representative, the Receipt (last page of FDD) for the FDD.  

Correct                       Not Correct
  
7. I have conducted an independent investigation of this franchise or co-branded franchise.  

Correct                       Not Correct



8. I have had ample time and opportunity to consult with advisors of my own choosing, such as lawyers and accountants, concerning the benefits and risks of entering into the Agreement and any other agreements.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

9. I do not have any questions about any of the information contained in the Agreement, FDD, or any of their Exhibits.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

If answered "Not Correct," I have the following questions: (Attach additional pages, if necessary.)

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10. I understand that this franchise or co-branded franchise involves business risks, and that the success or failure of my franchise will depend in large part upon my skills and abilities, competition from other business, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

11. Other than for the information appearing in the FDD, no employee or other person speaking on behalf of Tim Hortons has made any statement or promise concerning the revenues, profits or operating costs of a Tim Hortons Restaurant or co-branded Restaurant.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

12. No employee or other person speaking on behalf of Tim Hortons has made any statement or promise regarding the amount of money I may earn in operating a Tim Hortons Restaurant or co-branded Restaurant or that others have earned in operating a Tim Hortons Restaurant or co-branded Restaurant.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

13. No employee or other person speaking on behalf of Tim Hortons has made any statement or promise concerning the likelihood of success that I should or might expect to achieve from operating a Tim Hortons Restaurant or co-branded Restaurant, or that has been or might be achieved by any other Tim Hortons Restaurant or co-branded Restaurant.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

14. No employee or other person speaking on behalf of Tim Hortons has made any statement, promise or agreement concerning the advertising, marketing, training, support, service or assistance that Tim Hortons will furnish to me that is contrary to, or different from, the information in the FDD.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

15. I have not received any guarantee, assurance, or representation, expressed or implied, as to the past or potential success of this or other Tim Hortons Restaurants or co-branded Restaurants.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

16. Under the Franchise Agreement, and Operator Agreement, including any Co-Branded Restaurant Amendment to either Agreement, Tim Hortons and I have both agreed to (i) waive a jury trial for any dispute, as well as the right to seek punitive or exemplary damages against the other; and (ii) significantly reduce the time within which to assert a claim against the other in any adjudicatory forum.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

17. No employee or other person speaking on behalf of Tim Hortons has made any oral representation to me or provided me with any written representation which varies, reduces, expands, creates, eliminates, or is in any way inconsistent with any right or obligation of either Tim Hortons or me under any Agreement being signed today.

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

18. With respect to the Agreements being signed today, no one speaking on Tim Hortons' behalf has made any statement, promise, or agreement concerning:

- the rights or obligations which either we will have to you or you will have to us under any Agreements; or
- the terms and conditions of any Agreements

that, in either circumstance, are not specifically state in the Agreements?

\_\_\_\_\_ Correct                      \_\_\_\_\_ Not Correct

19. If you answered all prior questions "Correct," please initial below.

\_\_\_\_\_ (initials)

- OR -

For any question for which you answered "Not Correct," please provide a complete explanation below. (Attach additional pages, if necessary.)

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20. During my negotiations and evaluations leading up to my decision to purchase a Tim Hortons franchise, I communicated with the following Tim Hortons employees, officers and salespersons.

Name

Address

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Please understand that your answers to these questions are important to us, and that we will rely on them.

By signing this Compliance Certification, you are representing that you have responded truthfully to the above questions.

Prospective Franchisee

\_\_\_\_\_

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

**EXHIBIT O**  
**LIST OF CURRENT FRANCHISEES**

The name, restaurant address, and telephone number of all of our current restaurant franchisees as of December 29, 2013 are listed below.

**California**

San Jose Arena Management, LLC  
Home Advantage Properties LLC  
Sharks Ice  
44388 Old Warm Springs Blvd.  
Fremont, CA 94538  
408-279-6000

San Jose Arena Management, LLC  
Home Advantage Properties LLC  
Oakland Ice Center  
519 18<sup>th</sup> Street  
Oakland, CA 94612  
408-279-6000

San Jose Arena Management, LLC  
Sharks Ice  
1500 S. 10<sup>th</sup> Street  
San Jose, CA 95112  
408-279-6000

**Delaware**

DBN Donuts Corporation  
Dinesh Patel  
Dover Air Force Base  
Bldg 421  
Dover, DE 19902  
302-883-2144

**Florida**

PF Brokers, Inc.  
Landon Miller, Ted Nolan, Karyn  
Pesner and Frank Casissi  
BB&T Center  
2555 NW 136<sup>th</sup> Ave.  
Fort Lauderdale, FL 33323

Tampa Bay Arena, L.P.  
401 Channelside Drive  
Tampa Bay Lightning  
Tampa, FL 33602  
813-301-6526

**Indiana**

Vanilla Dips, LLC  
Bill Janes and Kim Maddock  
216 National Road  
Richmond, IN 47374  
765-935-3787

**Kentucky**

RDNKY, Inc.  
Rebecca Nichols  
2524 Winchester Ave.  
Ashland, Kentucky 41101  
(606) 325-3093

RDNKY, Inc.  
Dawn Nichols  
2206 13<sup>th</sup> Street  
Ashland, Kentucky 41101  
(606) 327-8819

TH Fort Knox, LLC  
Don Reninger, Jenine Skowron  
Building No. 2013  
Mini Mall – Eisenhower Shoppette  
Fort Knox, KY 40121  
502-942-6081

TH Fort Knox 2, LLC  
Don Reninger, Jenine Skowron  
1600 Spearhead Div Ave.  
HRC Ft. Knox  
Ft. Knox, KY 40121

**Maine**

True North Holdings, LLC  
Karl and Jillian Carter  
848 Minot Ave  
Auburn, ME 04210  
(207) 753-6773

True North Center, LLC  
Karl and Jillian Carter  
458 Center Street  
Auburn, ME 04210  
(207) 753-0014

City of Auburn  
Auburn Ice Arena  
48 Pettengill Park Rd.  
Auburn, ME 04210  
207-333-6688

RBM Enterprises, LLC  
Bruce MacGillivray and Karen Kearney  
230 Western Avenue  
Augusta, Maine 04330  
(207) 629-5150

JAMA Coffee II, Inc.  
Marc Nicknair  
301 Odlin Road  
Bangor, ME 04401  
207-942-0400

JAMA Coffee III, Inc.  
Marc and Andrea Nicknair  
444 Main Street  
Bangor, ME 04401  
207-947-9092

J.J.Myers, LLC  
Jamie and Jayne Myers  
594 Broadway  
Bangor, ME 04401  
(207) 262-0171

W.A.S. Coffee, LLC  
Sandy Kittridge and Bill Smith  
Five Points Shopping Center  
Rt. 111  
Biddeford, ME 04005  
207-282-5211

Sodexo America, LLC  
University of New England  
11 Hills Beach Rd.  
Biddeford, ME 04005

J.J. Myers, LLC  
Jamie & Jayne Myers  
299 Chamberlain Street  
Brewer, Maine 04412  
(207) 989-6319

J.J. Myers, LLC  
Jamie & Jayne Myers  
Walmart, 24 Walton Dr.  
Brewer, ME 04412  
207-989-1700

Troyco, LLC  
Troy Chamberlain  
109 Bennett Dr.  
Caribou, Maine 04736  
(207) 492-0363

Ben'z Friends Café Inc.  
Mercedes Melo  
290 North Street  
Houlton, ME 04730  
207-521-0100

True North Compass, LLC  
Karl and Jillian Carter & True North Holdings,  
LLC  
736 Sabattus Street  
Lewiston, ME 04240  
207-753-0176

Lewiston Urban Civic Center Enterprises, LLC  
Firland Management Colisee, LLC  
Androscoggin Bank Colisee  
190 Birch St.  
Lewiston, ME 04240  
630-222-6643

Penobscot Tims LLC  
Tyler and Angela Belk  
202 W Broadway  
Lincoln, ME 04457  
207-794-6495

Troyco, LLC  
Troy Chamberlain  
229 Main Street  
(Rt 1) & 14th Avenue  
Madawaska, ME 04756  
207-728-3565

J.J.Myers, LLC  
Jamie and Jayne Myers  
4 Lunt Road  
Newport, ME 04953  
(207) 368-5409

True North Passage, LLC  
Karl and Jillian Carter  
60 Fair Street  
Norway, ME 04268  
(207) 743-1957

J.J. Myers, LLC  
Jamie and Jayne Myers  
975 Stillwater Avenue  
Old Town, ME 04468  
207-827-6646

Troyco, LLC  
Troy Chamberlain and Lynn Chamberlain  
779 N. Main Street  
Presque Isle, Maine 04769  
(207) 760-9158

RSR, LLC  
Shane & Rebecca Reagh  
398 US Route 1  
Scarborough, ME 04074  
(207) 885-1330

Cynthia Santos  
50 Market Street  
South Portland, ME 04106  
207-799-3583

Cynthia Santos  
291 Maine Mall Road  
South Portland, ME 04108  
207-774-1555

Bluenose Enterprises, LLC  
Michael Vissers and Stacey MacKenzie  
5 Horton Place  
Topsham, ME 04086  
207-729-1262

RSR, LLC  
Shane Reagh and Rebecca Wentzell  
333 Main Street  
Waterville, ME 04901  
207-877-7757

VTV Enterprises, LLC  
Val and Tony Vagopoulos  
333 Main Street  
Waterville, ME 04901  
(207) 877-7757

### **Maryland**

Baker Enterprises 1 Aberdeen LLC  
Joel Baker  
Aberdeen Proving Grounds  
G Bldg 6002  
Aberdeen, MD 21005  
(443) 861-6564

Baker Enterprises 1 Aberdeen LLC  
Joel Baker  
Building 6008  
Jayhawk Road  
Aberdeen, MD 21005  
(443) 861-6564

### **Michigan**

C & J Tober, Inc.  
Curtis and Jennifer Tober  
727 S. Main Street  
Adrian, Michigan 49221  
(517) 265-8285

Battle Creek D Ave., Ltd.  
Tom & Shannon Brady  
5180 Lake Michigan Dr.  
Allendale, MI 49401  
810-923-5429

KB Holdings, LLC  
Bonita Dam & Kristen Dam  
7642 N. Alger Rd.  
Alma, MI 48801  
989-463-0899

Ann Arbor Gateway, Inc.  
Abraham Ajrouch  
2679 Ann Arbor-Saline Rd.  
Ann Arbor, MI 48103  
734-332-0906

EV Sayah LLC  
Elias Sayah  
3975 S. State Street  
Ann Arbor, MI 48103  
734-214-5700

Six Thirteen, Inc.  
Sam & LaShonda Harris  
1300 S. University  
Ann Arbor, MI 48104  
734-913-2653

Sodexo Operations, LLC  
University of Michigan  
1201 S. Main Street  
Ann Arbor, MI 48104  
734-769-0767

Sodexo America, LLC  
1116 South State St.  
Ann Arbor, MI 48109

Gaby Freddy, LLC  
Jamile Youssef  
and Freddy Abiaad  
1292 North Opdyke Road  
Auburn Hills, MI 48326  
(248) 373-4076

GJ Enterprises LLC  
Geoff Bullen & JoAnn Shannon  
Meijer, 800 Brown Rd.  
Auburn Hills, MI 48326

Glass Palace, LLC  
6 Championship Dr.  
Auburn Hills, MI 48326  
248-377-0100

Cyndon Enterprises LLC  
Don and Cindy Andrews  
4424 Baldwin Road  
Unit FC09  
Auburn Hills, MI 48326  
248-335-3620  
Battle Creek D Ave, Ltd  
Tom and Shannon Brady  
6012 B Drive North  
Battle Creek, MI 49014  
269-979-2536

Boniko, LLC  
Bonita Dam and Kelly Maniko  
3460 Wilder Road  
Bay City, Michigan 48706  
(989) 686-7219

RTJ Foods LLC  
Tim and Tess Noonan  
2141 Rawsonville Road  
Belleville, MI 48111  
(734) 485-5283

SNB of Birmingham, L.L.C.  
Samer Ghafari & Sejaan Ghafari  
36101 Woodward Ave.  
Birmingham, MI 48012  
248-647-0020

B Jays L.L.C.  
Elias and Clemence Bouary  
6495 Telegraph Road  
Bloomfield Township, MI 48301  
248-593-9381  
517-882-3536

Mantha Management Bloomfield, Inc.  
Robert and Lise Mantha  
40 E Square Lake Rd  
Bloomfield Township, MI 48304  
248-758-9670

Stew-Hort Inc.  
Robert and Maureen Stewart  
300 W. Grand River Avenue  
Brighton, MI 48116  
810-255-2796



CLD Parnall Inc.  
Vivian Sayah  
152 South Main Street  
Brooklyn, MI 48230  
517-938-8239

E.G.D., of Flint, Inc.  
Elie Damouni & George Damouni  
4025 E. Court Street  
Burton, Michigan 48532  
(810) 742-3722

Damouni Bros. Bristol Rd., Inc.  
Elie Damouni and George Damouni  
1230 E. Bristol Rd.  
Burton, Michigan 48529  
(810) 760-9770

M&J Hall, Inc.  
Mike and Janice Hall  
41276 Ford Road  
Canton, Michigan 48187  
(734) 981-4754

M&J Hall, Inc.  
Mike Hall, Jan Hall  
45135 Ford Rd.  
Canton Twp., Michigan 48188  
(734) 981-6914

Brian H. Kelemen & Associates Inc.  
Brian Kelemen, Lynn Kelemen  
33651 23 Mile Rd.  
Chesterfield Twp., Michigan 48047  
(586) 725-1540

M. Hall Enterprises, Inc.  
Bill and Erin Hall  
45515 Michigan Avenue  
Canton Township, MI 48188  
734-484-0261

Sayah, Inc.  
Joseph Sayah and Raymondah El-Sayah  
51595 Gratiot Avenue  
Chesterfield Township, MI 48051  
586-949-0970

Clawson TH, Inc.  
Wayne Izumi, William Kostenko, and Keysler  
Copeland  
1230 W. 14 Mile Road  
Clawson, MI 48017  
248-435-0411

Damouni of Hall Rd #2, Inc.  
Elie Damouni and George Damouni  
21406 Hall Rd  
Clinton Township, Michigan 48038  
810-982-4047

KYD of Pierson, Inc.  
Karim Damouni  
4140 W. Vienna Road  
Clio, MI 48420  
(810) 686-0115

Alma Enterprises, LLC  
Joseph Sayah, Raymondah El-Sayah  
1085 S. Gratiot Ave.  
Clinton Twp., Michigan 48043  
(586) 469-0362

Alma Enterprises, LLC  
Joseph Sayah and Raymondah El-Sayah  
39847 S. Groesbeck Highway  
Clinton Township, MI 48036  
586-468-3314

Alma I, Inc.  
Joseph Sayah & Raymondah El-Sayah  
35101 Harper Ave.  
Clinton Township, MI 48093  
586-792-3800

Alma II Inc.  
Joseph Sayah & Raymondah El-Sayah  
34325 Groesbeck Rd.  
Clinton Twp., Michigan 48035  
(586) 790-9720

Coffee Capers, L.L.C.  
Adele Audet  
39043 Garfield Rd.  
Clinton Township, MI 48038  
586-421-4553

Stew-Hort II, Inc.  
Bob & Maureen Stewart  
2201 Haggerty Rd.  
Commerce Township, MI 48390  
248-767-5887

A Squared Investments, LLC  
Debra Anderson  
1058 State Street  
Davison, Michigan 48423  
(810) 654-0390

Five Star Dough, LLC  
Scott and Shannon Suryan  
25000 Michigan Ave.  
Dearborn, MI 48124  
313-562-6000

In The Dough Enterprises, LLC  
Gary David, Sharon Andrews  
23780 Michigan Ave.  
Dearborn, Michigan 48124  
(313) 724-8793

Two For The Dough, LLC  
Gary David and Sharon Andrews  
3550 Greenfield  
Dearborn, Michigan 48162  
(313) 240-9394

Dearborn Fresh Supermarket, LLC  
Wanda Mackie  
13661 Colson Ave  
Dearborn, MI 48121  
313-846-7355

Dearborn Cafe, LLC  
Ali and Iman Zreik  
10005 W. Warren Ave.  
Dearborn, MI 48126  
313-406-5420

Dough 4 IT LLC  
Gary David, Sharon Andrews, and Scott Suryan  
7205 N Telegraph  
Dearborn Heights, MI 48125  
313-730-9810

AH-Masing Grace, Inc.  
JohnNae Reynolds  
10533 Gratiot Ave.  
Detroit, MI 48205  
313-923-8900

Kapeko Inc.  
Ron & Nila Sarmiento  
22565 W. 8 Mile  
Detroit, MI 48219  
313-592-9000

34/44, Inc.  
Walter Bender  
Millender Center  
333 E. Jefferson Avenue  
Suite 280  
Detroit, MI 48228  
313-964-2575

Copeland TH, Inc.  
Arthur & Keysler Copeland  
15340 Wyoming Ave.  
Detroit, MI 48238  
313-864-8000

Copeland TH, Inc.  
Arthur & Keysler Copeland  
19833 W. 7 Mile Rd.  
Detroit, MI 48227  
313-255-9600

Ashley-Bleu Diamond, Inc.  
Wanda Johnson  
Wayne State University  
The Union  
4830 Cass Ave  
Detroit, MI 48201  
313-831-1280

DLI Properties, LLC  
Ford Field  
2000 Brush Street  
Detroit, MI 48226  
313-262-2000

College for Creative Studies  
485 West Milwaukee Street  
Detroit, MI 48202  
313-664-1409

Bender 34 Inc.  
Walter L. Bender  
Compuware World HQ Bldg  
Space#01A16  
49 Monroe Street  
Detroit, MI 48226  
313-962-5550

34/44, Inc.  
Walter Bender  
7201 East Jefferson  
Detroit, MI 48214  
313-331-2485

Olympia Entertainment, Inc.  
600 Civic Center Drive  
Detroit, MI 48226  
313-471-7400

Damouni of Lansing #3, Inc.  
Elie Damouni and George Damouni  
12962 S. US 27  
Dewitt, MI 48820  
517-669-4800

P & B Dam LLC  
Bonita Dam  
772 W. Bay Street  
E. Tawas, MI 48730  
(989) 305-6064

DMB Holdings, LLC  
Mike Behnke and Deborah Cleminson  
3992 Coleman Road  
East Lansing, MI 48823  
517-333-2064

DMB Holdings, LLC  
Mike Behnke and Deborah Cleminson  
2015 N. Larch Street  
Lansing, MI 48906  
517-316-3177

Michigan State University  
200 Spartan Way  
East Lansing, MI 48824  
517-355-0273

Wilson 1, LLC  
Tom and Lillian Wilson  
1198 South Harrison Road  
East Lansing, MI 48823  
517-580-8161

Wilson 1, LLC  
Tom & Lillian Wilson  
3010 E. Lake Lansing Rd.  
East Lansing, MI 48823  
517-333-7004

Green Zone Enterprises, LLC  
Ray Jajou and Maher Jajou  
17210 E. 9 Mile  
Eastpointe, MI 48021  
810-523-5875

Makjak, LLC  
Kelly Maniko  
2906 Center Ave.  
Essexville, MI 48732  
989-893-2305

Rame Group, Inc.  
Michael and Ashwaq Jwaida  
33340 West 12 Mile Road  
Farmington Hills, Michigan 48334  
(248) 489-3192

Cyndon Enterprises LLC  
Don and Cindy Andrews  
326 W. Silver Lake Rd.  
Fenton, Michigan 48430  
(810) 714-3092

Cyndon Enterprises LLC  
Don and Cindy Andrews  
3238 Owen Road  
Fenton, MI 48430  
810-629-3921

Mantha Management Clarkston, Inc.  
Bob and Lise Mantha  
5700 Maybee Rd.  
Clarkston, MI 48346  
248-922-3195

Ashley-Bleu Diamond, Inc.  
Wanda Johnson  
22230 Woodward Ave.  
Ferndale, Michigan 48220  
(248) 546-2573

Briden Enterprises II LLC  
Brian and Dana Reicker  
27035 Telegraph Rd.  
Flat Rock, MI 48134  
734-789-8990

Cyndon Enterprises LLC  
Don and Cindy Andrews  
2435 W. Hill Rd.  
Flint, MI 48507  
810-234-8355

E.G.K., Inc.  
Elie Damouni and George Damouni  
1490 S. Linden  
Flint, Michigan 48532  
(810) 720-5493

GDM Food Service Inc.  
Michael Grail, Paul Dhaen, and Tomo Matesic  
1506 S Beacon Blvd  
Rt 31-Robbins  
Grand Haven, MI 49417  
616-935-7501

G.D. Rizk, Inc.  
Elie Damouni & George Damouni  
1274 Ballenger Hwy.  
Flint, Michigan 48504  
(810) 424-5970

KYD of Pierson, Inc.  
Karim Damouni  
4365 Pierson Road  
Flint, Michigan 48504  
(810) 230-3290

Cyndon Enterprises LLC  
Don and Cindy Andrews  
6008 Fenton Road  
Flint, Michigan 48507  
810-234-8961

Boom-Hort Incorporated  
Ken Boomer  
142 N. Main Street  
Frankenmuth, MI 48734  
989-652-2749

Coffee Capers, L.L.C.  
Adele Audet  
15728 15 Mile Road  
Fraser, MI 48026  
586-294-0332

Sleneem Enterprise, LLC  
Amy and Nelson Lesada  
30121 Ford Rd.  
Garden City, Michigan 48135  
(734) 762-9108

Dalwhinn Gaylord, LLC  
Joost Gragtmans, Robert Trdina, James  
Cheetham, and Vince Cardella  
1301 W. Main Street  
Gaylord, MI 49735  
989-448-2222

Damouni of Grand Blanc, Inc.  
Elie Damouni and George Damouni  
11334 S. Saginaw Street  
Grand Blanc, MI 48439  
(810) 603-0629

DMB Holdings, LLC  
David Michael Behnke and Deborah Cleminson  
860 E Saginaw Hwy  
Grand Ledge, MI 48837  
517-622-0039

GDM Food Service Inc.  
Mike & Paula Grail, Paul Dhaen, Tomo Matesic  
900 Fulton St. West  
Grand Rapids, MI 49504  
616-622-2512

DP Fox Sports & Entertainment, LLC &  
SMG Van Andel Arena  
130 West Fulton Street  
Grand Rapids, MI 49503  
616-742-6190

GDM Food Service Inc.  
Mike & Paula Grail, Paul Dhaen,  
Tomo Matesic  
5551 28<sup>th</sup> Street  
Grand Rapids, MI 49512  
616-940-0407

GDM Food Service Inc.  
Mike Grail, Tomo Matesic, Paul  
Dhaen and Jean-Marie Laprise  
5015 E. Beltline  
Grand Rapids, MI 49525  
616-447-8918

GDM Food Service Inc.  
Mike Grail, Tomo Matesic, Paul  
Dhaen and Jean-Marie Laprise  
2450 28<sup>th</sup> Street SE  
Grand Rapids, MI 49503  
616-940-1515

GDM Food Service Inc.  
Mike & Paula Grail, Paul Dhaen &  
Tomo Matesic  
2001 W. Washington Street  
Greenville, MI 48838  
616-754-5090

RQB, Inc.  
Walter Bender  
19353 Vernier  
Harper Woods, MI 48225  
(313) 881-7866

Stew-Hort II, Inc.  
Robert and Maureen Stewart  
10833 Highland Road  
Hartland, MI 48353  
810-632-9902

R & S Management Group, Inc.  
Wissam Abbo and Rasha Jwaida  
41 West 9 Mile  
Hazel Park, MI 48030  
248-543-7203

Trenay Corporation  
Theresa Johnson  
15109 Woodward  
Highland Park, MI 48203  
313-868-8000

JEAB Enterprises, LLC  
Mandi Brower  
243 N. River  
Holland, MI 49424  
616-394-0650

Kahala Franchise Corp  
5 West 8th Street  
Holland, MI 49423  
616-396-5940

JEAB Enterprises, LLC  
Mandi Brower  
809 Washington Ave.  
Holland, MI 49423  
616-836-0488

Proactive Resolutions, LLC  
Thomas Schlitts and Michele Hirschfield  
2350 Cedar Street  
Holt, MI 48842  
(517) 694-0129

Fresh Brew, LLC  
Majid Koza, Karam Bahnam, Alaa George  
and Bachar El-Sayegh  
1900 Latson Rd (USA To Go)  
Howell, MI 48842  
517-552-8780

Brian H. Kelemen & Associates Inc.  
Brian Kelemen and Lynn Kelemen  
1952 S. Cedar Street  
Imlay City, Michigan 48444  
(810) 726-1651

CCD Enterprises, LLC  
Vivian Sayah  
1715 W. Michigan Avenue  
Jackson, MI 49201  
(517) 795-1648

CCD Parnall Inc.  
Vivian Sayah  
1004 West Parnell Street  
Jackson, MI 49201  
517-768-5868

SJ&E Enterprises LLC  
Greg & Ruth Mancina  
4328 W. Main  
Kalamazoo, MI 49006  
269-382-1500

ACEA, L.L.C.  
Arnold & Corazon Villanueva  
4417 Kalamazoo Ave.  
Kentwood, MI 49518  
734-775-9588

A Cubed Investments, LLC  
Debra Anderson  
740 Lapeer Road  
Lake Orion, Michigan 48362  
248-693-8954

Bridan Enterprises II, LLC  
Brian and Dana Reicker  
3309 Sterns Road  
Lambertville, Michigan 48144  
734-865-1679

DMB Holdings, LLC  
David M. Behnke and Deborah Cleminson  
728 S. Waverly Road  
Lansing, MI 48917  
(517) 703-8131

Wilson 1, LLC  
Tom and Lillian Wilson  
3500 S. MLK Blvd.  
Lansing, MI 48910  
(517) 272-9501

Wilson 1, LLC  
Tom and Lillian Wilson  
2540 Jolly Road  
Lansing, MI 48911  
517-882-6311

DDA Lapeer, LLC  
Debra Anderson  
624 S. Main Street  
Lapeer, Michigan 48446  
810-667-1486

INUKSHUK Enterprises, LLC  
Vince and Michele Thompson  
36255 26 Mile Road  
Lenox Township, MI 48050  
(586) 716-9240

Bridan Enterprises, Inc.  
Brian and Dana Reicker  
1360 Southfield Rd.  
Lincoln Park, Michigan 48329  
(313) 383-7824

Bridan Enterprises, Inc.  
Brian and Dana Reicker  
1727 Southfield Road  
Lincoln Park, MI 48146  
313-928-0138

M&J Hall, Inc.  
Michael and Janice Hall  
33500 Plymouth Rd.  
Livonia, Michigan 48152  
(734) 427-0653

Mera Group, Inc.  
Michael and Ashwaq Jwaida  
33111 8 Mile Road  
Livonia, MI 48152  
248-477-4675

Krikor Management, Inc.  
Simon and Rana Krikor  
16815 Middlebelt Road  
Livonia, MI 48154  
734-425-4402

Krikor Management, Inc.  
Simon & Rana Krikor  
27430 Schoolcraft Rd.  
Livonia, MI 48150  
734-422-1506

Damouni of Hall Road, Inc.  
Elie Damouni and George Damouni  
22929 Hall Road  
Macomb, MI 48012  
586-948-1945

Grannbits, Inc.  
Tammy Dodd  
16450 26 Mile Rd.  
Macomb, MI 48042

Madison Heights TH, Inc.  
Wayne Izumi, Bill Kostenko, and Perry Miele  
493 W. 12 Mile Road  
Madison Heights, Michigan 48071  
248-548-1688

Dequindre TH, Inc.  
Wayne Izumi, Bill Kostenko, Keysler Copeland,  
Delamar Capital Inc. and 1083536 Ontario Ltd.  
28775 Dequindre Rd  
Madison Heights, MI 48071  
248-544-8770

Damouni of Marysville, Inc.  
Elie Damouni and George Damouni  
1551 Gratiot Blvd  
Marysville, MI 48040  
810-388-0029

Triple Dough, LLC  
Gary David and Sharon Andrews  
3556 Oakwood Blvd  
Melvindale, MI 48122  
313-388-9375

TWOCAN, INCORPORATED  
Bonita Dam  
2003 South Saginaw Road  
Midland, Michigan 48640  
(989) 832-9955

Stew-Hort Inc.  
Robert Stewart, Maureen Stewart  
177 S. Milford Rd.  
Milford, Michigan 48381  
(248) 684-7632

Bridan Food Service, Inc.  
Brian & Dana Reicker  
Meijer, 1700 North Telegraph Rd.  
Monroe, MI 48162

Bridan Food Service, Inc.  
Brian and Dana Reicker  
404 S. Monroe Street  
Monroe, Michigan 48161  
(734) 384-9523

Bridan Food Services, Inc.  
Brian and Dana Reicker  
1448 N. Telegraph Road  
Monroe, Michigan 48162  
734-457-2181

TA Operating LLC,  
dba Travel Centers of America  
1255 N. Dixie Highway  
Monroe, Michigan 48162  
(734) 384-7952

Twocan, Incorporated  
Bonita Dam  
1004 E. Pickard  
Mt. Pleasant, MI 48858  
(989) 779-0920

Aramark  
Central Michigan University  
1200 South Franklin St.  
Mt. Pleasant, MI 48858

Van Dam Holdings, LLC  
Bonita Dam and Kristen Van Dam  
1723 S. Mission  
Mt. Pleasant, MI 48858  
989-708-1861

LC Walker Arena  
955 Fourth Street  
Muskegon, MI 49440  
231-726-2939

JEAB Enterprises, LLC  
Mandi Brower  
1931 E. Sherman Blvd.  
Muskegon, MI 49444  
231-737-4300

T & H East, L.L.C.  
Majid Koza and Karam Bahnam  
USA 2 GO Gas Station  
30560 Milford Rd  
New Hudson, MI 48165  
248-446-8005

M&J Hall, Inc.  
Michael and Janice Hall  
17899 Haggerty Road  
Northville, Michigan 48167  
(248) 449-9727

GDM Food Service Inc.  
Michael Grail, Paul Dhaen, and Tomo Matesic  
3334 Henry Street  
Norton Shores, MI 49441  
231-733-6482

1st Step, LLC  
Majid Koza, Karam Bahnam, and Kusai Badrya  
47296 City Gate Drive  
Novi, MI 48374  
248-465-1816

Ashley-Bleu Diamond, Inc.  
Wanda Johnson  
22211 Coolidge Road  
Oak Park, MI 48237  
248-399-1367

DMB Holdings, LLC  
David Michael Behnke and Deborah Cleminson  
Meridian Mall  
1982 W Grand River  
Okemos, MI 48864  
517-706-0155

BGJ Enterprises, LLC  
Gazmend Dervishaj and Bujar Dervishaj  
3464 Okemos Rd  
Okemos, MI 48864  
517-347-9680

Damouni Brothers, Inc.  
Elie Damouni and George Damouni  
323 W. Main Street  
Owosso, Michigan 48867  
(989) 723-7384

GJ Enterprises LLC  
Geoff Bullen & JoAnn Shannon  
590 N. Lapeer Road  
Oxford, MI 48371  
(248) 572-4069

GDM Food Service Inc.  
Mike & Paul Grail, Tomo Matesic &  
Paul Dhaen  
3773 Plainfield Ave. NE  
Plainfield Township, MI 49525  
616-447-0776

M&J Hall, Inc.  
Michael and Janice Hall  
150 Plymouth Road  
Plymouth, Michigan 48170  
(248) 449-9727

Gale Force Sports & Entertainment  
Compurware Arena  
14900 Beck Road  
Plymouth, MI 48170  
734-453-4455

Cyndon Enterprises LLC  
Don and Cindy Andrews  
617 E. Walton  
Pontiac, Michigan 48342  
248-276-7588

Robinson 43, Inc.  
Frank and Teresa Robinson  
1600 S. Opdyke Street  
Pontiac, Michigan 48342  
(248) 332-1730

Damouni of Port Huron #1, Inc.  
Elie Damouni and George Damouni  
2626 Pine Grove  
Port Huron, MI 48060  
810-987-6734

Damouni of Port Huron #2, Inc.  
Elie Damouni and George Damouni  
3829 Pine Grove Avenue  
Port Huron, MI 48060  
810-982-4047



Port Huron 3, Inc.  
Elie Damouni and George Damouni  
755 24<sup>th</sup> Street  
Port Huron, MI 48040  
810-730-8959

Battlecreek D Ave, Ltd  
Tom & Shannon Brady  
5709 s. Westnedge  
Portage, MI 49002  
269-343-0910

Jayco Coffee Enterprise, LLC  
Jerry & Claudine Zorzi  
26950 Grand River Ave.  
Redford, MI 48240  
313-535-8700

Modun Enterprises, L.L.C.  
Bassam Bazzi and Racha Saad  
24225 5 Mile Road  
Redford, MI 48239  
313-255-8800

Modun Enterprises, L.L.C.  
Bassam Bazzi & Racha Saad  
14830 Telegraph Rd.  
Redford, MI 48239  
313-538-8460

INUKSHUK Enterprises, LLC  
Vince and Michele Thompson  
67467 Main Street  
Richmond, Michigan 48062  
586-727-2404

ANS TH Inc.  
Ravinder & Anita Saini  
940 Rochester Rd.  
Rochester Hills, MI 48307  
248-495-5454

Sleneem Enterprises, LLC  
Amy and Nelson Lesada  
7070 Middlebelt Road  
Romulus, Michigan 48174  
(734) 467-4913

Alma II, Inc.  
Joseph Sayah & Raymondah El-Sayah  
Meijer, 30800 Little Mack Rd.  
Roseville, MI 48066

Alma Enterprises, LLC  
Joseph Sayah and Raymondah El-Sayah  
30721 Gratiot Avenue  
Roseville, Michigan 48066  
(586) 285-0273

Alma Enterprises, LLC  
Joseph Sayah and Raymondah El-Sayah  
25511 Gratiot St.  
Roseville, Michigan 48066  
(586) 498-9270

G&V Food Service, Inc.  
John Genovesi & Thomas Valenti  
28285 Groesbeck Hwy  
Roseville, MI 48066  
586-498-7800

Royal Oak TH, Inc.  
Wayne Izumi, Bill Kostenko, and Perry Miele  
2214 E. 11 Mile Road  
Royal Oak, Michigan 48067  
(248) 548-3391

Boom Hort, Inc.  
Ken Boomer  
2039 N. Michigan Avenue  
Saginaw, Michigan 48602  
(517) 753-0273

BOOM-HORT INCORPORATED  
Ken Boomer  
4870 State Street  
Saginaw, Michigan 48602  
(989) 793-5288

MKL Enterprises LLC  
Bruce Filipich and Shirley Ellis  
8099 Gratiot Ave.  
Saginaw, Michigan 48609  
(989) 781-5241

SMG-The Dow Event Center  
Dow Event Center  
303 Johnson Street  
Saginaw, MI 48607  
989-798-3781

Hat Trick Bakeries, Inc.  
Jack and Pam Klarich  
524 E. Michigan Ave.  
Saline, Michigan 48176  
(734) 429-0761

Brian H. Kelemen & Associates Inc.  
Brian and Lynn Kelemen  
12265 23 Mile Road  
Shelby Township, MI 48313  
586-731-3144

B Jays L.L.C.  
Elias Bouary, Clemence Bouary  
25203 Evergreen Rd.  
Southfield, Michigan 48076  
(248) 355-2116

B Jays L.L.C.  
Elias and Clemence Bouary  
29069 Greenfield Road  
Southfield, Michigan 48076  
248-552-0016

B Jays L.L.C.  
Elias and Clemence Bouary  
25311 Telegraph Rd.  
Southfield, Michigan 48034  
248-350-1896

Timz 2 Go, LLC  
Maria and Tony Forte  
28565 Northwestern Highway  
Southfield, MI 48075  
248-799-0468

B Jays L.L.C.  
Elias and Clemence Bouary  
19701 12 Mile Rd.  
Southfield, MI 48076  
248-563-0718

Blue Collar Brew, Inc.  
Jacob Millner  
19014 Eureka  
Southgate, MI 48195  
734-284-3000

Zim Tim, LLC  
Joe Zimbalatti, Mark Zimbalatti  
16100 Northline Road  
Southgate, MI 48195  
(734) 284-5633

Zim Tim, LLC  
Joe Zimbalatti, Mark Zimbalatti  
16801 Fort Street  
Southgate, Michigan 48195  
(734) 246-8345

Naz-th Corp.  
Joe Zimbalatti, Mark Zimbalatti  
13843 Northline Avenue  
Southgate, Michigan 48195  
(734) 246-4505

INUKSHUK Enterprises, LLC  
Vincent and Michele Thompson  
160 Clinton Avenue  
St. Clair, MI 48079  
810-326-1625

Alma Enterprises, LLC  
Joseph Sayah and Raymondah El-Sayah  
23825 Harper Ave.  
St. Clair Shores, MI 48080  
(586) 776-2124

Alma I, Inc  
Joseph Sayah and Raymondah El-Sayah  
28101 Harper Road  
St. Clair Shores, MI 48080  
586-777-7880

GRANNBITS, INC.  
Tammy Dodd  
42875 Hayes  
Sterling Heights, Michigan 48313  
(810) 987-6734

Grannbits III, Inc.  
Tammy Dodd  
37121 Mound Road  
Sterling Heights, Michigan 48310  
586-268-3366

Grannbits II, Inc.  
Tammy Dodd  
34918 Van Dyke  
Sterling Heights, Michigan 48312  
(586) 979-0498

Grannbits IV, Inc.  
Tammy Dodd  
40955 Mound Rd.  
Sterling Heights, MI 48310  
586-453-6761

SNB of Sterling Heights LLC  
Sejaan Ghafari and Samer Ghafari  
4065 15 Mile Rd.  
Sterling Heights, MI 48310  
248-914-4285

Timz 2 Go 2, Inc.  
Tony and Maria Forte  
2635 Orchard Lake Road  
Sylvan Lake, MI 48320  
248-681-2922

JCH Enterprises, LLC  
Alex and Lida Cruz  
21399 Van Born Road  
Taylor, MI 48180  
(313) 792-1722

JCH Enterprises, LLC  
Alex and Lida Cruz  
11130 Allen Rd.  
Taylor, Michigan 48180  
(734) 287-2234

Sleneem Enterprise, LLC  
Nelson and Amy Lesada  
27340 Eureka Road  
Taylor, MI 48180  
734-942-7031

Alidalex Enterprises LLC  
Alex and Lida Cruz  
22400 Ecorse Rd  
Taylor, MI 48180  
313-292-5815

Kelemen Café Division, LLC  
Brian & Lynn Kelemen and Ken Rice  
8460 Telegraph Rd.  
Taylor, MI 48180  
586-354-7641

Six Thirteen Inc.  
Sam and LaShonda Harris  
901 W. Chicago Blvd  
Tecumseh, MI 49286  
517-423-4239

Naz-th Corp.  
Joe Zimbalatti, Mark Zimbalatti  
1816 West Road  
Trenton, Michigan 48183  
(734) 246-4505

P Q Foods, LLC  
Hassan Charara and Radwan Charara  
20913 Gibraltar Rd.  
Trenton, MI 48183  
734-675-9337

Muffin III, LLC  
Maureen Finnigan & John Mara  
1905 E. Maple Rd.  
Troy, MI 48083  
248-524-1188

Muffin I LLC  
Maureen Finnigan  
3331 Rochester Rd.  
Troy, MI 48083  
248-740-8053

Muffin II, LLC  
Maureen Finnigan & John Mara  
507 E. Big Beaver  
Troy, MI 48083  
248-524-3100

Muffin IV, LLC  
Maureen Finnigan & John Mara  
1852 East Big Beaver  
Troy, MI 48083  
313-683-0392

CNJ Incorporated  
Mariann Mladenoff  
47050 Van Dyke  
Utica, Michigan 48317  
(810) 997-0529

Grannbits, Inc.  
Tammy Dodd  
Meijer, 15055 Hall Rd.  
Utica, MI 48315

Damouni of Van Dyke, Inc.  
Elie Damouni, George Damouni  
8763 Hall Rd.  
Utica, MI 48315  
586-997-9720

RTJ Foods, LLC  
Tim and Tess Noonan  
10360 Belleville Rd.  
Van Buren Twnshp, Michigan 48111  
(734) 699-5278

STEW-HORT INC.  
Robert and Maureen Stewart  
1006 E. West Maple Road, Suite A  
Walled Lake, Michigan 48390  
(248) 668-0044

R & S Management Group, Inc.  
Wissam Abbo and Rasha Jwaida  
26807 Hoover Rd.  
Warren, MI 48089  
(586) 757-2251

Trenay Corporation  
Theresa Johnson  
29030 Van Dyke  
Warren, Michigan 48093  
(586) 573-7270

TG4, LLC  
Nelson and Amy Lesada,  
and Rachel Lesada  
20700 Mound Road  
Warren, Michigan 48091  
(586) 757-0467

RQB, Inc.  
Walter Bender and Asha Glenn  
22600 Van Dyke  
Warren, MI 48089  
586-758-3118

R & S Management Group, Inc.  
Wissam Abbo and Rasha Jwaida  
28877 Schoenherr  
Warren, MI 48088  
586-751-1821

ZSA Café Inc.  
Sami & Adiba Youkhana  
25100 Ryan Rd.  
Warren, MI 48091  
586-756-6305

Brian H. Kelemen & Associates Inc.  
Brian Kelemen  
13240 32 Mile Road  
Washington Twp, MI 40865  
586-336-6809

Gaby Jamile, LLC.  
Jamile Youssef  
4837 Dixie Hwy.  
Waterford, Michigan 48329  
(248) 618-9369

Mantha Management Group, Inc.  
Bob and Lise Mantha  
180 N. Cass Lake Rd.  
Waterford, Michigan 48328  
(248) 738-2650

KYD, Inc.  
Karim Damouni  
9 N. Telegraph  
Waterford, MI 48329  
810-444-5870

LLJBT Construction, L.L.C.  
1123 129th Street  
Wayland, MI 49348  
269-792-7622

Solomons, Inc.  
Moussa Zoarob and MarieJeane Kouchoukian  
34441 E. Michigan Avenue  
Wayne, MI 48184  
734-729-4391

Paradies-DTW, LLC  
Detroit Metro Airport F-1A  
2500 World Gate Place  
Wayne, MI 48242  
404-494-3396

Paradies-DTW, LLC  
Detroit Metro Airport W-2A  
2500 World Gate Place  
Wayne, MI 48242  
404-494-3396

Maple Orchard Coffee, Inc.  
Frank Awdish and Frank Fouad Awdish, Jr.  
6480 Orchard Lake Rd.  
West Bloomfield, MI 48322  
248-737-6666

Boom-Hort North, Inc.  
Ken Boomer  
2960 Cook Rd.  
West Branch, MI 48661  
989-343-6844

Le Petite Café Inc.  
Sabah Mahmoud  
38350 Ford Rd.  
Westland, MI 48185  
313-522-0078

Solomons, Inc.  
Moussa Zoarob and MarieJeanne Kouchoukian  
715 South Wayne Road  
Westland, MI 48186  
734-595-0452

Westland Coffee, LLC  
Majid Koza, Karam Bahnam, Alaa George  
Bachar El-Sayegh  
7126 N. Wayne  
Westland, MI 48185  
248-767-5337

MTTL Enterprises LLC  
Steven Todd and Marcy Deffendall  
9199 Highland Road  
White Lake Twp., Michigan 48383  
(248) 698-4967

Crisel Enterprises, LLC  
Edwin and Loreta Crisolo  
21930 Allen Road  
Woodhaven, MI 48183  
(734) 968-6793

Crisel Enterprises, LLC  
Edwin and Loreta Crisolo  
22051 West Road  
Woodhaven, MI 48183  
734-692-0279

Crisel II, Inc.  
Edwin and Loreta Crisolo  
2704 Biddle  
Wyandotte, MI 48192  
734-720-0729

GDM Food Service Inc.  
Michael Grail, Paul Dhaen, and Tomo Matesic  
1550 28th St  
Wyoming, MI 49509  
616-249-9450

EVSayah LLC  
Elias Sayah  
760 S. Hewitt Rd.  
Ypsilanti, MI 48197  
(734) 480-2450

Kapeko Inc.  
Ron & Nila Sarmiento  
2220 Washtenaw Ave.  
Ypsilanti, MI 48197  
734-386-9196

Sethpality 4689, LLC  
Sethpality Holdings USA Inc.  
Deepak Seth, Punan Seth, Amit Seth,  
Rachana Seth, Anik Seth  
1311 Anna J Stepp  
Ypsilanti Township, MI 48197  
734-480-0367

**New Jersey**

Aramark Sports and Entertainment Services,  
LLC  
Prudential Center  
25 Lafayette Street  
Newark, NJ 07102  
973-757-6929

Skylands Ownership Group, LLC  
2765 State Highway 23  
Stockholm, NJ 07460  
973-697-1600

**New York**

Compass Group USA, Inc.  
Albany College of Pharmacy & Health Science  
106 New Scotland Avenue  
Albany, NY 12208  
518-694-7218

FHL of New York, LLC  
Joseph and Shirley Filippelli  
161 S. Main Street  
Albion, NY 14411  
(585) 589-6592

Tops Markets, LLC  
408 West Avenue  
Albion, NY 14411  
585-589-2548

Tops Markets, LLC  
12775 Broadway  
Alden, NY 14004  
716-505-1450

Niagara Street Associates, LLC  
Bob Bavisotto and Phil Perna  
12886 Broadway  
Alden, NY 14004  
716-937-7800

Eden Valley Brewing, Inc.  
Randy and Kimberly Schmitz  
8645 Erie Road  
Angola, New York 14006  
(716) 549-5060

Kelton Enterprises, LLC  
David & Allanna Beaton, Gary O'Neill and  
Corey Craig (U.S.), LTD  
11520 Transit Road  
Amherst, NY 14228  
(716) 568-2600

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Corey  
Craig (U.S.), LTD, and Gary O'Neill  
1705 Niagara Falls  
Amherst, New York 14228  
(716) 871-0052

Kelton Enterprises, LLC  
David and Allanna Beaton, Gary O'Neill, and  
Corey Craig (U.S.), LTD  
3394 Sheridan Dr.  
Amherst, New York 14226  
(716) 833-6207

BUSCO, BJC, INC.  
Benjamin and Cathleen Buscarino and Josephine  
Buscarino  
9590 Transit Road  
Amherst, New York 14051  
(716) 568-1060

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
2290 Millersport Highway  
Amherst, NY 14068  
716-568-2610

Tops Markets, LLC  
2351 Maple Road  
Amherst, NY 14221  
716-634-276

Tops Markets, LLC  
9660 Transit Road  
Gas Station  
Amherst, NY 14051  
716-515-3525

Tops Markets, LLC  
3500 Main Street  
Amherst, NY 14226  
716-515-3240

Tops Markets, LLC  
3035 Niagara Falls Boulevard  
Amherst, NY 14228  
716-515-0025

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
1950 Sweet Home Road  
Amherst, NY 14228  
716-689-0187

Clark Holdings, Inc.  
Bryan and Wendy Clark  
1810 Maple Road  
Amherst, NY 14221  
716-688-8452

JTRAV Incorporated  
Jim Travis  
771 Wehrle Dr.  
Amherst, NY 14221  
716-626-6756

Niagara Street Associates, LLC  
Bob Bavisotto and Phil Perna  
3980 Maple Rd.  
Amherst, NY 14226  
(716) 668-7620

Dimark Development LLC  
Mark and Diane Murphey  
4192 State Highway 30  
Amsterdam, NY 12010  
518-883-7807

Tops Markets, LLC  
658 W. Main Street  
Arcade, NY 14009  
585-492-0067

Tops PT, LLC  
150 Prospect Street  
Attica, NY 14011  
585-591-8092

160 Café & Bake Inc.  
Kerrim Jivani and Shehzad Sayani  
160 Grant Avenue  
Auburn, NY 13021  
315-258-0430

Tops PT, LLC  
352 West Genesee St.  
Auburn, NY 13021  
315-252-7995

Tops Markets, LLC  
270 E. Main Street  
Avon, NY 14414  
585-226-2730

Tops PT, LLC  
2265 Downer Street  
Baldwinsville, NY 13027  
315-635-3536

Western Regional Off-Track Betting  
Corporation  
8315 Park Road  
Batavia, NY 14020  
585-343-3750

MCMC Enterprises, LLC  
Anthony McEachern and Jeff Cercone  
3610 St Rt 31  
Baldwinsville, NY 13027  
315-622-4278

Tops Markets, LLC  
390 West Main Street  
Batavia, NY 14020  
585-343-9373

Clark-Lumberg Associates, LLC.  
Bryan Clark, Wendy Clark, and David Lumberg  
20 Main Street  
Batavia, New York 14020  
(585) 344-1430

Tops Markets, LLC  
309 West Morris Street  
Bath, NY 14810  
607-776-1015

Mirabito Holdings Inc.  
1178 Vestal Avenue  
Binghamton, NY 13903  
607-722-1572

Mirabito Holdings Inc.  
1232 Upper Front Street  
Binghamton, NY 13905  
607-722-1572

Double, Double, Inc.  
Diana Ulsrud and Lynn Traverse  
3638 S Park Avenue  
Blasdell, NY 14219  
716-882-5544

Mirabito Holding, Inc  
5600 Bartel Rd  
Brewerton, NY 13029  
315-676-5629

D.L. Mayer LLC  
David Mayer, Lynette Mayer  
6573 Fourth Section Rd.  
Brockport, New York 14420  
(585) 637-3150

Tops Markets, LLC  
1740 Sheridan Drive  
Buffalo NY 14223  
716-874-4991

Ahuja Enterprises Inc.  
Amit Ahuja and Sahil Ahuja  
2240 Delaware Ave.  
Buffalo, NY 14216  
(716) 871-3700

Flexion, Inc.  
Alfred "Fredy" Stamm &  
Judy Harrower-Stamm  
1137 Bailey Avenue  
Buffalo, New York 14206  
716-893-8611

Ahuja Enterprises Inc.  
Amit Ahuja & Sahil Ahuja  
2207 Niagara Street  
Buffalo, New York 14207  
(716) 876-8200

Ahuja Enterprises INC.  
Amit Ahuja and Sahil Ahuja  
50 Fountain Plaza  
Buffalo, New York 14202  
(716) 362-9693

Ahuja Enterprises Inc.  
Amit Ahuja and Sahil Ahuja  
3470 Main Street  
Buffalo, New York 14214  
(716) 831-1997

Ahuja Enterprises Inc.  
Amit Ahuja and Sahil Ahuja  
Liberty Bank  
424 Main Street  
Buffalo, NY 14202  
716-854-0704

Ahuja Enterprises Inc.  
Amit Ahuja & Sahil Ahuja  
2200 Elmwood Ave  
Buffalo, NY 14216  
716-362-0232

Varma Enterprises Inc.  
Ajay and Shashi Varma and Manan and  
Taruna Varma  
1 HSBC Center  
Buffalo, New York 14203  
(716) 854-3898

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
University at Buffalo  
Student Union  
Buffalo, NY 14260-2100  
716-645-5495



Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
University at Buffalo  
Alfiero Center  
Buffalo, NY 14260-4010  
716-645-5487

Faculty-Student Association of State University  
of New York at Buffalo, Inc.  
University at Buffalo  
Baldy Hall  
Buffalo, NY 14260  
716-645-3967

Faculty-Student Association of State University  
of New York at Buffalo, Inc.  
University at Buffalo  
Farber Hall  
Buffalo, NY 14260  
716-829-2117

Tops Markets, LLC  
345 Amherst Street  
Buffalo, NY 14207  
716-515-2170

Tops Markets, LLC  
1770 Broadway  
Buffalo, NY 14212  
716-515-3330

Tops Markets, LLC  
1275 Jefferson Avenue  
Buffalo, NY 14208  
716-816-0038

Perna-Niagara, Inc.  
Robert Bavisotto and Phil Perna  
425 Niagara Street  
Buffalo, NY 14201  
716-852-6112

Flexion, Inc.  
Alfred "Fredy" Stamm &  
Judy Harrower-Stamm  
647 Bailey Avenue  
Buffalo, NY 14206  
716-828-1152

Kalra Enterprises Inc.  
Rajan and Shivani Kalra  
219 Bryant Street  
Buffalo, NY 14222  
(716) 878-7000

Ahuja Enterprises Inc.  
Amit Ahuja and Sahil Ahuja  
Erie County Medical Center  
462 Grider Street  
Buffalo, NY 14211  
716-893-5871

Aramark Healthcare Support Services, LLC  
565 Abbott Road  
Buffalo, NY 14220  
716-828-2106

State University of New York College at Buffalo  
1300 Elmwood Avenue  
Buffalo NY 14222  
716-878-3486

Kalra Enterprises Inc.  
Rajan and Shivani Kalra  
1405 Kensington Ave  
Buffalo, NY 14215  
(716) 837-6390

Aramark Healthcare Support Services, LLC  
360 Choate Avenue  
Buffalo, NY 14220  
716-828-2106

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton,  
Gary O'Neill & Corey Craig (US), Ltd.  
University at Buffalo  
150 Kapoor Hall  
Buffalo, NY 14214  
716-645-1784

Tops Markets, LLC  
2101 Elmwood Ave.  
Buffalo, NY 14207  
716-515-0050

Flexion, Inc.  
Alfred "Fredy" Stamm &  
Judy Harrower-Stamm  
1474 Seneca Street  
Buffalo, NY 14210  
716-824-4158

Sodexo America, LLC  
Larkin Bldg  
726 Exchange Street  
Buffalo, NY 14210  
716-819-2882

Ahuja Enterprises Inc.  
Amit Ahuja & Sahil Ahuja  
214 Elmwood Ave.  
Buffalo, NY 14222  
716-380-1351

Frank's Independent, Inc.  
Frank Sakoski  
3198 Main Street  
Buffalo, New York 14214  
(716) 836-5337

Landes & Blackwell Services, Inc.  
Janis E. Klein  
585 Elmwood Avenue  
Buffalo, New York 14222  
(716) 886-5576

Kalra Enterprises Inc.  
Rajan and Shivani Kalra  
Buffalo General Medical Center  
875 Ellicott Street  
Buffalo, NY 14203  
716-859-3293

Varma Enterprises Inc.  
Ajay & Shashi Varma  
Manan & Taruna Varma  
181 Ellicott St.  
Buffalo, NY 14203  
716-842-0350

Varma Enterprises Inc.  
Ajay & Shashi Varma  
Manan & Taruna Varma  
ECC  
121 Ellicott Street  
Buffalo, NY 14203  
716-572-2952

Buffalo Sportservice, LLC  
First Niagara Center/HSBC Arena/  
Sabres  
1 Seymour H Knox III Plaza  
Buffalo, NY 14203

Tops Markets, LLC  
1460 South Park Avenue  
Buffalo, NY 14220  
716-515-2050

Compass Group USA, Inc.  
Canisius College Library  
2001 Main Street  
Buffalo, NY 14208  
716-888-8486

Niagara Street Associates, LLC  
Bob Bavisotto and Phil Perna  
1989 Seneca Street, B-Kwik  
Buffalo, NY 14210  
(716) 824-1794

C.R.B. Holdings, Inc.  
Bob Burns and Jason Burns  
2970 Sauders Settlement Rd.  
Cambria, NY 14132  
716-731-5151

Tops PT, LLC  
5335 West Genesee Street  
Camillus, NY 13031  
315-487-0787

Mirabito Holdings Inc.  
2052 W. Genesee Turnpike  
Camillus, NY 13031  
315-672-3347

Tops Markets, LLC  
5150 North Street  
Canandaigua, NY 14424  
585-394-5120

JDA Enterprises LLC  
Mark and Shari Giardino  
5137 North Road  
Canandaigua, New York 14424  
(585) 394-2510

JDA Enterprises LLC  
Mark and Shari Giardino  
10 Booth Street  
Canandaigua, New York 14424  
(585) 394-8530

Tops PT, LLC  
9554 Harden Blvd, Rte 13  
Camden, NY 13316  
315-245-4745

Tops PT, LLC  
Rt 5 & Oxbow Road  
Canastota, NY 13032  
315-697-2700

Mirabito Holdings Inc.  
1166 Castle Creek Rd.  
Castle Creek, NY 13744  
607-648-4425

Tops PT, LLC  
71 Nelson Street  
Cazenovia, NY 13035  
315-655-4565

Mirabito Holdings Inc.  
28 St. RT 11  
Central Square, NY 13036  
315-676-4902

Mirabito Holdings Inc.  
682 North Main Street  
Central Square, NY 13036  
315-668-9846

H & R Strom, Inc.  
Rosalie Strom and Regina James  
2595 Union Road  
Cheektowaga, New York 14227  
(716) 656-7337

Spirit Enterprises, Inc.  
Michael & Jennifer Derrick & Tina Laity  
3816 Union Road  
Cheektowaga, New York 14225  
(716) 686-9392

Clark Holdings, Inc.  
Bryan and Wendy Clark  
4301 Genesee Street  
Cheektowaga, NY 14225  
716-631-4080

Tops Markets, LLC  
2195 Harlem Road  
Cheektowaga, NY 14225  
716-929-0380

JTRAV Incorporated  
James Travis  
1199 French Rd.  
Cheektowaga, New York 14227  
(716) 608-7611

Faith, Hope, Love, Inc.  
Michael & Jennifer Derrick & Tina Laity  
1610 Walden Ave.  
Cheektowaga, New York 14225  
(716) 597-0546

Spirit Enterprises, Inc.  
Michael & Jennifer Derrick & Tina Laity  
1 Walden Galleria  
Space A-213  
Cheektowaga, NY 14225  
716-651-0135

Kalra Enterprises, Inc.  
Rajan & Shivani Kalra  
440 Pine Ridge  
Cheektowaga, NY 14225  
716-895-2600

Tops PT, LLC  
3870 Harlem Road  
Cheektowaga, NY 14215  
716-836-0433

Tops Markets, LLC  
3865 Union Road  
Cheektowaga, NY 14227  
716-608-7611

Hebrews Enterprises, Inc.  
Tina and Ron Laity  
3465 Union Rd.  
Cheektowaga, NY 14225  
716-681-2510

Mirabito Holdings Inc.  
5 Kattelville Rd  
Chenango Bridge, NY 13745  
607-648-2844

Mirabito Holdings Inc.  
49 Genesee St.  
Cherry Valley, NY 13320  
607-264-8177

Tops PT, LLC  
800 West Genesee Street  
Chittenango, NY 13142  
315-687-9224

Delaware North Companies Travel Hospitality  
Services, Inc.  
4002 Ransom Road  
Clarence, New York 14031  
(716) 759-6656

Sky's The Limit J.B.C., Inc.  
Ben and Cathy Buscarino and Josephine  
Buscarino  
9220 Main Street  
Clarence, New York 14031  
(716) 626-9689

Tops PT, LLC  
8417 Oswego Road  
Clay, NY 13027  
315-652-4934

TEN TO GO, LLC  
Stephen and Sandra Hughes  
3911 Brewerton Road  
Clay, NY 13212  
315-458-0357

Tops PT, LLC  
5 Commons Drive, Rte 28  
Cooperstown, NY 13326  
607-547-5956

Delaware North Companies Travel Hospitality  
Services, Inc.  
8319 Indian Falls Road  
Corfu, New York 14036  
(585) 792-9047

Tops Markets, LLC  
3932 State Route 281  
Cortland, NY 13045  
607-250-2500

141 Clinton Associates, LLC  
Bakhtiar Ahmed and Arif Muhammad  
141 Clinton Ave.  
Cortland, NY 13045  
607-662-0277

Tops Markets, LLC  
35 Franklin Plaza  
Dansville, NY 14437  
585-335-2140

CLP Darien Lake, LLC  
9993 Allegheny Rd.  
Darien Center, NY 14040  
585-599-5104

Mirabito Holdings Inc.  
15863 St Hwy 23  
Davenport, NY 13750  
607-278-5086

Mirabito Holdings Inc.  
54 Elm Street  
Delhi, NY 13753  
607-746-3353

H&R Strom, Inc.  
Rosalie Strom and Regina James  
5316 Transit Drive  
Depew, New York 14043  
(716) 684-7335

Tops Markets, LLC  
4777 Transit Road  
Gas Station  
Depew, NY 14043  
716-515-3280

Tops Markets, LLC  
4777 Transit Road  
Depew, NY 14043  
716-515-3280

Tops Markets, LLC  
6363 Transit Road  
Depew, NY 14043  
716-601-0180

7860 Transit Rd., Inc.  
Bob Bavisotto & Phil Perna  
5892 Transit Rd.  
Depew, NY 14043  
716-681-6868

Broadway Penora, Inc.  
Robert Bavisotto and Phil Perna  
5175 Broadway  
Depew, NY 14043  
716-515-3440

Mirabito Holdings Inc.  
360 St Hwy 10  
Deposit, NY 13754  
607-467-3799

Double, Double, Inc.  
Diana Ulsrud and Lynn Traverse  
6933 Erie Rd  
Derby, NY 14047  
716-947-4428

Tops Markets, LLC  
6914 Erie Road  
Derby, NY 14047  
716-947-4019

Delta-Sonic Carwash Systems, Inc.  
3439 Erie Blvd.  
Dewitt, NY 13214  
315-251-0605

Tops Markets, LLC  
4600 East Genesee Street  
DeWitt, NY 13214  
315-445-4071

Tops PT, LLC  
4410 E Genesee Street  
De Witt, NY 13214  
315-446-6421

LaurJen, LLC  
Eric and Tiffany Riihinen  
6227 Thompson Road  
DeWitt, NY 13214  
315-434-1952

Tops Markets, LLC  
3955 Vineyard Drive  
Dunkirk, NY 14048  
716-635-5130

Chadwick Bay Coffee Company, Inc.  
Gina and David Kron  
92 Lake Shore Drive E.  
Dunkirk, NY 14048  
(716) 363-6450

G.D.K. Development Inc.  
David and Gina Kron  
3936 Vineyard Drive  
Lot C  
Dunkirk, NY 14048  
716-363-2200

Tops Markets, LLC  
65 Grey Street  
East Aurora, NY 14052  
716-655-3206

Double, Double Inc.  
Diana Ulsrud and Lynn Ellis  
44 Hamburg Street  
East Aurora, New York 14052  
(716) 655-8467

Sodexo America, LLC  
Fisher Price  
636 Girard Ave.  
East Aurora, NY 14052

Klenk & George Inc.  
Mike George and John Klenk  
447 W. Commercial  
East Rochester, NY 14445  
585-586-8580

LaurJen, LLC  
Eric and Tiffany Riihinen  
7035 Manlius Center Road  
East Syracuse, NY 13057  
315-656-7785

RFC Enterprises, Inc.  
Frank Crisalli, Jr. and Rose Marie Crisalli  
6360 E Taft Rd  
East Syracuse, NY 13057  
315-214-0160

Eden Valley Brewing, Inc.  
Randy and Kimberly Schmitz  
8259 North Main Street  
Eden, NY 14057  
716-992-4455

Tops PT, LLC  
64 E. Washington Street  
Ellicottville, NY 14731  
716) 699-2353

Miranda Holdings, Inc.  
Ray and Sally Miranda  
6599 Rt 219 N.  
Ellicottville, NY 14731  
716-941-7034

Double, Double, Inc.  
Diana Ulsrud and Lynn Traverse  
661 Jamison Road  
Elma, New York 14059  
716-655-6790

Tops Markets, LLC  
830 Consumer Square Plaza  
Elmira, NY 14903  
607-739-0095

Tops Markets, LLC  
299 S. Main Street  
Elmira, NY 14904  
607-734-6686

Tops PT, LLC  
1600 Cedar Street  
Southtown Plaza  
Elmira, NY 14904  
607-734-8147

Tops Markets, LLC  
299 S. Main Street  
Gas Station  
Elmira, NY 14904  
607-734-6686

Mirabito Holdings Inc.  
1308 E. Main St.  
Endicott, NY 13760  
607-754-2664

Tops Markets, LLC  
6720 Pittsford/Palmyra Road  
Fairport, NY 14450  
585-264-0820

Tops PT, LLC  
110 South Work Street  
Falconer, NY 14733  
716-665-1150

Finger Lakes Casino & Racetrack, Inc.  
5857 Route 96  
Farmington, NY 14425

Tops PT, LLC  
5351 N Burdick Street  
Fayetteville, NY 13066  
315-637-8039

Faculty Student Association of State University  
College at Fredonia, New York, Inc.  
Thompson Hall  
280 Central Avenue  
Fredonia, NY 14063  
716-680-6251

G.D.K. Development, Inc.  
Gina and David Kron  
10371 Bennett Rd.  
Fredonia, New York 14063  
(716) 672-6611

Faculty Student Association of State University  
College at Fredonia, New York, Inc.  
SUNY Fredonia – Williams Center  
Fredonia, NY 14063  
716-680-6311

Tops PT, LLC  
20 Center Street  
Frewsburg, NY 14738  
716-569-6460

THDEV, LLC  
222 S. Second Street  
Fulton, NY 13069  
315-592-4840

FMR Gates, LLC  
Don Reninger, Jenine Skowron, Shawn  
Falgiano and Lydia Meachem  
1563 Spencerport Road  
Gates, NY 14624  
585-247-1470

Yan & Yan Bakery, LLC  
Kin Yan Au and Karen Lee  
1508 Buffalo Road  
Gates, NY 14624  
585-527-9150

Yan & Yan Bakery, LLC  
Kin Yan Au and Karen Lee  
2311 Chili Avenue  
Gates, NY 14624  
585-426-3075

141 Clinton Associates, LLC  
Bakhtiar Ahmed and Arif Muhammad  
4753 Onondaga Blvd  
Geddes, NY 13219  
315-422-4507

Crossing Borders, LLC  
Armen and Jodi Vahramian  
1 Ryan Drive  
Geneseo, NY 14454  
(585) 243-9160

Tops Markets, LLC  
381 Hamilton Street  
Geneva, NY 14456  
315-781-0205

Samoel Enterprises, LLC  
Ed Samoel and Nicole Broussard  
451 Hamilton Road  
Geneva, NY 14456  
315-781-9120

AVI Food Systems, Inc.  
Geico Headquarters  
300 Crosspoint Parkway  
Getzville, NY 14068

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill and Corey Craig (US) Ltd  
1555 North French Rd.  
Getzville, NY 14068  
716-639-3704

Miranda Holdings, Inc.  
Ray and Sally Miranda  
65 Buffalo Street  
Gowanda, New York 14070  
(716) 532-3133

Clark Holdings, Inc.  
Bryan Clark & Wendy Clark  
2366 Grand Island Blvd  
Grand Island, NY 14072  
716-744-2740

Tops Markets, LLC  
2140 Grand Island Boulevard  
Gas Station,  
Grand Island, NY 14072  
716-775-1138

Tops Markets, LLC  
2140 Grand Island Boulevard  
Grand Island, NY 14072  
716-775-1138

Clark Holdings, Inc.  
Bryan Clark, Wendy Clark  
1685 Grand Island Blvd.  
Grand Island, New York 14072  
(716) 772-5286

FHL of New York, LLC  
Joe and Shirley Filippelli  
2600 Ridgeway Ave.  
Greece, NY 14626  
(585) 225-0050

Kazimir Enterprises, LLC  
Kasthuri Paramasivam and John Kujawinski  
649 Long Pond Rd  
Greece, NY 14612  
585-225-1910

Ridge Road Café, Inc.  
George and Nidhi Pino  
2037 West Ridge Road  
Greece, NY 14626  
585-227-8851

Tops Markets, LLC  
3507 Mt. Read Boulevard  
Greece, NY 14616  
585-663-4400

J.D. Williams Holdings, LLC  
Jennifer Williams, Diane Williams, Don  
Williams, and Michael Williams  
3663 Mt. Read Blvd.  
Greece, New York 14616  
(585) 663-7623

Delta-Sonic Carwash Systems, Inc.  
990 W. Ridge Rd.  
Greece, NY 14615  
585-865-3797

Tops Markets, LLC  
S. 6150 South Park Avenue  
Hamburg, NY 14075  
716-515-3300

Double, Double Inc.  
Diana Ulsrud and Lynn Traverse  
4066 Lakeshore Road  
Hamburg, New York 14075  
(716) 627-3087

Andlaur, LLC  
Robert and Dawn Mencer  
342 Buffalo Street  
Hamburg, New York 14075  
(716) 648-4838

Double, Double Inc.  
Diana Ulsrud and Lynn Traverse  
5035 Southwestern Blvd.  
Hamburg, New York 14075  
(716) 649-9027

AndLaur LLC  
Robert and Dawn Mencer  
5635 Camp Road  
Hamburg, NY 14075  
716-312-0180

Miranda Holdings, Inc.  
Raymond and Sally Miranda  
7074 Boston State Road  
Hamburg, New York 14075  
716-648-1748

Tops Markets, LLC  
4250 McKinley Parkway  
Hamburg, NY 14075  
716-515-3225

Buffalo Trotting Association, Inc.  
5600 McKinley Parkway  
Hamburg, NY 14075  
716-646-6109

Tops Markets, LLC  
4250 McKinley Pkwy (Gas)  
Hamburg, NY 14075  
716-515-3300

Tops Markets, LLC  
1800 Lake Road  
Hamlin, NY 14464  
585-964-2920

Mirabito Holdings Inc.  
494 W Main St  
Hancock, NY 13783  
607-637-2906

Mirabito Holdings, Inc.  
3622 NYS Rt. 79  
Harpursville, NY 13787  
607-693-1269

JMLewy Enterprises, LLC  
John and Meagen Lewandowski  
1580 Jefferson Road  
Henrietta, NY 14623  
585-424-4480



Delta-Sonic Carwash Systems, Inc.  
2970 W. Henrietta Rd.  
Henrietta, NY 14620  
585-427-0520

Crossing Borders, LLC  
Armen and Jodi Vahramian  
375 Kenneth Drive  
Henrietta, New York 14467  
(585) 344-6923

Crossing Borders, LLC  
Armen and Jodi Vahramian  
4760 W. Henrietta Rd.  
Henrietta, New York 14467  
(585) 334-3790

Crossing Borders, LLC  
Armen & Jodi Vahramian  
2190 E. Henrietta Rd.  
Henrietta, NY 14467  
585-359-0388

Tops Markets, LLC  
98 South Avenue  
Hilton, NY 14468

Mirabito Holdings, Inc.  
1028 Main Street  
Hobart, NY 13788  
607-538-9010

TL Hospitality, LLC  
425 State Rt 37  
Hogansburg, NY 13655  
518-358-4229

TL Hospitality, LLC  
148 State Route 37  
Hogansburg, NY 13655

Panagg Cafe Incorporated  
Gurvinder Singh, Ashna Walia, and Adarsh  
Walia  
1517 E. Ridge Rd.  
Irondequoit, New York 14621  
(585) 266-6270

AndLaur, LLC  
Robert and Dawn Mencer  
675 Route 5 and Route 20  
Irving, NY 14081  
(716) 934-2350

141 Clinton Associates, LLC  
Bakhtiar Ahmed and Arif Muhammad  
407 Elmira Rd.  
Ithaca, NY 14850  
607-272-2240

Tops Markets, LLC  
710 South Meadow Street  
Ithaca, NY 14850  
607-275-8041

Tops Markets, LLC  
710 South Meadow St (Gas)  
Ithaca, NY 14850  
607-275-8041

Mirabito Holdings Inc.  
600 North Fulton St  
Ithaca College, NY 14850  
607-256-4010

Tops Markets, LLC  
2300 North Triphammer Road  
Ithaca, NY 14850  
607-257-4952

Gateway Food Concepts Inc.  
Aziz Premji and Salim Premji  
93-40 Sutphin Blvd  
Jamaica, NY 11434  
718-725-0002

Tar Enterprises, LLC  
Victor and Brenda Tarana  
1361 E. 2<sup>nd</sup> Street  
Jamestown, NY 14701  
(716) 488-0735

TAR Enterprises, LLC  
Victor & Brenda Tarana, Blake Tarana  
1311 North Main  
Jamestown, NY 14701  
716-484-6254

Tops PT, LLC  
738 Foote Avenue  
Jamestown, NY 14701  
716-484-7243

Tops Markets, LLC  
1800-2000 Washington Street  
Jamestown, NY 14701  
716-665-1100

Tar Enterprises, LLC  
Victor and Brenda Tarana  
21 S. Main Street  
Jamestown, New York 14701  
(716) 484-6739

Aramark Healthcare Support Services, LLC  
Kenmore Mercy Hospital  
2950 Elmwood Ave.  
Kenmore, NY 14217

Double, Double, Inc.  
Diana Ulsrud and Lynn Traverse  
2530 Hamburg Turnpike  
Lackawanna, NY 14218  
(716) 827-4091

Varma Enterprises Inc.  
Ajay & Shashi Varma, Manaan & Taruna  
Varma  
1340 Ridge Rd.  
Lackawanna, New York 14218  
(716) 823-1971

Tar Enterprises, LLC  
Victor and Brenda Tarana  
277 E. Fairmount Ave.  
Lakewood, New York 14750  
(716) 763-0655

William & Aurora, LLC  
Bob Bavisotto and Phil Perna  
470 Aurora St  
Lancaster, NY 14086  
231-726-2939

7860 Transit Rd., Inc.  
Robert Bavisotto and Phil Perna  
4849 Transit Road  
Lancaster, NY 14043  
716-668-7620

Niagara Street Associates, LLC  
Bob Bavisotto and Phil Perna  
470 Aurora Street  
Lancaster, New York 14086  
(716) 651-0776

Genesee & Harris Hill, LLC  
Bob Bavisotto and Phil Perna  
5390 Genesee Street  
Lancaster, New York 14086  
(716) 681-1720

7860 Transit Rd., Inc.  
Bob Bavisotto and Phil Perna  
3600 Walden Ave.  
Lancaster, New York 14086  
(716) 651-3028

Niagara Street Associates, LLC  
Bob Bavisotto and Phil Perna  
6339 Transit Road  
Lancaster, NY 14043  
716-681-4264

7860 Transit Rd., Inc.  
Bob Bavisotto & Phil Perna  
4221 Walden Ave.  
Lancaster, NY 14043

Tops Markets, LLC  
128 W. Main Street  
Leroy, NY 14482  
585-768-8549

Clark Holdings, Inc.  
Bryan and Wendy Clark  
Lewiston-Queenston Bridge  
Lewiston, NY 14092  
(716) 278-9600

Tops PT, LLC  
805 Cayuga Road  
Lewiston, NY 14092  
716-754-7121

DiMino's Lewiston Market, Inc.  
Anthony DiMino, Catherine DiMino, Anne  
Marie Hephher, and Mary Rose Casero  
906 Center Street  
Lewiston, NY 14092  
716-215-1350

Kelton Enterprises, LLC  
David & Allanna Beaton, Gary O'Neill, and  
Corey Craig (U.S.), LTD  
4 Transit Rd.  
Lockport, NY 14094  
(716) 478-0382

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
7084 Chestnut Ridge Rd  
Lockport, NY 14094  
716-438-4480

Kelton Enterprises, LLC  
David and Allanna Beaton  
5816 South Transit Road  
Lockport, New York 14094  
(716) 873-1415

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
3984 Lockport Olcott Road  
Lockport, NY 14094  
(716) 438-2290

Niagara-Lockport Enterprises, Inc.  
Robert Bavisotto and Phil Perna  
5827 South Transit Road  
Lockport, NY 14094  
716-439-4366

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
6393 Robinson Rd  
Lockport, NY 14094  
716-433-0030

Tops Markets, LLC  
7134 Rochester Road  
Lockport, NY 14094  
716-434-3990

Tops PT, LLC  
7395 Turin Road  
Lowville, NY 13367  
315-376-6311

Spice Berry, Inc.  
Manjur Alam and Begum Nassa  
1021 6th Avenue  
Manhattan, NY 10018  
656-852-6113

Tops PT, LLC  
119 West Seneca Street  
Manlius, NY 13104  
315-682-7261

Tops PT, LLC  
640 South Erie Street  
Mayville, NY 14756  
716-753-7670

FHL of New York, LLC  
Joseph and Shirley Filippelli  
11305 Maple Ridge Road  
Medina, NY 14103-1815  
585-798-8658

Tops Markets, LLC  
11170 Maple Road  
Medina, NY 14103  
585-798-2590

1003 Park Street, Inc.  
Schiel Wood and Gregory Wood  
3681 State Route 37  
Morristown, NY 13664  
315-375-4015

Kelton Enterprises, LLC  
David Beaton, Allanna Beaton, Gary O'Neill,  
and Corey Craig (U.S.), LTD  
748 Niagara Falls Blvd.  
N. Tonawanda, New York 14120  
(716) 692-8630

Sweet Tooth Inc  
Zohra Ali & Dilshad Chandrani  
452 North Ave.  
New Rochelle, NY 10801  
914-636-9818

LIR Management Corp.  
National Restaurants Management Inc.  
1 Penn Plaza  
New York, NY 10119  
212-630-0314

Kahala Franchise Corp  
162 W. 72nd Street  
New York, NY 11023  
212-799-0488

Kahala Franchise Corp  
750 9th Street  
New York, NY 10019  
212-757-1488

Kahala Franchise Corp  
253 W. 42nd Street  
New York, NY 10036  
212-398-1882

Clyde's Inn Operating Inc.  
National Restaurants Management Inc.  
2 Penn Station  
Taxi Stand/ Taxi Level  
New York, NY 10021  
212-594-0204

12<sup>th</sup> Restaurant Inc.  
National Restaurants Management Inc.  
401 7<sup>th</sup> Ave  
New York, NY 10001  
212-630-0319

Union Square Operating, Inc.  
National Restaurants Management Inc.  
34 E. Union Square  
New York, NY 10025  
212-316-2915

National 42<sup>nd</sup> St Realty Inc.  
National Restaurants Management Inc.  
47 E. 42<sup>nd</sup> St  
New York, NY 10017  
212-681-8501

Taft Food Court LLC  
50-7 LLC  
(Riese Restaurants; National  
Restaurant Management Inc.)  
761 7<sup>th</sup> Ave  
New York, NY 10019  
212-767-8347

Gourmet Management Corp.  
National Restaurants Management Inc.  
Pennsylvania Station  
Amtrak Level  
8th Avenue  
New York, NY 10001  
212-620-0320

Klenk & George Inc.  
Mike George and John Klenk  
821 W. Union Street  
Newark, New York 14513  
(315) 332-0106

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, Corey Craig (US) Ltd  
2897 S. Main Street  
Newfane, NY 14108  
716-778-5083

Tops Markets, LLC  
4235 Military Road  
Niagara, NY 14305  
716-297-3410

C.R.B. Holdings, Inc.  
Bob Burns and Jason Burns  
8500 Niagara Falls Boulevard  
Niagara Falls, New York 14304  
(716) 297-1641

C.R.B. Holdings, Inc.  
Bob Burns and Jason Burns  
3024 Pine Ave.  
Niagara Falls, New York 14301  
(716) 285-0410

C.R.B. Holdings, Inc.  
Bob Burns and Jason Burns  
2720 Military Rd.  
Niagara, New York 14304  
(716) 297-3947

Tops Markets, LLC  
3949 Lockport-Olcot Road  
Niagara, NY 14094  
716-439-8900

Tops Markets, LLC  
1000 Portage Road  
Niagara Falls, NY 14301  
716-513-2170

Tops Markets, LLC  
7200 Niagara Falls Blvd.  
Niagara Falls, NY 14304  
716-513-2200

Seneca Niagara Falls Gaming Corporation  
310 Fourth Street (Location #1)  
Niagara Falls, NY 14303  
(716) 299-1100 ext 2003

Seneca Niagara Falls Gaming Corporation  
310 Fourth Street (Location #2)  
Niagara Falls, NY 14303  
(716) 299-1100 ext 2003

C.R.B. Holdings, Inc.  
Bob Burns and Jason Burns  
Niagara Falls Memorial Medical Center  
621 10th Street  
Niagara Falls, NY 14302  
716-282-1250

Delta-Sonic Carwash Systems, Inc.  
Niagara Falls Blvd & 80<sup>th</sup>  
Niagara Falls, NY 14303  
716-283-7884

C.R.B. Holdings, Inc.  
Bob & Jackie Burns, Jason Burns  
Niagara Falls Outlet Mall  
1900 Military Rd.  
Niagara Falls, NY 14304  
716-297-4232

Sodexo America, LLC  
Niagara University  
Gallagher Center, Bisgrove Bldg.  
Sophomore Drive  
Niagara University, NY 14109  
716-286-8461

Sodexo America, LLC  
Niagara University  
Gallagher Center, Alumni Hall  
PO Box 1049  
Niagara University, NY 14109  
716-286-8461

Tops Markets, LLC  
7375 Boston State Rd.  
North Boston, NY 14110

D.L. Mayer LLC  
David and Lynette Mayer  
4380 Buffalo Rd.  
North Chili, NY 14514  
(585) 594-5065

Tops PT, LLC  
3803 Brewerton Road  
North Syracuse, NY 13212  
315-458-0032

LaurJen, LLC  
Eric & Tiffany Riihinen  
911 North Main Street  
North Syracuse, NY 13212  
315-458-2474

Tops Markets, LLC  
301 Meadow Drive  
North Tonawanda, NY 14120  
716-743-4350

Varma Enterprises Inc.  
Ajay and Shashi Varma and Manan and Taruna  
Varma  
459 Division Street  
North Tonawanda, New York 14120  
716-743-4151

Mirabito Holdings Inc.  
4839 State Highway 23  
Norwich, NY 13815  
607-336-2462

Tops PT, LLC  
54 E Main St  
Norwich, NY 13815

1003 Park Street, Inc.  
Schiel S. Wood and Gregory A. Wood  
1111 Champlain Street  
Ogdensburg, NY 13669  
603-388-0789

Tops Markets, LLC  
2401 W. State Street  
Olean, NY 14760  
716-373-1021

Two Flags, Inc.  
Robin and Laurie Greaves  
3012 NY SR 417  
Olean, New York 14760  
(716) 373-3280

Two Flags, Inc.  
Robin and Laurie Greaves  
501 Union Street North  
Olean, NY 14760  
716-372-1801

One Cream, One Sugar, Inc.  
Gary and Sharon Taylor  
246 Genesee St.  
Oneida, NY 13421  
315-361-6190

Mirabito Holdings Inc.  
169 Oneida Street  
Oneonta, NY 13820  
607-432-2393

Mirabito Holdings Inc.  
570 Main Street  
Oneonta, NY 13820  
607-432-0559

Mirabito Holdings Inc.  
4968 State Hwy 23  
Oneonta, NY 13820  
607-352-2800

Tops Markets, LLC  
6272 Furnace Road  
Ontario, NY 14519  
315-524-3550

Delta-Sonic Carwash Systems, Inc.  
3205 Orchard Park Rd  
Orchard Park, NY 14217  
716-886-0931

Tops Markets, LLC  
3201 Southwestern Boulevard  
Orchard Park, NY 14217  
716-677-2569

MACARAT Inc.  
Tara Stamm  
3239 Abbott Road  
Orchard Park, New York 14217  
(716) 821-0710

MACARAT Inc.  
Tara Stamm  
3878 Southwestern Boulevard  
Orchard Park, NY 14217  
716-312-0124

Bauer Service, Inc.  
Michael Capriotto  
4298 South Buffalo Road  
Orchard Park, New York 14217  
(716) 662-4475

MACARAT Inc.  
Tara Stamm  
3275 Orchard Park Rd.  
Orchard Park, New York 14217  
(716) 677-6834

MACARAT Inc.  
Tara Stamm  
4041 Southwestern Blvd.  
Orchard Park, NY 14217  
716-238-1072

Mirabito Holdings, Inc.  
200 East First Street  
Oswego, NY 13126  
315-207-0250

Mirabito Holdings Inc.  
2969 SR 49 Central Square  
Oswego, NY 13036  
315-676-2693

Tops PT, LLC  
1145 Rt 17-C  
Oswego, NY 13827  
607-687-2546

Auxilliary Services, State University  
College at Oswego, Inc.  
7060 Route 104  
SUNY Oswego  
Oswego, NY 13126  
315-312-6041

Mirabito Holdings, Inc.  
195 County Rt. 48  
Otego, NY 13825  
607-988-9080

Mirabito Holdings, Inc.  
10 N. Canal Street  
Oxford, NY 13830  
607-843-6128

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton,  
Gary O'Neill & Corey Craig (US) Ltd  
6470 Campbell Blvd  
Pendleton, NY 14094  
716-445-0531

Delta-Sonic Carwash Systems, Inc.  
1660 Penfield Rd.  
Penfield, NY 14526  
585-381-8675

FMR Webster, LLC  
Don Reninger, Jenine Skowron, Shawn  
Falgiano and Lydia Meachem  
1786 Empire Blvd.  
Penfield, New York 14580  
(585) 671-7485

McKay Family Restaurants, Inc.  
Randy McKay  
2230 Penfield Rd.  
Penfield, NY 14526  
585-261-2565

Tops PT, LLC  
321 Liberty Street  
Penn Yan, NY 14527  
315-536-2508

FMR Fairport, LLC  
Don Reninger, Jenine Skowron, Shawn  
Falgiano and Lydia Meachem  
908 Fairport Road  
Perrington, New York 14450  
(585) 586-8350

Klenk & George Inc.  
Mike George and John Klenk  
720 Pittsford Victor Road  
Pittsford, NY 14534  
585-385-7549

Compass Group USA, Inc.  
101 Broad Street  
Plattsburgh, NY 12901  
518-564-5282

Potsdam Auxiliary & College Educational  
Services, Inc  
44 Pierrepont Avenue  
Potsdam, NY 13676  
315-267-2652

1003 Park Street, Inc.  
Schiel Wood and Gregory Wood  
154 Elm  
Potsdam, NY 13676  
315-296-2295

Tops PT, LLC  
3830 Rome Road  
Pulaski, NY 13142  
315-298-1081

Purchase College Association, Inc.  
735 Anderson Hill Road  
Purchase, NY 10577  
914-251-6970

Tops PT, LLC  
51 Main Street  
Randolph Plaza  
Randolph, NY 14772  
716-358-6577

1003 Park Street, Inc.  
Schiel Wood and Gregory Wood  
9005 State Highway 56  
Raymondville, NY 13678  
315-384-3484

Mirabito Holdings Inc.  
977 RT 79  
Richford, NY 13835  
607-657-8302

Kazmir Enterprises, LLC  
Kasthuri Paramasivam & John Kujawinski  
27 Greece Ridge Center Dr.  
Space 122  
Rochester, NY 14626  
585-453-8050

Tops PT, LLC  
217 N. Winton Rd.  
Rochester, NY 14610  
585-288-7850

Tops Markets, LLC  
450 West Avenue  
Rochester, NY 14611  
585-512-4100

Crossing Borders, LLC  
Armen and Jodi Vahramian  
802 Paul Road  
Rochester, New York 14624  
(585) 247-2410

Joshua Tree Enterprises  
Bob and Judy DeGolier  
607 Jefferson Road  
Rochester, New York 14623  
(585) 427-0670

JMLewy Enterprises, LLC  
John and Meagen Lewandowski  
1525 Lake Avenue  
Rochester, NY 14615  
585-254-6470

Tops Markets, LLC  
1900 Clinton Avenue South  
Rochester, NY 14618  
585-442-2990

Tops Markets, LLC  
175 North Winton Road  
Rochester, NY 14610  
585-288-7850

Tops Markets, LLC  
710 Lake Avenue  
Rochester, NY 14613  
585-254-0110

Tops Markets, LLC  
1215 Jefferson Road  
Rochester, NY 14623  
585-427-9980

Joshua Tree Enterprises, Inc.  
Robert and Judy DeGolier  
1631 Lyell Avenue  
Rochester, NY 14606  
585-458-6420

JMLewy Enterprises, LLC  
John and Meagen Lewandowski  
1250 University Avenue  
Rochester, NY 14607  
585-244-0940

Tops Markets, LLC  
2345 Buffalo Road  
Rochester, NY 14624  
585-247-8040

Joshua Tree Enterprises, Inc  
Robert and Judy DeGolier  
1286 Mt Hope Ave  
Rochester, NY 14620  
585-271-1260

Rochester Library Cafe Incorporated  
George and Nidhi Pino  
Rochester Library  
115 South Ave  
Rochester, NY 14604  
585-428-8300

East Main Café Incorporated  
George & Nidhi Pino  
1 E. Main  
Rochester, NY 14614  
585-325-1887



Delta-Sonic Carwash Systems, Inc.  
718 E. Main St.  
Rochester, NY 14604  
585-232-4418

Tops Markets, LLC  
1601 Penfield Rd.  
Rochester, NY 14625  
585-264-0820

Tops Markets, LLC  
999 E. Ridge Rd.  
Rochester, NY 14617  
585-467-0475

Tops PT, LLC  
217 Erie Blvd West  
Rome, NY 13440  
315-334-5300

Ten To Go, LLC  
Steven and Sandra Hughes  
1210 Buckley Rd  
Salina, NY 13088  
315-451-1641

Miranda Holdings, Inc.  
Ray and Sally Miranda  
567 Broad  
Salamanca, NY 14779  
716-945-5073

College Association of Niagara County  
Community College, Inc.  
3111 Saunders Settlement Road  
Sanborn, NY 14132  
716-614-6222 Ext. 4087

College Association of Niagara County  
Community College, Inc.  
3111 Saunders Settlement Road  
Sanborn, NY 14132  
716-614-6222 Ext. 4087

Miranda Holdings, Inc.  
Ray and Sally Miranda  
12479 Olean Road  
Sardinia, NY 14134  
(716) 496-5920

Samoel Enterprises, LLC  
Edward & Nicole Samoel  
1959 East Main Street (US Rt 20)  
Seneca Falls, NY 13165  
315-539-4600

Mirabito Holdings Inc.  
81 N. Main Street  
Sherburn, NY 13460  
607-674-6823

Tops PT, LLC  
87 East State Street  
Sherrill, NY 13461  
315-361-1689

Mirabito Holdings Inc.  
1 West Main Street  
Sidney, NY 13838  
607-563-1321

Mirabito Holdings Inc.  
112 Delaware Avenue  
Sidney, NY 13838  
607-563-9433

Tops PT, LLC  
140 Central Avenue  
Silver Creek, NY 14136  
716-934-3431

Tops PT, LLC  
40 Fennell Street  
Skaneateles, NY 13152  
315-685-7427

Tops PT, LLC  
27 Slayton Ave  
Spencerport, NY 14559  
585-352-2100

D.L. Mayer LLC  
David and Lynette Mayer  
403 S. Union Street  
Spencerport, NY 14559  
585-349-7838

Tops Markets, LLC  
184 South Cascade  
Springville, NY 14141  
716-592-8241

Miranda Holdings, Inc.  
Ray Miranda, Sally Miranda  
371 South Cascade Dr.  
Springville, New York 14141  
(716) 592-0436

RFC Enterprises, Inc.  
Frank and Rose Marie Crisalli  
985 East Brighton Avenue  
Syracuse, NY 13215  
315-492-2942

Mirabito Holdings, Inc.  
2501 Erie Blvd East  
Syracuse, NY 13224  
315-446-2900

MCMC Enterprises, LLC  
Anthony McEachern and Jeffrey Cercone  
Golisano Children's Hospital  
750 East Adams Street  
Syracuse, NY 13210  
315-474-1019

Tops PT, LLC  
2120 West Genesee Street  
Syracuse, NY 13219  
315-488-2989

Tops PT, LLC  
181 Shop City Plaza  
Syracuse, NY 13206  
315-437-5201

Tops PT, LLC  
620 Nottingham Road  
Syracuse, NY 13224  
315-446-5201

Mirabito Holdings Inc.  
4464 W. Senceca Turnpike  
Syracuse, NY 13212  
315-498-5621

Mirabito Holdings Inc.  
356 N. Midler Avenue  
Syracuse, NY 13206  
315-432-0152

Delta-Sonic Carwash Systems, Inc.  
3720 Brewerton Rd  
Syracuse, NY 13212  
315-455-5125

Tops Markets, LLC  
4141 South Salina St.  
Syracuse, NY 13205

Tops Markets, LLC  
700 1<sup>st</sup> North Street  
Syracuse, NY 13208

MCMC Enterprises, LLC  
Anthony McEachern and Jeff Cercone  
302 S. Salina Street  
Syracuse, NY 13202  
315-744-5032

Kelton Enterprises, LLC  
David and Allanna Beaton,  
Corey Craig (US) Ltd., and  
Gary O'Neill  
1777 Sheridan Drive  
Tonawanda, New York 14223  
(506) 856-8050

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Corey  
Craig (US), Ltd, and Gary O'Neill  
2760 Niagara Falls Boulevard  
Tonawanda, New York 14150  
716-690-9935

Varma Enterprises Inc.  
Ajay & Shashi Varma, Manan Varma and  
Taruna Varma  
71 Niagara Street  
Tonawanda, New York 14150  
(716) 695-7778

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
849 Youngs Street  
Tonawanda, New York 14150  
(716) 692-1239

Varma Enterprises Inc.  
Ajay & Shashi Varma and Manan & Taruna  
Varma  
2060 Military Road  
Tonawanda, NY 14150  
(716) 873-2294

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
1235 Colvin Blvd.  
Tonawanda, NY 14223  
(716) 874-7880

Tops Markets, LLC  
150 Niagara Street  
Tonawanda, NY 14150  
716-693-5700

Tops Markets, LLC  
890 Young Street  
Tonawanda, NY 14212  
716-692-8254

Varma Enterprises Inc.  
Ajay and Shashi Varma and Manan and Taruna  
Varma  
325 Meadow Drive  
Tonawanda, NY 14120  
716-694-6750

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton, Gary  
O'Neill, and Corey Craig (US), Ltd.  
1930 Colvin Boulevard  
Tonawanda, NY 14150  
716-689-0187

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton  
Gary O'Neill and Corey Craig (US) Ltd  
1308 Niagara Falls Blvd.  
Tonawanda, NY 14150  
716-639-3704

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton  
Gary O'Neill and Corey Craig (US) Ltd  
2190 Niagara Falls Blvd.  
Tonawanda, NY 14228  
716-694-1778

Mirabito Holdings Inc.  
180 Main Street  
Unadilla, NY 13849  
607-369-3500

Mirabito Holdings Inc.  
3300 Old Vestal Rd  
Vestal, NY 13851  
(607) 797-1980

Delaware North Companies Travel Hospitality  
Services, Inc.  
SENECA TRAVEL PLAZA  
7029 Aldridge Road  
Victor, New York 14564  
(585) 924-3636

Samoel Enterprises, LLC  
Edward Samoel and Nicole Broussard  
260 West Main Street  
Victor, New York 14564  
(585) 924-2370

Delaware North Companies Travel Hospitality  
Services, Inc.  
Scottsville Travel Plaza  
20 Erie Station Road  
W. Henrietta, New York 14586  
(585) 334-0475

Wing and A Prayer, Inc.  
Joe and Karen Elardo  
461 N. Main Street  
Warsaw, NY 14569  
(585) 786-0250

Tops Markets, LLC  
2382 Rt. 19  
Warsaw, NY 14569  
585-786-0660

Tops PT, LLC  
1963 Kingdom Plaza  
Waterloo, NY 13165

Tops PT, LLC  
22050 Seaway Shopping Center  
Watertown, NY 13601  
315-788-7330

Valentine Stores, Inc.  
Edward Valentine and John Valentine  
21306 NY Rt. 12F  
Watertown, NY 13601  
315-788-2603

Tops PT, LLC  
504 ½ S. Franklin Street  
Watkins Glen, NY 14891  
607-535-4064

JMLewy Enterprises, LLC  
John and Meagen Lewandowski  
819 Ridge Rd.  
Webster, NY 14580  
585-424-4480

THDEV, LLC  
2767 Route 31  
Weedsport, NY 13166  
315-834-8681

Tops Markets, LLC  
111 Bolivar Road  
Wellsville, NY 14895  
585-593-0166

Mirabito Holdings, Inc.  
4102 State Highway 23  
West Oneonta, NY 13861  
607-432-6737

Tops Markets, LLC  
355 Orchard Park Road  
West Seneca, NY 14224  
716-517-3000

Tops PT, LLC  
315 Orchard Park  
West Seneca, NY 14224  
716-821-0157

Flexion, Inc.  
Alfred “Fredy” Stamm &  
Judy Harrower-Stamm  
1481 Union Road  
West Seneca, New York 14224  
(716) 675-3761

Tops Markets, LLC  
800 Harlem Road  
West Seneca, NY 14224  
716-823-8948

MACARAT Inc.  
Tara Stamm  
3515 Seneca Street  
West Seneca, New York 14224  
716-674-7960

Flexion, Inc.  
Alfred “Fredy” Stamm &  
Judy Harrower-Stamm  
2413 Clinton Street  
West Seneca, New York 14224  
(716) 821-5536

MACARAT Inc.  
Tara Stamm  
697 Orchard Park Road  
West Seneca, NY 14224  
716-675-0426

Delta-Sonic Carwash Systems, Inc.  
350 Langner Rd.  
West Seneca, NY 14224  
716-822-2285

Mirabito Holdings Inc.  
1 E Main St.  
West Winfield, NY 13491  
315-822-5785

Tops PT, LLC  
121 East Main Street  
Westfield, NY 14787  
716-326-4965

C.R.B. Holdings, Inc.  
Robert Burns and Jason Burns  
2248 Niagara Road  
Wheatfield, NY 14304  
(716)731-5346

Clark Holdings, Inc.  
Bryan and Wendy Clark  
6125 Main Street  
Williamsville, NY 14221  
(716) 634-2200

Kalra Enterprises Inc.  
Rajan and Shivani Kalra  
1540 Maple Road  
Williamsville, NY 14221  
716-568-3855

6687 Transit Rd, LLC  
Bob Bavisotto and Phil Perna  
6687 Transit Road  
Williamsville, NY 14221  
(716) 730-9300

Tops PT, LLC  
5274 Main & Union  
Williamsville, NY 14221  
716-632-7411

7860 Transit Rd., Inc.  
Bob Bavisotto and Phil Perna  
7860 Transit Road  
Williamsville, New York 14224  
(716) 626-0413

Clark Holdings, Inc.  
Bryan and Wendy Clark  
5140 Main Street (Walker Center)  
Williamsville, New York 14221  
(716) 565-0501

Clark Holdings, Inc.  
Bryan and Wendy Clark  
870 Maple Road  
Williamsville, New York 14221  
716-636-7579

Clark Holdings, Inc.  
Bryan and Wendy Clark  
1060 Wehrle Drive  
Williamsville, New York 14221  
716-626-9781

Clark Holdings, Inc.  
Bryan and Wendy Clark  
5225 Sheridan Drive  
Williamsville, New York 14221  
716-626-5993

Delta-Sonic Carwash Systems, Inc.  
4983 Transit Rd.  
Williamsville, NY 14221  
716-631-0771

Kelton Enterprises, LLC  
David Beaton, Allanna Kelly-Beaton  
& Gary O'Neill  
Easton Hills Mall  
4545 Transit Rd., Space 304  
Williamsville, NY 14221  
716-633-2485

Clark Holdings, Inc.  
Bryan Clark and Wendy Clark  
ECC  
6205 Main Street  
Williamsville, NY 14221  
716-912-2523

### **North Dakota**

KSA Operations, LLC  
Michael Kuntz and Todd Mitzel  
The Ralph Arena  
1 Ralph Engelsted Arena Dr.  
Grand Forks, ND 58203  
701-740-5160

KSA Operations, LLC  
Michael Kuntz and Todd Mitzel  
801 42<sup>nd</sup> Street  
Grand Forks, ND 58201  
701-740-5160

### **Ohio**

AVI Food Systems, Inc.  
Ohio University  
95 Richland Ave.  
Athens, OH 45701

DCI-Beavercreek, LLC  
David Cropper and Jennifer Elliott  
1318 N. Fairfield Rd.  
Beavercreek, OH 45432  
(937) 431-1452

Maple Dips, LLC  
Bill Janes and Kim Maddock  
4465 Indian Ripple Rd.  
Beavercreek, Ohio 45440  
(937) 427-3496

CALPAM Food Services, LLC  
Phillip and Catherine Beaupre  
514 S. Main Street  
Bellefontaine, OH 43311  
(937) 292-7318

JJR Luna Enterprises, LLC  
Roberto and Jenny Luna  
1508 Wooster Road  
Bowling Green, Ohio 43402  
(419) 373-9859

Sodexo Sports & Leisure  
Bowling Green State University  
1001 East Wooster Street  
Bowling Green, OH 43403  
419-727-1028

Partners In Dough, Ltd.  
Craig & Kathy Zahniser  
1305 South Main Street  
Bryan, OH 43506  
419-630-0263

Legendary Coffee LLC  
David Trucksis and Jean Martin  
15580 State Route 170  
Calcutta, OH 43920  
(330) 385-6366

ANTCO Enterprises, LLC  
Andrew Cooney  
1721 Southgate Parkway  
Cambridge, OH 43725  
740-439-3249

QSR Enterprises, LLC  
John Uvira  
6238 Prentiss School Drive  
Canal Winchester, Ohio 43110  
(614) 920-1593

Maple Dips, LLC  
Bill Janes and Kim Maddock  
5615 Wilmington Pike  
Centerville, Ohio 45459  
(937) 439-3825

St Joes Island Coffee Company, LLC  
Michael Birch  
665 Miamisburg Centerville Rd.  
Centerville, Ohio 45459  
(937) 443-1550

Scioto River Restaurant, Inc.  
Tim Sublett, Brian Chinn  
1020 North Bridge St.  
Chillicothe, Ohio 45601  
(740) 779-2163

Scioto River Restaurant, Inc.  
Tim Sublett and Brian Chinn  
1100 E. Main St.  
Chillicothe, Ohio 45601  
(740) 779-3250

PE 5678, LLC  
Michael and Trina Forbes  
23923 U.S. Rt. 23  
Circleville, Ohio 43113  
(740) 474-9499

B3 Liberty Tims LLC  
Tonya Boll & Denis Bruncak  
3700 Discovery Lane  
Columbus, OH 43065  
740-917-5099

COLHOC Limited Partnership DBA Columbus  
Blue Jackets  
200 West Nationwide Boulevard  
Columbus, OH 43215  
614-246-3663

Everjoy, LLC  
Ayo and Edna Adelusola  
3475 Cleveland Ave.  
Columbus, OH 43224  
(614) 261-1946

Everjoy, LLC  
Edna and Ayo Adelusola  
5710 Cleveland Avenue  
Columbus, Ohio 43229  
(614) 890-9744

Hepta Foods, LLC  
John Uvira  
3737 S. Hamilton Road  
Columbus, Ohio 43125  
614-836-2169

Hexa Foods, LLC  
Louise Stonehouse  
6532 E. Broad Street  
Columbus, OH 43213  
614-755-6503

J & E Kline LLC  
John and Errin Kline  
4451 Roberts Road  
Columbus, OH 43228  
(614) 921-0750

J Kline and Sons, Ltd.  
John Kline  
1815 Hilliard-Rome Rd.  
Columbus, Ohio 43026  
(614) 527-8485

ME Donuts 3 LLC  
Matthew Egan  
955 East Dublin-Granville Road  
Columbus, OH 43229  
614-825-9544

LRW Maxtown, LLC  
Lonnie and Rita Waldrop  
2086 Polaris Parkway  
Columbus, OH 43240  
614-846-8571

M E Donuts 2 LLC  
Matthew Egan  
1815 Morse Road  
Columbus, OH 43229  
614-447-0707

M E Donuts LLC  
Matthew Egan  
5470 N. High Street  
Columbus, Ohio 43214  
(614) 436-6591

PE 11129, LLC  
Michael and Trina Forbes  
4765 West Broad Street  
Columbus, OH 43228  
614-992-0807

PE 4563, LLC  
Michael and Trina Forbes  
Ice Haus  
200 W Nationwide Blvd  
Columbus, OH 43215  
614-754-1905

PE 4756, LLC  
Mike & Trina Forbes, Pink Elephant, LLC  
4969 Roberts Rd.  
Columbus, OH 43026  
614-777-9827

PE 4870, LLC  
Mike and Trina Forbes  
60 N. Wilson Rd.  
Columbus, OH 43204  
614-276-2855

Rensko Arcadia, LLC  
Don Reninger and Jenine Skowron  
2754 North High Street  
Columbus, Ohio 43214  
(614) 784-0097

Pink Elephant, LLC  
Michael Forbes and Trina Forbes  
790 Georgesville Road  
Columbus, Ohio 43228  
614-274-8060

Pink Elephant, LLC  
Michael Forbes and Trina Forbes  
793 W. State Street  
Columbus, Ohio 43222  
(614) 280-0734

Quatro Foods, LLC  
Louise Stonehouse  
3450 Gender Road  
Columbus, OH 43110  
(614) 834-4859

Rensko Olentangy, LLC  
Don Reninger and Jenine Skowron  
1501 Olentangy River Road  
Columbus, OH 43212  
(614) 299-2087

Rensko Bethel II, LLC  
Don Reninger and Jenine Skowron  
737 Bethel Road  
Columbus, Ohio 43214  
(614) 459-8506

Rensko Lazelle, LLC  
Don Reninger and Jenine Skowron  
8333 N. High Street  
Columbus, Ohio 43235  
(614) 438-0004

Rensko Riverside, LLC  
Don Reninger and Jenine Skowron  
Riverside Hospital  
3535 Olentangy River Rd  
Suite 1002  
Columbus, OH 43214  
614-459-0077

Levy Premium Food Service Limited  
Partnership  
OSU Schottenstein Center  
555 Borror Drive  
Columbus, OH 43210  
(614) 237-2158

Rensko Stelzer, LLC  
Donald Reninger and Jenine Skowron  
2845 Stelzer Road  
Columbus, OH 43219  
(614) 473-1078

TNJ 4927, LLC  
Dan & Julie Hardiman  
636 Harrisburg Pike  
Columbus, OH 43223  
614-634-3136

TNJ 3476, LLC  
Daniel and Julietta Hardiman  
Mount Carmel East Hospital  
5975 E. Broad Street  
Columbus, OH 43213  
614-577-9614

TNJ 5731, LLC  
Dan & Julie Hardiman  
1451 West Broad Street  
Columbus, Ohio 43222  
(614) 275-4453

TNJ 7506, LLC  
Daniel and Julietta Hardiman  
1135 Dublin Road  
Columbus, OH 43215  
(614) 487-1631

TNJ 4222, LLC  
Daniel and Julietta Hardiman  
2 East Broad Street  
Columbus, OH 43215  
614-340-9868

Touchstone Hospitality, LLC  
Robert E. Lee III  
4600 International Gateway  
Columbus, OH 43219  
614-237-2158

Touchstone Hospitality II, LLC  
Robert E. Lee  
2062 E. Livingston Ave.  
Mayfield Place  
Columbus, OH 43209  
614-947-0319

Triad Foods, LLC  
Louise Stonehouse  
3623 S. High Street  
Columbus, Ohio 43206  
(614) 497-3660

Whitegate Holdings, LLC  
Nolan and Heather Wilcox  
5221 N. Hamilton Road  
Columbus, OH 43230  
(614) 337-1018

Levy Premium Food Service Limited  
Partnership  
411 Woody Hayes Drive  
Columbus, OH 43210  
614-237-2158



Touchstone Hospitality V, LLC  
Robert E. Lee  
505 E. Livingston  
Columbus, OH 43215  
614-214-7866

Franklin County Stadium, Inc.  
Huntington Park  
330 Huntington Park Lane  
Columbus, OH 43215  
614-462-5250

OHBOY Enterprises, LLC  
Paul and Deborah Klouda  
131 W. Chestnut Street  
Coshocton, Ohio 43812  
(740) 295-0529

DCI-York Commons, LLC  
David Cropper and Jennifer Elliott  
6793 Miller Lane  
Dayton, OH 45414  
937-454-5016

Kahala Franchise Corp  
135 Jasper Street  
Dayton, OH 45409  
937-228-2653

Maple Dips, LLC  
Bill Janes and Kim Maddock  
5976 Far Hills Road  
Dayton, OH 45429  
(937) 436-0364

Maple Dips, LLC  
William Janes and Kimberly Maddock  
5798 Springboro Pike  
Dayton, OH 45449  
937-643-2941

The Reyes Group LLC  
Benito and Shiloh Reyes  
959 Patterson Road  
Dayton, OH 45419  
(937) 643-3267

University of Dayton Concessions  
1801 Edwin C. Moses Blvd  
Dayton, OH 45417  
937-229-5885

Partners In Dough, Ltd.  
Craig and Kathy Zahniser  
524 N. Clinton Street  
Defiance, OH 43512  
419-782-3500

Rensko Delaware, LLC  
Donald Reninger and Jenine Skowron  
89 W. Williams  
Delaware, Ohio 43015  
(740) 362-3203

Rensko Dublin, LLC  
Donald Reninger and Jenine Skowron  
6490 Riverside Drive  
Dublin, Ohio 43017  
(614) 760-5994

FMS-TH Sawmill, LLC  
Frank and Michelle Slavik  
7493 Sawmill Road  
Dublin, Ohio 43017  
(614) 356-1530

FMS-TH Avery, Inc.  
Frank and Michelle Slavik  
6850 Hospital Drive  
Dublin, Ohio 43017  
614-717-0570

TC & KC, LLC  
Khalid and Tonya Chaudhry  
899 South Main Street  
Englewood, Ohio 45322  
(937) 832-2946

DCI-Fairborn, LLC  
David Cropper and Jennifer Elliott  
1245 E. Dayton Yellow Springs Road  
Fairborn, OH 45324  
(937) 318-2970

JJR Luna Enterprises, LLC  
Roberto and Jenny Luna  
1200 Tiffin Avenue  
Findlay, OH 45840  
(419) 424-5059

Kahala Franchise Corp  
1050 Interstate Court  
Findlay, OH 45840  
419-424-5995

Angel Business Corporation  
Joseph and Luciana Saade  
1116 W. State Street  
Fremont, OH 43420  
419-355-8840

Rensko Gahanna, LLC  
Donald Reninger & Jenine Skowron  
365 Agler Road  
Gahanna, Ohio 43230  
(614) 473-9303

Whitegate Holdings, LLC  
Nolan and Heather Wilcox  
370 S. Hamilton Rd.  
Gahanna, OH 43230  
614-414-0140

ADW Enterprises, Ltd.  
Adam Wythe  
3445 Broadway  
Grove City, OH 43123  
(614) 277-0797

Pink Elephant, LLC  
Michael and Trina Forbes  
2111 Stringtown Road  
Grove City, Ohio 43123  
(614) 539-5738

Pink Elephant, LLC  
Michael Forbes and Trina Forbes  
3065 London Groveport Road  
Grove City, Ohio 43123  
(614) 277-0441

TAK More Donuts LLC  
Tariq Ahmad and Khalid Chaudhry  
2312 Needmore Road  
Harrison Township, OH 45414  
(937) 275-7105

OHBOY Enterprise, LLC  
Paul & Deborah Klouda  
875 Hebron Rd.  
Health, OH 43056  
740-788-8297

FMS-TH Mill Run, LLC  
Frank and Michelle Slavik  
3711 Fishinger Boulevard  
Hilliard, Ohio 43026  
(614) 527-0935

LP Donuts LLC  
Bart Craver and Meghan O. Craver  
3850 Lyman Drive  
Hilliard, Ohio 43228  
(614) 527-4733

Angel Business Corporation  
Joseph and Luciana Saade  
7140 Orchard Center Drive  
Holland, OH 43528  
(419) 867-7612

The Brew For You, LLC  
Mark Sponarski. Bertha Ochoa Sponarski  
7901 Brandt Pike  
Huber Heights, Ohio 45424  
(937) 237-5075

D&R MacDonald Enterprises LLC  
Robert and Dawn MacDonald  
823 Memorial Drive North  
Lancaster, Ohio 43130  
740-653-7114

D&R MacDonald Enterprises LLC  
Robert & Dawn McDonald  
1621 E. Main Street  
Lancaster, Ohio 43130  
(740) 654-8396

Kahala Franchise Corp  
1635 River Valley Circle South  
Lancaster, OH 43130  
740-654-4999

FMS-TH Lewis Ctr., LLC  
Frank and Michelle Slavik  
9037 Owensfield Drive  
Lewis Center, Ohio 43035  
740-549-0503

Two Timothy Two LLC  
Roger Rhodes and Steve Rhodes  
2387 Elida Road  
Lima, OH 45807  
567-712-6349

D.KaF, Inc.  
Kathy Ferguson  
118 N. 7<sup>th</sup> Street  
Marietta, OH 45750  
740-538-6007

Rensko Marion, LLC  
Don Reninger and Jenine Skowron  
1325 Mt. Vernon  
Marion, Ohio 43302  
(740) 386-6000

Rensko Marysville LLC  
Don Reninger & Jenine Skowron  
977 Delaware Ave.  
Marysville, OH 43040  
937-642-2010

Darde Enterprises, Ltd.  
Darlene Stilwell and DeEtte Nijakowski  
161 W. Dussel Drive  
Maumee, OH 43537  
419-893-2167

Cafe Nuovo, LLC  
Richard and Julia Lamm  
150 Monarch Lane  
Miamisburg, Ohio 45342  
(937) 866-5071

St Joes Island Coffee Company, LLC  
Michael Birch  
1255 Hamilton-Lebanon Road  
Monroe, OH 45050  
513-539-8116

HILL TH-MV, LLC  
Steven Hill  
941 Coshocton Avenue  
Mt. Vernon, OH 43050  
740-397-2913

Whitegate Holdings, LLC  
Nolan and Heather Wilcox  
7400 Fodor Rd.  
New Albany, Ohio 43054  
(614) 939-0630

Whitegate Holdings, LLC  
Nolan and Heather Wilcox  
9685 Johnstown Road  
New Albany, Ohio 43054  
(614) 939-1300

Hill TH-MV, LLC  
Steve Hill  
963 North 21<sup>st</sup> Street  
Newark, OH 43055  
740-364-1206

Angel Business Corporation  
Joseph and Luciana Saade  
2621 Navarre Ave.  
Oregon, Ohio 43616  
(419) 698-3530

Aramark  
Miami University  
501 East High St  
Oxford, OH 45056

Whitegate Holdings, LLC  
Nolan and Heather Wilcox  
105 Broad Street  
Pataskala, OH 43062  
740-927-1403

Angel Business Corporation  
Joseph & Luciana Saade  
10711 State Rt 20, Ste A  
Perrysburg, OH 43551  
567-366-6083

Picktown Foods, LLC  
John Uvira  
1085 Hill Road  
Pickerington, Ohio 43147  
614-866-1716

VASAR Enterprises, LLC  
Ryan Holland  
635 Water Street  
Piqua, Ohio 45356  
(937) 778-8334

TNHRS Inc.  
Tim Sublett  
1130 Chillicothe Street  
Portsmouth, Ohio 45662  
(740) 353-3734

Columbus Zoo and Aquarium  
4850 W. Powell Rd.  
Powell, OH 43065  
614-645-3550

Wilson Empire, LLC  
Kayla & Stephanie Wilson  
2445 Brice Rd.  
Reynoldsburg, OH 43068  
614-861-0600

Wilson Empire, LLC  
Kayla & Stephanie Wilson  
6780 East Main Street  
Reynoldsburg, OH 43068  
614-861-0305

Wilson Empire, LLC  
Kayla & Stephanie Wilson  
1885 Baltimore-Reynoldsburg Rd.  
Reynoldsburg, OH 43068  
614-322-9368

Darette Enterprises Inc.  
Darlene Stilwell, DeEtte Nijakowski  
1011 Buck Rd.  
Rossford, Ohio 43460  
(419) 661-1468

VASAR Enterprises, LLC  
Ryan Holland  
1310 Michigan Street  
Sidney, OH 45365  
937-492-8336

PE 4337, LLC  
Michael and Trina Forbes  
5022 N Walnut St  
South Bloomfield, OH 43103  
740-983-6950

OHBOY Enterprises, LLC  
Paul and Deborah Klouda  
44 N. Maysville Ave.  
S. Zanesville, OH 43701  
(740) 588-9639

TCDB, LLC  
Richard and Julia Lamm  
894 West Central Avenue  
Springboro, Ohio 45066  
(937) 704-9638

The Reyes Group LLC  
Benito and Shiloh Reyes  
1521 W. North  
Springfield, OH 45504  
(937) 325-4678

The Reyes Group LLC  
Benito and Shiloh Reyes  
1525 N. Limestone Drive  
Springfield, Ohio 45503  
(937) 390-1502

Reyes Holdings, LLC  
Benito and Shiloh Reyes  
2000 E. Main St.  
Springfield, OH 45505  
937-631-4667

ANTCO Enterprises LLC  
Andy Cooney  
4234 Sunset Boulevard  
Steubenville, Ohio 43952  
(740) 266-9877

HILL TH-MV, LLC  
Steven and Leanne Hill  
125 State Route 3  
Sunbury, OH 43074  
740-965-1407

Rensko Shell 71, LLC  
Donald Reninger and Jenine Skowron  
7332 State Route 37 E.  
Sunbury, OH 43074  
740-965-6718

AKAM Enterprises, Inc.  
Bryan and Wendy Miller  
5800 Alexis Road  
Sylvania, Ohio 43560  
(419) 882-1621

AKAM Enterprises Inc.  
Bryan & Wendy Miller  
6815 Central Ave.  
Sylvania, OH 43617  
419-843-1802

Angel Business Corporation  
Joseph & Luciana Saade  
1801 Laskey Rd.  
Toledo, OH 43613  
419-480-1020

Aramark  
University of Toledo  
2801 Bancroft  
Toledo, OH 43606

AKAM Enterprises, Inc.  
Bryan and Wendy Miller  
4735 Monroe Street  
Toledo, Ohio 43623  
(419) 472-7002

Angel Business Corporation  
Joseph and Luciana Saade  
3125 Glendale Ave.  
Toledo, Ohio 43614  
(419) 382-9605

EGKAS, Inc.  
Elias Samaha and Grace Metri  
1345 N. Reynolds Rd.  
Toledo, OH 43615  
419-531-7711

EGKAS, Inc.  
Elias Smaha and Grace Metri  
5640 Airport Hwy  
Toledo, OH 43615  
419-868-4933

NuVista LLC  
Alison Davies and Stella Davies  
700 W. Main Street  
Troy, Ohio 45373  
(937) 335-4000

Rensko Henderson, LLC  
Donald Reninger and Jenine Skowron  
4740 Reed Road  
Suite 121  
Upper Arlington, OH 43220  
614-459-6773

CALPAM Food Services, LLC  
Phil and Catherine Beaupre  
759 Scioto Street  
Urbana, Ohio 43078  
937-484-5577

Pink Elephant, LLC  
Michael and Trina Forbes  
520 Clinton Avenue  
Washington Court House, OH 43160  
(740) 636-0979

TNHR Inc.  
Tim Sublett  
510 East Emmitt  
Waverly, Ohio 45690  
740-947-6007

HILL TH-MV, LLC  
Steve Hill  
6259 Sunbury Road  
Westerville, OH 43081  
614-882-6033

LRW Maxtown, LLC  
Rita Waldrop, Lonnie Waldrop  
891 North State Street  
Westerville, Ohio 43082  
(614) 794-0494

LRW Maxtown, LLC  
Rita and Lonnie Waldrop  
300 Polaris Parkway Road  
Westerville, OH 43082  
614-882-0487

Rensko Westerville, LLC  
Don Reninger & Jenine Skowron  
772 South State Street  
Westerville, OH 43081  
614-895-9380

Touchstone Hospitality III, LLC  
Robert E. Lee  
3965 East Broad Street  
Whitehall, OH 43213  
614-237-5573

Dual Control Investments, LLC  
David Cropper and Jennifer Elliott  
38 North Orange Street  
Xenia, OH 45385  
(937) 372-1341

AVI Food Systems, Inc.  
Beeghly Center/YSU Basketball Stadium  
224 W. Spring Street  
Youngstown, OH 44555  
724-456-9927

AVI Food Systems, Inc.  
Stambaugh Stadium  
577 Fifth Ave.  
Youngstown, OH 44555

OHBOY Enterprises, LLC  
Paula and Deborah Klouda  
3231 N. Maple Avenue  
Zanesville, OH 43701  
(740) 452-7748

## Pennsylvania

Reid Stores, Inc.  
1002 E. Main Street  
Bradford, PA 16701  
814-368-9502

Reid Stores, Inc.  
8030 Perry Hwy  
Summit Township, PA 16509  
814-866-5320

Tops Markets, LLC  
150 Main Street  
Bradford, PA 16701  
814-363-9901

Reid Stores, Inc.  
7 E. Columbus Ave.  
Corry, PA 16407  
814-663-6058

Scotian Enterprises, LLC  
Brian and Jennifer Schibler  
201 West Plum Street  
Edinboro, PA 16412  
814-734-0636

Delta-Sonic Carwash Systems, Inc.  
6850 Peach St.  
Erie, PA 16509  
814-217-0321

Miranda Holdings, Inc.  
Ray and Sally Miranda  
6980 Peach Street  
Erie, Pennsylvania 16509  
(813) 868-8454

Miranda Holdings, Inc.  
Ray and Sally Miranda  
4231 Peach Street  
Erie, Pennsylvania 16509  
(813) 866-5071

SSCMK, Inc.  
Scott Kyser & Cody Kyser  
815 East 38<sup>th</sup> Street  
Erie, PA 16504  
814-825-2153

Scotian Enterprises, LLC  
Brian and Jennifer Schibler  
209 E. 12<sup>th</sup> Street  
Erie, PA 16503  
(814) 874-3000

Scotian Enterprises, LLC  
Brian & Jennifer Schibler  
2745 West 26<sup>th</sup> Street  
Erie, Pennsylvania 16506  
(814) 464-9161

Scotian Enterprises, LLC  
Brian and Jennifer Schibler  
2565 W. 12<sup>th</sup> Street  
Erie, PA 16505  
(814) 874-4955

Tops Markets, LLC  
1702 E. 38<sup>th</sup> Street  
Erie, PA 16510  
814-455-7482

Tops Markets, LLC  
1520 W. 26<sup>th</sup> Street  
Erie, PA 16508  
814-455-9000

Tops PT, LLC  
712 West 38<sup>th</sup> Street  
Liberty Plaza  
Erie, PA 16508  
814-864-4958

Liberty Bean, LLC  
Great Bend Exxon Gas Station  
25106 State Route 11  
Exit 230  
Interstate 81  
Hallstead, PA 18822  
570-879-8107

Hat Trick Food & Beverage, LLC  
225 Highland Park Blvd  
Hanover Township, PA 18702

SSCMK, Inc.  
Scott Kyser and Cody Kyser  
4444 Buffalo Rd.  
Harborcreek Township, PA 16510  
716-572-7822

Tops PT, LLC  
525 North Fraley Street  
Kane, PA 16735  
814-837-7812

Liberty Bean, LLC  
1174 Mt. Cobb Rd.  
Lake Ariel, PA 18436  
570-689-3900

Scotian Enterprises, LLC  
Brian and Jennifer Schibler  
1193 Park Avenue  
Meadville, PA 16335  
814-336-5002

Tops PT, LLC  
144 Center Street  
Downtown Mall  
Meadville, PA 16335  
814-724-4025

Aramark Sports and Entertainment  
Services, LLC  
3601 S. Broad Street  
Philadelphia, PA 19148

PL Phase One, LP  
Xfinity Live  
1100 Pattison Ave.  
Philadelphia, PA 19148

Tops Markets, LLC  
3014 Elmira Street  
Sayre, PA 18810  
570-882-9188

Tops Markets, LLC  
448 North Keystone Avenue  
Sayre, PA 18840  
570-888-4785

Tops PT, LLC  
Bradford Town Center  
RR Box 6035  
Towanda, PA 18848

Tops PT, LLC  
595 Elmira Street  
Troy, PA 16947  
570-297-2475

Tops PT, LLC  
19-21 East High Street  
Union City, PA 16438  
814-438-7614

Scotian Enterprises, LLC  
Brian and Jennifer Schibler  
16447 Conneaut Lake Road  
Vernon Township, PA16335  
814-333-2648

JMLB Enterprises, LLC  
John MacDonald  
36 Pennsylvania Ave E  
Warren, PA 16365  
814-726-3600

BFS Foods, Inc.  
Marshall Bishop  
1 Park Place  
Washington, PA 15330  
724-705-7606

Tops PT, LLC  
230 South High Street  
Waterford, PA 16441  
814-796-6711

Tops PT, LLC  
28 Railroad Avenue  
Youngsville, PA 16371  
814-563-4366

### **Virginia**

C3 Management, Inc  
Chris and Terry Settelen  
9230 7<sup>th</sup> Avenue  
Building SP-28  
Norfolk, VA 23511  
757-423-0981

TCS Oceana, LLC  
Chris and Terry Settelen  
NASO - Jet Mart  
970 E Ave  
Building 542  
Virginia Beach, VA 23460  
757-321-6960

### **West Virginia**

L & S Coffee, Inc.  
Tim Sublett and Beverly Lasater  
3903 Teays Valley Road  
Hurricane, WV 25526  
(304) 757-8173

D.KaF, Inc.  
Kathy Ferguson  
3555 Murdoch Avenue  
Parkersburg, West Virginia 26101  
(304) 424-0790

D.KaF, Inc.  
Kathy Ferguson  
555 5<sup>th</sup> Street  
Parkersburg, West Virginia 26101  
(304) 428-4104

GTND Enterprises, LLC  
Gerald and Theresa Dionne  
223 MacCorkle Avenue  
St. Albans, WV 25177  
304-722-6515

ANTCO Enterprises LLC  
Andrew Cooney  
884 National Road  
Wheeling, WV 26003  
304-905-814



## **LIST OF CURRENT FRANCHISEES (CONT.)**

The name, restaurant address, and telephone number of all of our current restaurant franchisees who have joined the system from December 30, 2013 to March 12, 2014 are listed below. The \* indicates that the franchisee has signed a franchise agreement, but the restaurant is not operational as of March 12, 2014.

### **Arizona**

\* IceCoffeeArizona Holdings, LLC  
Anthony LeBlanc  
Jobing.com Arena  
9400 W. Maryland Ave.  
Glendale, AZ 85305  
623-772-3304

### **Maine**

RSR, LLC  
Shane and Rebecca Reagh  
5 Horton Place  
Topsham, ME 04086  
207-729-1262

### **Michigan**

Half Dozen Doughnuts, LLC  
Scott and Shannon Suryan  
4035 Telegraph Rd.  
Dearborn Heights, MI 48124  
269-377-1657

\* DanLex LLC  
Daniel Rabkin and Aleksa Pandza  
31300 5 Mile Rd.  
Livonia, MI 48152  
734-421-8100

### **Minnesota**

Bois Forte Band of Chippewa  
Fortune Bay Casino  
1430 Bois Forte  
Tower, MN 55790

### **New York**

Varma Enterprises Inc.  
Ajay & Shashi Varma  
Manan & Taruna Varma  
537 Delaware Ave.  
Buffalo, NY 14202  
716-884-8404

\* MACARAT Inc.  
Tara Stamm  
4250 McKinley Parkway  
Hamburg, NY 14075  
716-238-1072

TLA-Hospitality LLC  
Eli Tarbell, Justin Tarbell, Christy  
Laguador, RYanne Araujo  
232 Main Street  
Massena, NY 13662  
315-705-4435

\* North America Eatery Inc.  
Raymond Wong & Mary Tchou-Wong  
64 E. 34<sup>th</sup> Street  
New York, NY 10016  
646-259-5669

\* The Source Service Station, Inc.  
Doodnauth Dhanraj  
2 Old Country Rd.  
Westbury, NY 11801  
517-832-8181

### **Ohio**

Compass Group USA, Inc.  
Wright State University  
186 Student Union  
Dayton, OH 45435

**Pennsylvania**

NEO Restaurant Group, Inc.  
Hadi A. Hadi and Adnan Qutail  
135 N. Hermitage Rd.  
Hermitage, PA 16148  
724-347-7400

**West Virginia**

\* BFS Foods, Inc.  
Marshall Bishop  
5000 Willie G. Ave.  
Westover, WV 26501  
304-291-6983

**EXHIBIT P**  
**LIST OF RECENT FORMER FRANCHISEES**

The name, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under our Franchise Agreement during the most recently completed fiscal year, or who has not communicated with us within 10 weeks of the date of this disclosure document are listed below.

The states listed below in which these former franchisees may be contacted are not necessarily the same states in which the former franchisees' restaurants were located.

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

**Maine**

DCS Limited, LLC  
Donald and Carol Robitaille and Shawn Robitaille  
Auburn, ME  
207-774-7100

True North compass, LLC  
Karl & Jillian Carter  
Auburn, ME  
207-333-7539  
(Remained as a current franchisee of other restaurants)

RBM Enterprises, LLC  
Bruce MacGillivray and Karen Kearney  
Augusta, ME 04330  
207-592-8467

JAMA Coffee IV, Inc.  
Marc & Andrea Nicknair  
Glenburn, ME  
207-944-7944  
(Remained as a current franchisee of other restaurants)

JAMA Coffee, Inc.  
Marc & Andrea Nicknair  
Glenburn, ME  
207-944-7944  
(Remained as a current franchisee of other restaurants)

Pate Ventures, Inc.  
Mike and Paula Pate  
Saco, ME  
207-281-2566

RSR, LLC  
Shane Reagh and Rebecca Wentzell  
Windham, ME  
207-831-2153  
(Remained as a current franchisee of other restaurants)

Bluenose Enterprises, LLC  
Michael Vissers & Stacey MacKenzie  
West Jefferson, OH  
207-333-7539  
(Remained as a current franchisee of other restaurants)

Bluenose Enterprises, LLC  
Michael Vissers & Stacey MacKenzie  
West Jefferson, OH  
207-333-7539  
(Remained as a current franchisee of other restaurants)

### **Michigan**

CCD Wisner LLC  
Vivian Sayah  
Ann Arbor, MI  
248-935-3673  
(Remained as a current franchisee of other restaurants)

Straub Group  
David & Brigitte Straub  
Grand Rapids, MI  
301-247-3825

Proactive Resolutions, LLC  
Tom Schlitts and Michele Hirschfield  
Holt, MI  
810-956-4760  
(Remained as a current franchisee of other restaurants)

JCH Enterprises, LLC  
Alex and Lida Cruz  
Northville, MI  
734-395-6701  
(Remained as a current franchisee of other restaurants)

Kitchen Corner, LLC  
Frank Ascitutto  
Southgate, MI  
734-231-3361

R & S Management Group, Inc.  
Wissam Abbo and Rasha Jwaida  
Warren, MI  
586-703-7033  
(Remained as a current franchisee of other restaurants)

**New York**

Compass Group USA, Inc.  
Charlotte, NC  
518-335-5156  
(Remained as a current franchisee of other restaurants)

Kalra Enterprises Inc.  
Rajan and Shivani Kalra  
Amherst, NY  
716-480-0036  
(Remained as a current franchisee of other restaurants)

SRF Breakaway Enterprises, LLC  
Steve Foxcroft  
Auburn, NY 13021  
315-224-9111

Mirabito Holdings, Inc.  
Joseph Mirabito  
Binghamton, NY  
607-352-2911  
(Remained as a current franchisee of other restaurants)

Mirabito Holdings, Inc.  
Joseph Mirabito  
Binghamton, NY  
607-352-2911  
(Remained as a current franchisee of other restaurants)

LPNC, LLC  
David and Joan Pelz  
Clarence Center, NY  
716-864-1406

APA Cafe Inc.  
Gurvinder Singh, Ashna Walia, and Adarsh Walia  
Greece, NY  
516-343-7291  
(Remained as a current franchisee of other restaurants)

Houston Street Café, LLC  
Manjinder Singh, Daniel LeBlanc  
& Jay Gujjar  
New York, NY  
914-602-3102

152 W 34 Inc.  
National Restaurants Management Inc.  
(Riese Restaurants)  
Guy DiMaria  
New York, NY  
212-563-7440  
(Remained as a current franchisee of other restaurants)

1286 RR Operating Inc.  
National Restaurants Management Inc.  
(Riese Restaurants)  
Guy DiMaria  
New York, NY  
212-563-7440  
(Remained as a current franchisee of other restaurants)

No.26 Court St Restaurant Inc.  
National Restaurants Management Inc.  
(Riese Restaurants)  
Guy DiMaria  
New York, NY  
212-563-7440  
(Remained as a current franchisee of other restaurants)

Startpoint LLC  
Dermot Fogarty, Royale Fogarty  
Penfield, New York  
585-269-8246

Startpoint LLC  
Dermot and Royale Fogarty and Nicole and Kevin Taylor  
Penfield, NY  
585-269-8246

CPJ Whaling Enterprises, LLC  
Paul and Janette Whaling and Chris Whaling  
Rochester, NY  
860-951-2056

CPJ Whaling Enterprises, LLC  
Paul and Janette Whaling and Chris Whaling  
Rochester, NY  
860-951-2056

J.D. Williams Holdings, LLC  
Jennifer Williams, Diane Williams, Don Williams and Michael Williams  
Rochester, NY  
716-994-6653

Sweet Tooth Inc  
Zohra Ali & Dilshad Chandrani  
Scarsdale, NY  
914-882-6989  
(Remained as a current franchisee of other restaurants)

G.D.K. Development, Inc.  
Gina and David Kron  
Northeast, PA  
716-672-9246  
(Remained as a current franchisee of other restaurants)

## **Ohio**

Certified Oil Co.  
Columbus, OH  
614-563-7787

Certified Oil Co.  
Columbus, OH  
614-563-7787

Certified Oil Co.  
Columbus, OH  
614-563-7787

LP Craver LLC  
Bart Craver and Meghan O. Craver  
Columbus, OH  
614-496-5116  
(Remained as a current franchisee of other restaurants)

Rensko St. Anns, LLC  
Don Reninger & Jenine Skowron  
Delaware, OH  
614-352-4287  
(Remained as a current franchisee of other restaurants)

Rensko Bethel I, LLC  
Donald Reninger, Jenine Skowron  
Delaware, OH  
614-352-4287  
(Remained as a current franchisee of other restaurants)

FMS-TH Riverside LLC  
Frank & Michelle Slavik  
Galloway, OH  
614-519-2587  
(Remained as a current franchisee of other restaurants)

Penta Foods, LLC  
Louise Stonehouse and John Uvira  
New Albany, OH  
614-571-3024  
(Remained as a current franchisee of other restaurants)

The Blalock Group, L.L.C.  
Leon Blalock  
Powell, OH  
614-572-8832

The Blalock Group III, L.L.C.  
Leon Blalock  
Powell, OH  
614-572-8832

The Blalock Group IV LLC  
Leon Blalock  
Powell, OH  
614-572-8832

Sodexo & IMG College, Inc.  
Williamsburg, VA  
614-583-1283  
(Remained as a current franchisee of other restaurants)

Sodexo & IMG College, Inc.  
Williamsburg, VA  
614-583-1283  
(Remained as a current franchisee of other restaurants)

## **Pennsylvania**

Penn State University  
State College, PA  
814-865-9080

SMG Food and Beverage, LLC  
(re: Nassau Coliseum, Long Island, NY)  
West Conshohocken, PA



**West Virginia**

GTND Enterprises, LLC  
Gerald and Theresa Dionne  
St. Albans, WV  
304-410-2607

(Remained as a current franchisee of other restaurants)

**EXHIBIT Q**  
**STATE-SPECIFIC DISCLOSURES AND AGREEMENT AMENDMENTS**

1. California
2. Hawaii
3. Illinois
4. Indiana
5. Maryland
6. Michigan
7. Minnesota
8. New York
9. North Dakota
10. Rhode Island
11. Virginia
12. Washington
13. Wisconsin

**Addendum to Disclosure Document Pursuant to  
The California Franchise Investment Law**

OUR WEBSITES HAVE NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENTS OF OUR WEBSITES MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT [www.corp.ca.gov](http://www.corp.ca.gov).

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of California:

**ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

1. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.
2. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq).
3. The Franchise Agreement contains a provision requiring application of the laws of Ohio. This provision may not be enforceable under California law.
4. The Franchise Agreement requires venue to be limited to the jurisdiction where we have our principal place of business when the proceeding begins; currently, Dublin, Ohio. This provision may not be enforceable under California law.
5. You must sign a general release of claims if you transfer your franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).
6. California Corporations Code, Section 31125 requires us to give you a disclosure document, approved by the Department of Corporations before we ask you to consider a material modification of your Franchise Agreement.
7. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.
8. Neither the franchisor nor any person or franchise broker disclosed in Item 2 of the Disclosure Document is subject to any currently effective order of any national securities

association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a *et seq.*, suspending or expelling such persons from membership in such association or exchange.

**Addendum to Disclosure Document Pursuant to  
the Hawaii Franchise Investment Law**

1. The general release language contained in the Franchise Agreement shall not relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Hawaii.
2. This proposed registration is exempt from the registration requirements of the states of California, Illinois, Indiana, Maryland, New York, North Dakota, Rhode Island, Virginia and Washington.
3. This proposed registration is or will shortly be on file in the states of Hawaii, Minnesota and Wisconsin; notice of filing is in effect in Michigan and South Dakota.
4. No states have refused, by order or otherwise, to register these franchises.
5. No states have revoked or suspended the right to offer these franchises.
6. The proposed registration of these franchises has not been withdrawn in any state.

## Hawaii Amendment to the Franchise Agreement

In recognition of the requirements of Hawaii Franchise Investment Law, Hawaii Rev. Stat. §§ 482E, *et seq.*, the parties to the attached Tim Hortons USA Inc. Franchise Agreement (the "Agreement") agree *as follows*:

1. Section 2.01 f., under the heading "Renewal," is deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in lieu thereof:

2.01 f. Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective shareholders, directors, agents, and employees, excluding only such claims as Franchisee may have under the Hawaii Franchise Investment Law.

2. Section 11.02 b., under the heading "Transfer of Interest," is deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in lieu thereof:

11.02 b. The transferor shall have executed a general release in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective partners, shareholders, directors, employees, and agents, excluding only such claims as the transferor may have under the Hawaii Franchise Investment Law.

3. Article XII, under the heading "Termination," shall be amended by the addition of the following new paragraph 12.05, which shall be considered an integral part of the Agreement:

12.05 Notwithstanding anything to the contrary in this Section 12.05, Franchisor shall comply with Hawaii law which currently requires that Franchisor compensate Franchisee upon termination or refusal to renew the franchise for the fair market value, at the time of the termination or expiration of the franchise, of any inventory, supplies, equipment and furnishings which were purchased from Franchisor or a supplier designated by Franchisor. Personalized materials which have no value to Franchisor need not be compensated for. If Franchisor refuses to renew a franchise for the purpose of converting Franchisee's, business to one owned and operated by Franchisor, Franchisor, in addition, must compensate Franchisee for the loss of goodwill. Franchisor may deduct reasonable costs incurred in removing, transporting and disposing of Franchisee's inventory, supplies, equipment and furnishings pursuant to these requirements, and may offset any moneys due Franchisor.

4. This Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Hawaii Franchise Investment Law, Hawaii Rev. Stat. §§ 482E, *et seq.*, are met independently without reference to this Amendment.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Hawaii Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Hortons USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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

**Addendum to Disclosure Document Pursuant to  
the Illinois Franchise Disclosure Act**

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions will supersede and apply to all franchises offered and sold in the State of Illinois:

**ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

1. Notice Required by Law:

THE TERMS AND CONDITIONS UNDER WHICH YOUR FRANCHISE CAN BE TERMINATED AND YOUR RIGHTS UPON NON-RENEWAL MAY BE AFFECTED BY ILLINOIS LAW, 815 ILCS 705/19 AND 705/20.

2. The provisions of the Franchise License Agreement and all other agreements concerning governing law, jurisdiction, venue, choice of law and waiver of jury trials will not constitute a waiver of any right conferred upon Licensee by the Illinois Franchise Disclosure Act. The Illinois Franchise Disclosure Act will govern the Franchise License Agreement with respect to Illinois licensees.

3. Section 41 of the Illinois Franchise Disclosure Act states that "any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void".

4. The "Summary" section of Item 17 (v), entitled Choice of Forum is amended by adding the following language:

However, any provision in the Franchise Agreement that designates jurisdiction or venue in a forum outside of the State of Illinois is void under section 4 of the current Illinois Franchise Disclosure Act, although the Franchise Agreement may provide for arbitration in a forum outside of the State of Illinois.

5. The "Summary" section of Item 17 (w), entitled Choice of Law is amended by adding the following language:

However, except for federal law, Illinois *law* applies if the jurisdictional requirements of the Illinois Franchise Disclosure Act of 1987 (as amended) are met.

6. Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently, without reference to this addendum.



## **Illinois Amendment to the Franchise Agreement**

In recognition of the requirements of the Illinois Franchise Disclosure Act, Ill. Comp. Stat. §§ 705/1 to 705/44, the parties to the attached Tim Hortons USA Inc. Standard Franchise Agreement (the "Agreement") agree as follows:

1. Article II of the Agreement, under the heading "Duration of Agreement," shall be supplemented by the addition of the following new paragraph 2.02, which shall be considered an integral part of the Agreement:

2.02 If any of the provisions of this Section 2 are inconsistent with Section 20 of the Illinois Franchise Disclosure Act, the provisions of the Act shall apply. If Franchisor refuses to renew this Agreement, Franchisor shall compensate Franchisee if (and to the extent) such compensation is required under Section 20 of the Illinois Franchise Disclosure Act.

2. Article XII of the Agreement, under the heading "Termination," shall be supplemented by the addition of the following new paragraph 12.05, which shall be considered an integral part of the Agreement:

12.05 If any of the provisions of this Section 12 concerning termination are inconsistent with Section 19 of the Illinois Franchise Disclosure Act, then said Illinois law shall apply.

3. Section 17.00 of the Agreement, under the heading "Applicable Law," shall be deleted in its entirety, and shall have no force or effect; and the following new paragraph 17.00 shall be substituted in lieu thereof:

Section 17.00 - Choice of Law: This Agreement takes effect upon its acceptance and execution by Franchisor in Ohio and Ohio law shall apply to any claim or controversy regarding the making, entering into, performance, interpretation, breach or termination of this Agreement, except with respect to claims or controversies arising under the Illinois Franchise Disclosure Act. In the event of any conflict of law, the laws of Ohio shall prevail, without regard to the application of Ohio conflict of law rules, except with respect to claims arising under the Illinois Franchise Disclosure Act. If, however, any provision of this Agreement would not be enforceable under the laws of Ohio, and if the Franchised Business is located outside of Ohio and such provision would be enforceable under the laws of the state in which the Franchised Business is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Article XVII is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Ohio to which it would not otherwise be subject.

4. Section 17.04 of the Agreement, under the heading "Applicable Law," is deleted in its entirety.

5. Article XVII of the Agreement, under the heading "Applicable Law," shall be

supplemented by the addition of the following new Section 17.05, which shall be considered an integral part of the Agreement:

17.05 Nothing contained in this Section shall constitute a condition, stipulation, or provision purporting to bind any person to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other Illinois law (as long as the jurisdictional requirements of the Illinois Franchise Disclosure Act are met).

6. Section 18.02 of the Agreement, under the heading "Entire Agreement," shall be deleted in its entirety, and shall have no force or effect; and the following new paragraph shall be substituted in lieu thereof:

This Agreement and the documents referred to herein constitute the entire, full, and complete Agreement between Franchisor and Franchisee concerning the subject matter hereof. Other than the representations and documents set forth in the Franchise Disclosure Document provided to Franchisee by Franchisor, there are no other oral or written understandings, representations or agreements between Franchisee and Franchisor concerning the subject matter of this Agreement upon which Franchisee relied in entering into this Agreement. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

7. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently without reference to this amendment.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed, and delivered this Illinois Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Hortons USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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

**Addendum To Disclosure Document Pursuant to the  
Indiana Franchise Disclosure Law  
and the Indiana Deceptive Franchise Practices Act**

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of Indiana:

1. The laws of the State of Indiana supersede any provisions of the Franchise Agreement or Ohio law if such provisions are in conflict with Indiana law.
2. The prohibition by Indiana Code 23-2-2.7-1(7) against unilateral termination of the franchise without good cause or in bad faith, good cause being defined therein as a material breach of the Franchise Agreement, will supersede the provisions of the Franchise Agreement in the State of Indiana to the extent they may be inconsistent with such prohibition.
3. No release, waiver, or estoppel language set forth in the Franchise Agreement will relieve the Franchisor or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana.
4. Any provision in the Franchise Agreement which limits litigation brought for breach of the Franchise Agreement, including waiver of the right to a trial by jury or the right to collect punitive damages, in any manner whatsoever is deleted from any Franchise Agreement in the State of Indiana.

## **Indiana Amendment to the Franchise Agreement**

In recognition of the requirements of the Indiana Franchise Disclosure Act and Indiana Deceptive Franchise Practices Act, the parties to the attached Tim Hortons USA Inc. Standard Franchise Agreement (the "Agreement") agree as follows:

1. The laws of the State of Indiana supersede any provisions of the Franchise Agreement or Ohio law if such provisions are in conflict with Indiana law.
2. The prohibition by Indiana Code 23-2-2.7-1(7) against unilateral termination of the franchise without good cause or in bad faith, good cause being defined therein as a material breach of the Franchise Agreement, will supersede the provisions of the Franchise Agreement to the extent they may be inconsistent with such prohibition.
3. No release, waiver, or estoppel language set forth in the Franchise Agreement will relieve the Franchisor or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana.
4. Any provision in the Franchise Agreement which limits litigation brought for breach of the Franchise Agreement, including Section 17.02 ("Waiver of Jury Trial and Punitive Damages"), in any manner whatsoever is deleted from the Franchise Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed, and delivered this Indiana Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Hortons USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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

**Addendum to Disclosure Document Pursuant to  
the Maryland Franchise Registration and Disclosure Law**

The following provisions will supersede anything to the contrary in the Franchise Disclosure Document or Franchise Agreement and will apply to all franchises offered and sold under the laws of the State of Maryland:

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

1. The general release language contained in the Franchise Agreement shall not relieve the Franchisor or any other person, directly or indirectly, from liability under the Maryland Franchise Registration and Disclosure Law.
2. The laws of the State of Maryland may supersede the Franchise Agreement, including the areas of termination and renewal of the Franchise.
3. A franchisee may sue in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Laws must be brought within three years after the grant of the Franchise.
4. The provision of the Franchise Agreement that provides for termination upon your bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

## **Maryland Amendment to the Franchise Agreement**

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the parties to the attached Tim Hortons USA Inc. Standard Franchise Agreement (the "Agreement") agree as follows:

1. The general release language contained in the Franchise Agreement shall not relieve the Franchisor or any other person, directly or indirectly, from liability under the Maryland Franchise Registration and Disclosure Law.
2. The laws of the State of Maryland may supersede the Franchise Agreement, including the areas of termination and renewal of the Franchise.
3. A franchisee may sue in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Laws must be brought within three years after the grant of the Franchise.

[signature page follows]



IN WITNESS WHEREOF, the parties hereto have duly executed, and delivered this Maryland Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Hortons USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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

## MICHIGAN ADDENDUM TO DISCLOSURE DOCUMENT

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

- (A) A PROHIBITION ON THE RIGHT OF A FRANCHISEE TO JOIN AN ASSOCIATION OF FRANCHISEES.
- (B) A REQUIREMENT THAT A FRANCHISEE ASSENT TO A RELEASE, ASSIGNMENT, NOVATION, WAIVER OR ESTOPPEL WHICH DEPRIVES A FRANCHISEE OF RIGHTS AND PROTECTIONS PROVIDED IN THIS ACT. THIS SHALL NOT PRECLUDE A FRANCHISEE, AFTER ENTERING INTO A FRANCHISE AGREEMENT, FROM SETTling ANY AND ALL CLAIMS.
- (C) A PROVISION THAT PERMITS A FRANCHISOR TO TERMINATE A FRANCHISE PRIOR TO THE EXPIRATION OF ITS TERM EXCEPT FOR GOOD CAUSE. GOOD CAUSE SHALL INCLUDE THE FAILURE OF THE FRANCHISEE TO COMPLY WITH ANY LAWFUL PROVISIONS OF THE FRANCHISE AGREEMENT AND TO CURE SUCH FAILURE AFTER BEING GIVEN WRITTEN NOTICE THEREOF AND A REASONABLE OPPORTUNITY, WHICH IN NO EVENT NEED BE MORE THAN 30 DAYS; TO CURE SUCH FAILURE.
- (D) A PROVISION THAT PERMITS A FRANCHISOR TO REFUSE TO RENEW A FRANCHISE WITHOUT FAIRLY COMPENSATING THE FRANCHISEE BY REPURCHASE OR OTHER MEANS FOR THE FAIR MARKET VALUE, AT THE TIME OF EXPIRATION, OF THE FRANCHISEE'S INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES AND FURNISHINGS. PERSONALIZED MATERIALS WHICH HAVE NO VALUE TO THE FRANCHISOR AND INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES AND FURNISHINGS NOT REASONABLY REQUIRED IN THE CONDUCT OF THE FRANCHISED BUSINESS ARE NOT SUBJECT TO COMPENSATION. THIS SUBSECTION APPLIES ONLY IF: (i) THE TERM OF THE FRANCHISE IS LESS THAN 5 YEARS; AND (ii) THE FRANCHISEE IS PROHIBITED BY THE FRANCHISE OR OTHER AGREEMENT FROM CONTINUING TO CONDUCT SUBSTANTIALLY THE SAME BUSINESS UNDER ANOTHER 'TRADEMARK, SERVICE MARK, TRADE NAME, LOGOTYPE, ADVERTISING OR OTHER COMMERCIAL SYMBOL IN THE SAME AREA SUBSEQUENT TO THE EXPIRATION OF THE FRANCHISE OR THE FRANCHISEE DOES NOT RECEIVE AT LEAST 6 MONTHS ADVANCE NOTICE OF FRANCHISOR'S INTENT NOT TO RENEW THE FRANCHISE.

- (E) A PROVISION THAT PERMITS THE FRANCHISOR TO REFUSE TO RENEW A FRANCHISE ON TERMS GENERALLY AVAILABLE TO OTHER FRANCHISEES OF THE SAME CLASS OR TYPE UNDER SIMILAR CIRCUMSTANCES. THIS SECTION DOES NOT REQUIRE A RENEWAL PROVISION.**
- (F) A PROVISION REQUIRING THAT ARBITRATION OR LITIGATION BE CONDUCTED OUTSIDE THIS STATE. THIS SHALL NOT PRECLUDE THE FRANCHISEE FROM ENTERING INTO AN AGREEMENT, AT THE TIME OF ARBITRATION, TO CONDUCT ARBITRATION AT A LOCATION OUTSIDE THIS STATE.**
- (G) A PROVISION WHICH PERMITS A FRANCHISOR TO REFUSE TO PERMIT A TRANSFER OF OWNERSHIP OF A FRANCHISE, EXCEPT FOR GOOD CAUSE. THIS SUBDIVISION DOES NOT PREVENT A FRANCHISOR FROM EXERCISING A RIGHT OF FIRST REFUSAL TO PURCHASE THE FRANCHISE. GOOD CAUSE SHALL INCLUDE, BUT IS NOT LIMITED TO:**
- (i) THE FAILURE OF THE PROPOSED FRANCHISEE TO MEET THE FRANCHISOR'S THEN CURRENT REASONABLE QUALIFICATIONS OR STANDARDS.**
  - (ii) THE FACT THAT THE PROPOSED TRANSFEREE IS A COMPETITOR OF THE FRANCHISOR OR SUBFRANCHISOR.**
  - (iii) THE UNWILLINGNESS OF THE PROPOSED TRANSFEREE TO AGREE IN WRITING TO COMPLY WITH ALL LAWFUL OBLIGATIONS.**
  - (iv) THE FAILURE OF THE FRANCHISEE OR PROPOSED TRANSFEREE TO PAY ANY SUMS OWING TO THE FRANCHISOR OR TO CURE ANY DEFAULT IN THE FRANCHISE AGREEMENT EXISTING AT THE TIME OF THE PROPOSED TRANSFER.**
- (H) A PROVISION THAT REQUIRES THE FRANCHISEE TO RESELL TO THE FRANCHISOR ITEMS THAT ARE NOT UNIQUELY IDENTIFIED WITH THE FRANCHISOR. THIS SUBDIVISION DOES NOT PROHIBIT A PROVISION THAT GRANTS TO A FRANCHISOR A RIGHT OF FIRST REFUSAL TO PURCHASE THE ASSETS OF A FRANCHISE ON THE SAME TERMS AND CONDITIONS AS A BONA FIDE THIRD PARTY WILLING AND ABLE TO PURCHASE THOSE ASSETS, NOR DOES THIS SUBDIVISION PROHIBIT A PROVISION THAT GRANTS THE FRANCHISOR THE RIGHT TO ACQUIRE THE ASSETS OF A**

**FRANCHISE FOR THE MARKET OR APPRAISED VALUE OF SUCH ASSETS IF THE FRANCHISEE HAS BREACHED THE LAWFUL PROVISIONS OF THE FRANCHISE AGREEMENT AND HAS FAILED TO CURE THE BREACH IN THE MANNER PROVIDED IN SUBDIVISION (C).**

- (I) A PROVISION WHICH PERMITS THE FRANCHISOR TO DIRECTLY OR INDIRECTLY CONVEY, ASSIGN OR OTHERWISE TRANSFER ITS OBLIGATIONS TO FULFILL CONTRACTUAL OBLIGATIONS TO THE FRANCHISEE UNLESS PROVISION HAS BEEN MADE FOR PROVIDING THE REQUIRED CONTRACTUAL SERVICES.**

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

**\* \* \* \***

**IF THE FRANCHISOR'S MOST RECENT FINANCIAL STATEMENTS ARE UNAUDITED AND SHOW A NET WORTH OF LESS THAN \$100,000.00, THE FRANCHISOR MUST, AT THE REQUEST OF THE FRANCHISEE, ARRANGE FOR THE ESCROW OF INITIAL INVESTMENT AND OTHER FUNDS PAID BY THE FRANCHISEE UNTIL THE OBLIGATIONS TO PROVIDE REAL ESTATE, IMPROVEMENTS, EQUIPMENT, INVENTORY, TRAINING OR OTHER ITEMS INCLUDED IN THE FRANCHISE OFFERING ARE FULFILLED. AT THE OPTION OF THE FRANCHISOR, A SURETY BOND MAY BE PROVIDED IN PLACE OF ESCROW.**

**\* \* \* \***

**THE NAME AND ADDRESS OF THE FRANCHISOR'S AGENT IN THIS STATE AUTHORIZED TO RECEIVE SERVICE OF PROCESS IS MICHIGAN DEPARTMENT OF COMMERCE, CORPORATION AND SECURITIES BUREAU, 6546 MERCANTILE WAY, P.O. BOX 30222, LANSING, MICHIGAN 48910.**

**\* \* \* \***

**ANY QUESTIONS REGARDING THIS NOTICE SHOULD BE DIRECTED TO:  
DEPARTMENT OF THE ATTORNEY GENERAL'S OFFICE  
CONSUMER PROTECTION DIVISION  
ATTN: FRANCHISE  
670 G. MENNEN WILLIAMS BUILDING  
LANSING, MICHIGAN 48913**

**Addendum to Disclosure Document Pursuant to  
the Minnesota Franchise Investment Law**

Notwithstanding anything to the contrary set forth in the Disclosure Document, the following provisions will supersede and apply to all franchises offered and sold in the State of Minnesota:

**ITEM 13**

1. Franchisor shall indemnify Franchisee against liability to third parties resulting from claims by third parties that the Franchisee's use of the trademarks of Franchisor infringes trademark rights of the third party. Franchisor does not indemnify Franchisee against the consequences of Franchisee's use of Franchisor's trademarks except in accordance with the requirements of the Franchise Agreement, and, as a condition to indemnification, Franchisee must provide notice to Franchisor of any such claim and tender the defense of the claim to Franchisor within ten (10) days after the claim is asserted. If Franchisor accepts the tender of defense, Franchisor has the right to manage the defense of the claim, including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.

**ITEM 17**

1. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the disclosure document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to a jury trial or any procedure, forum, or remedies as may be provided for by the laws of the jurisdiction.
2. With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5 which requires that, except in certain specified cases, a franchisee must be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the franchise agreement, and that consent to the transferor of the franchise not be unreasonably withheld.
3. Pursuant to Minn. Rule 2860.4400D, any general release of claims that you or a transferor may have against us or our shareholders, directors, employees and agents, including without limitation claims arising under federal, state, and local laws and regulations shall exclude such claims you or a transferor may have under the Minnesota Franchise Law and the Rules and Regulations promulgated thereunder by the Commissioner of Commerce.
4. Minnesota Rule 2860.4400J prohibits requiring a franchisee to consent to liquidated damages. Under the terms of the Franchise Agreement, as modified by the Minnesota Addendum to the Franchise Agreement, all references to liquidated damages are deleted.
5. Minn. Rule 2860-4400J prohibits waiver of a jury trial. All references in the Franchise

Agreement to waiver of a jury trial are deleted in their entirety.

6. Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota Franchise Law or the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce are met independently without reference to this Addendum to the Disclosure Document.

## Minnesota Amendment to the Franchise Agreement

In recognition of the requirements of the Minnesota Franchise Law, Minn. Stat. §§ 80C.01 through 80C.22, and of the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce, Minn. Rules §§ 2860.0100 through 2860.9930, the parties to the attached Tim Hortons USA Inc. Franchise Agreement (the "Agreement") agree as follows:

1. Section 17.03 of the Agreement, under the heading "Reduction of Statute of Limitations," shall be amended by the addition of the following paragraph at the end of the section:

Notwithstanding the foregoing, any and all claims arising under the Minnesota Franchise Act, Minn. Stat. §§80C.01 — 80C.22, must be commenced within three (3) years after the cause of action arises.

2. Article XVII of the Agreement, under the heading "Applicable Law," shall be supplemented by the following new subsection 17.05, which shall be considered an integral part of this Agreement:

17.05 Minnesota Law. Minnesota law provides franchisees with certain termination, non-renewal, and transfer rights. In sum, Minn. Stat. § 80C.14 (subd. 3, 4, and 5) currently require, except in certain specified cases, that a franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice of non-renewal of the Franchise Agreement, and that consent to the transfer of the franchise not be unreasonably withheld. In addition, Minn. Stat § 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring you to consent to liquidated damages, termination penalties or judgment notes; and nothing in the disclosure document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to a jury trial or any procedure, forum, or remedies as may be provided for by the laws of the jurisdiction. Finally, any general release executed pursuant to this Agreement shall exclude such claims that have arisen under the Minnesota Franchise Law and the Rules and Regulations promulgated thereunder by the Minnesota Department of Commerce.

3. Franchisor shall indemnify Franchisee against liability to third parties resulting from claims by third parties that the Franchisee's use of the trademarks of Franchisor infringes trademark rights of the third party. Franchisor does not indemnify Franchisee against the consequences of Franchisee's use of Franchisor's trademarks except in accordance with the requirements of the Franchise Agreement, and, as a condition to indemnification, Franchisee must provide notice to Franchisor of any such claim and tender the defense of the claim to Franchisor within ten (10) days after the claim is asserted. If Franchisor accepts the tender of defense, Franchisor has the right to manage the defense of the claim, including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.
4. Each provision of this Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota Franchise Law or

the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce are met independently without reference to this Amendment to the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Minnesota Amendment to Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Hortons USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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



**Addendum to Disclosure Document Pursuant to  
the New York Franchise Sales Act**

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions will supersede and apply to all franchises offered and sold under the laws of the State of New York:

**ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

1. No release language set forth in the Franchise Agreement will relieve the Licensor or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of New York.
2. The requirements of Sections 7.04 and 13.08 of the Franchise Agreement that you consent to the issuance of an injunction are modified in the State of New York to provide only that you consent to the seeking of such an injunction.

**New York Amendment to the Franchise Agreement**

In recognition of the requirements of the New York Franchise Sales Act, the parties to the attached Tim Hortons USA Inc. Franchise Agreement (the "Agreement") agree as follows:

1. No release language set forth in the Franchise Agreement will relieve the Franchisor or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of New York.
2. The requirements of Sections 17.04 and 13.08 of the Franchise Agreement that you consent to the issuance of an injunction are modified in the State of New York to provide only that you consent to the seeking of such an injunction.

IN WITNESS WHEREOF, the parties hereto have duly executed, and delivered this New York Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Hortons USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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

## **Addendum to the Disclosure Document Pursuant to the North Dakota Franchise Disclosure Act**

In recognition of the requirements of the North Dakota Franchise Investment Law, N.D. Cent. Code, §§ 51-19-01 through 51-19-17, and the policies of the office of the State of North Dakota Securities Commission, the Franchise Disclosure Document for Tim Horton USA Inc. shall be amended by the addition of the following language:

The North Dakota Securities Commissioner has held the following to be unfair, unjust, or inequitable to North Dakota franchisees (Section 51-19-09, N.D.C.C.):

1. **Restrictive Covenants:** Franchise disclosure documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.
2. **Situs of Arbitration Proceedings:** Franchise agreements providing that the parties must agree to arbitrate disputes at a location that is remote from the site of the franchisee's business.
3. **Restriction on Forum:** Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
4. **Liquidated Damages and Termination Penalties:** Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
5. **Applicable Laws:** Franchise agreements which specify that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.
6. **Waiver of Trial by Jury:** Requiring North Dakota franchisees to consent to the waiver of a trial by jury.
7. **Waiver of Exemplary and Punitive Damages:** Requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.
8. **General Release:** Requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.
9. **Limitation of Claims:** Franchise Agreements that require the franchisee to consent to a limitation of claims. The statute of limitations under North Dakota law applies.

## **North Dakota Amendment to the Franchise Agreement**

Notwithstanding anything to the contrary set forth in the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of North Dakota:

1. The laws of the State of North Dakota supersede any provisions of the Franchise Agreement, the other agreements or Ohio law if such provisions are in conflict with North Dakota law. The Franchise Agreement will be governed by North Dakota law, rather than Ohio law, as stated in Section 17.00 of the Franchise Agreement.
2. Any provision in the Franchise Agreement which designates jurisdiction or venue or requires the Franchisee to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from the Franchise Agreement.
3. Any provision in the Franchise Agreement which requires you to waive your right to a trial by jury is deleted from the Franchise Agreement.
4. No release language set forth in the Franchise Agreement will relieve the Franchisor or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of North Dakota.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed, and delivered this North Dakota Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Hortons USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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

**Addendum To Franchise Disclosure Document  
Additional Information Required by  
the State of Rhode Island**

In recognition of the requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, the Franchise Disclosure Document for Tim Hortons USA Inc. for use in the State of Rhode Island shall be amended to include the following:

- 1 Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following paragraph:

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

- 2 This Addendum to the Disclosure Document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, are met independently without reference to this Addendum to the Disclosure Document.

## **Rhode Island Amendment to the Franchise Agreement**

In recognition of the requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, the parties to the attached Tim Hortons USA Inc. Franchise Agreement (the "Agreement") agree as follows:

1. Article XVII of the Agreement, under the heading "Applicable Law," shall be supplemented by the following new subsection 17.05, which shall be considered an integral part of this Agreement:

17.05 § 19-28.1-14 of the Rhode Island Franchise Investment Act provides that "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

2. This Amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, are met independently without reference to this Amendment.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Rhode Island Amendment to Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Horton USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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



**Addendum to Disclosure Document  
Pursuant to the Virginia Retail Franchise Act**

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Tim Hortons USA Inc. for use in the Commonwealth of Virginia shall be amended as follows-

1. Item 17. The following statement is added to Item 17.h. of the table describing the Franchise Agreement:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

**Addendum to Disclosure Document Pursuant to  
the Washington Franchise Investment Protection Act**

In recognition of the requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.180, the Franchise Disclosure Document for Tim Hortons USA Inc. in connection with the offer and sale of franchises for use in the State of Washington shall be amended to include the following:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following paragraphs at the conclusion of the Item:

The State of Washington has a statute, RCW 19.100.180, which may supersede the franchise agreement in your relationship with the Franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the Franchisor including the areas of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the State of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by a Franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

2. Each provision of this addendum to the disclosure document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.180, are met independently without reference to this addendum to the disclosure document.

## Washington Amendment to the Franchise Agreement

In recognition of the requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.010 through 19.100.940, the parties to the attached Tim Hortons USA Inc. Franchise Agreement agree as follows:

1. The State of Washington has a statute, RCW 19.100.180, which may supersede the franchise agreement in your relationship with the Franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the Franchisor including the areas of termination and renewal of your franchise.
2. In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the State of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.
3. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.
4. A release or waiver of rights executed, by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.
5. Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.
6. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.010 through 19.100.940, are met independently without reference to this amendment.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Washington Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Horton USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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

**Addendum to Disclosure Document Pursuant to  
the Wisconsin Fair Dealership Act**

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of Wisconsin:

1. **REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF SECURITIES OF THE STATE OF WISCONSIN.**
2. The following shall apply to Franchise Agreements in the State of Wisconsin:
  - a. The Wisconsin Fair Dealership Act, Wisconsin Statutes, Chapter 135 (the "Act") shall apply to and govern the provisions of Franchise Agreements issued in the State of Wisconsin.
  - b. The Act's requirement, including the requirements that, in certain circumstances, a franchisee receives ninety (90) days' notice of termination, cancellation, non-renewal or substantial change in competitive circumstances, and sixty (60) days to remedy claimed deficiencies, shall supersede the requirements of the Franchise Agreement to the extent they are inconsistent with the Act's requirements.

**Wisconsin Amendment to the Franchise Agreement**

In recognition of the requirements of the Wisconsin Fair Dealership Act, the parties to the attached Tim Hortons USA Inc. Franchise Agreement agree as follows:

1. The Wisconsin Fair Dealership Act, Wisconsin Statutes, Chapter 135 (the "Act") shall apply to and govern the provisions of Franchise Agreements issued in the State of Wisconsin.
  
2. The Act's requirement, including the requirements that, in certain circumstances, a franchisee receives ninety (90) days' notice of termination, cancellation, non-renewal or substantial change in competitive circumstances, and sixty (60) days to remedy claimed deficiencies, shall supersede the requirements of the Franchise Agreement to the extent they are inconsistent with the Act's requirements.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Wisconsin Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Tim Horton USA Inc.

FRANCHISOR

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

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

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

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

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

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

FRANCHISEE

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

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

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

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

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

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

**EXHIBIT R**

**COLD STONE CREAMERY ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

## EXHIBIT R

### COLD STONE CREAMERY ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT

The following modifications are to the Tim Hortons Franchise Disclosure Document and may supplement certain portions of the Franchise Disclosure Document and the Franchise Agreement:

#### ITEM 1

##### THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES

We have entered into an arrangement with Kahala Franchising, L.L.C. (“**Cold Stone**”) under which selected franchised and company-owned Cold Stone Creamery® and Tim Hortons® restaurants will offer each others’ products in addition to their own product mix (“**Co-Branding Program**”).

Cold Stone has developed a system for the sale of ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverage products and other frozen dessert products (“**Cold Stone Products**”) under the Cold Stone Creamery name and associated trademarks and service marks (the “**Cold Stone Marks**”). Cold Stone's predecessor, Kahala Franchise Corp. and Tim Hortons have signed an Amended and Restated Master License Agreement dated November 6, 2009, which Master License Agreement was assigned to Cold Stone on August 6, 2010 (“**Master License Agreement**”). Under the Master License Agreement Cold Stone has permitted Tim Hortons to grant to certain of its franchisees or company or affiliate-owned Restaurants the right to use the Cold Stone Marks in connection with the sale of selected Cold Stone Products within the premises of Tim Hortons Restaurants. Similarly, under the Master License Agreement Tim Hortons has permitted Cold Stone to grant to certain of its franchisees or company or affiliate-owned restaurants the right to use the Proprietary Marks in connection with the sale of Tim Hortons products within their Cold Stone Creamery restaurants. Our parent company, THI, has entered into a mutual termination agreement with Kahala Franchise Corp. with respect to the Cold Stone Creamery brand in Canada. This decision does not affect our U.S. Cold Stone Creamery co-branded operations.

In order to participate in the Co-Branding Program and sell the Cold Stone Products at your Restaurant, certain of the terms and conditions of your Franchise Agreement with us must be modified. If you have entered or will enter into a Franchise Agreement with us, you will be required to sign an Amendment to Tim Hortons Franchise Agreement for Co-Branded Restaurant in the form attached as Attachment A.

We have also constructed a number of new restaurants that offer Tim Hortons products and Cold Stone Products. These new restaurants are similar in layout and function to existing Tim Hortons Restaurants which have been converted to allow for the sale of Cold Stone Products. Both newly-built Restaurants that offer Tim Hortons products and Cold Stone Products and existing Tim Hortons Restaurants that are renovated to allow for the sale of Cold Stone Products are referred to collectively as “**Co-Branded Restaurants**.”

We expect the majority of Co-Branded Restaurants will be offered to existing franchisees.

Cold Stone is an unaffiliated third party. We have no ownership rights or interests in the Cold Stone Marks or the Cold Stone Products. We have negotiated the Master License Agreement to, among other things, permit us to sublicense to our franchisees the rights to use the Cold Stone Marks and to sell the Cold Stone Products. Nonetheless, those rights and our ability to sublicense them to you remain subject at all times to the Master License Agreement remaining in full force and effect. If for any reason the



Master License Agreement is terminated or expires prior to the expiration of the term of your Amendment your rights to use the Cold Stone Marks and to sell the Cold Stone Products will immediately cease.

## ITEM 5

### INITIAL FEES

For franchisees, the initial franchise fee for the right to operate a Co-Branded Restaurant is \$20,000. This fee is in addition to the initial franchise fee that you pay to become a Tim Hortons franchisee. The initial franchise fee is non-refundable and, except as described in the next paragraph, is uniformly imposed on all franchisees.

We will reduce your initial franchise fee if you are renovating an existing Tim Hortons Restaurant to become a Co-Branded Restaurant and the remaining term of your Tim Hortons Franchise Agreement (including all renewal terms available to you under your Franchise Agreement) is fewer than 10 years. In this circumstance, your initial franchise fee will be reduced to \$2,000 multiplied by the number of full years remaining in the potential length of your term. As an example, if you currently have 6½ years remaining in the last renewal term available to you under your Franchise Agreement, your initial franchise fee will be \$12,000.

Prior to commencing sale of the Cold Stone Products at an existing Restaurant you will need to renovate your Restaurant by installing new or used signage, equipment and leasehold improvements required to prepare and sell the Cold Stone Products. The interior signage (excluding menuboards), equipment and leasehold improvements necessary to sell Cold Stone Products are referred to collectively as the “**Cold Stone Assets.**” We will offer to sell the Cold Stone Assets to you, but, if you prefer, you may instead purchase similar signage, equipment and leasehold improvements from approved third parties. You are under no obligation to purchase any Cold Stone equipment and interior signage from us, but, if you acquire any of these items from third-party approved suppliers, the signage, equipment and leasehold improvements must be functionally equivalent to the Cold Stone Assets and purchased from approved suppliers in order to be permitted to sell Cold Stone Products. If you are opening a brand-new Co-Branded Restaurant, all Tim Hortons equipment must be purchased from us or an affiliate as disclosed in Item 5 of the Tim Hortons FDD. No payments made to us are refundable.

With our approval, you may choose to own or lease the property upon which a brand-new Co-Branded Restaurant is located and to build and/or equip the Co-Branded Restaurant yourself. We will only provide this approval, if at all, for newly-built Co-Branded Restaurants. If you are approved to do this, you must pay us or our affiliates for any building components or fixtures that you order through us and you must use our designated and approved third party design architect to prepare the initial design drawings for your Restaurant. Further, we or our affiliate will provide management and assistance through the site development process, for which we may charge a development and assistance fee that ranges from \$0 to \$50,000. You are solely responsible for conforming your Restaurant on real estate that you own or lease to all codes and ordinances, including the Americans with Disabilities Act (“ADA”) and obtaining all required permits.

We may, but are not obligated to, offer to rent the Cold Stone Assets to you under circumstances described in Item 10 in this Exhibit R. If we make this offer, you will have the option to purchase the Cold Stone Assets from us at any time.

If you choose to participate in the Co-Branding Program, and are offered a full-franchise purchase of a newly-built Co-Branded Restaurant, or are offered to renovate an existing Tim Hortons Restaurant to become a Co-Branded Restaurant, you must or may make, in addition to the initial franchise fee discussed

above, the following payments set forth in the corresponding tables to us or one of our affiliates at or before the time that you begin selling Cold Stone Products:

**ESTIMATED INITIAL FEES FOR A NEWLY-BUILT CO-BRANDED RESTAURANT**

<b><u>EXPENSE CATEGORY</u></b>	<b><u>AMOUNT</u></b>	<b><u>MANDATORY OR OPTIONAL PAYMENTS TO US OR AN AFFILIATE</u></b>
		Mandatory
BAKERY EQUIPMENT	\$54,400 to \$59,100	
DISPLAY EQUIPMENT	\$74,200 to \$105,800	Mandatory
COLDSTONE ASSETS - Display	\$11,700 to \$17,500	Optional
COLDSTONE ASSETS – Refrigeration	\$40,300 to \$46,200	Optional
RESTAURANT FIXTURES	\$78,200 to \$89,800	Mandatory
		Mandatory
SIGNAGE	\$56,700 to \$83,700	
REFRIGERATION	\$25,700 to \$48,900	Mandatory
RESTAURANT EQUIPMENT	\$77,600 to \$105,100	Mandatory
SEATING	\$10,300 to \$17,200	Mandatory
INSTALLATION	\$32,900 to \$36,400	Mandatory
DELIVERY	\$17,000 to \$21,700	Mandatory
GRAND OPENING ADVERTISING	\$5,500	Mandatory
EMPLOYEE UNIFORMS	\$1,000 to \$1,500	Mandatory
<b>TOTAL</b>	<b><u>\$485,500 to \$638,400</u></b>	

**ESTIMATED INITIAL FEES TO RENOVATE EXISTING TIM HORTONS RESTAURANT TO CO-BRAND**

<b><u>EXPENSE CATEGORY</u></b>	<b><u>AMOUNT</u></b>	<b><u>MANDATORY OR OPTIONAL PAYMENTS TO US OR AN AFFILIATE</u></b>
SIGNAGE	\$8,300 to \$20,000	Optional
COLD STONE ASSETS	\$61,400 to \$91,100	Optional
GRAND OPENING ADVERTISING	\$2,500 to \$5,500	Mandatory
EMPLOYEE UNIFORMS	\$1,000 to \$1,500	Mandatory
CONSTRUCTION/LEASEHOLD IMPROVEMENTS	\$15,000 to \$30,000	Optional
<b>Grand Total</b>	<b><u>\$88,200 to \$148,100</u></b>	

**ITEM 6**

**OTHER FEES**

**Franchise Agreement**

<b>Type of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty on Cold Stone sales	6% of Gross Sales from Cold Stone Products	Weekly	Note 1
Premises Rent	8.5% of Gross Sales from Cold Stone Products	Monthly	
Advertising payment on Cold Stone sales	2.5% of Gross Sales from Cold Stone Products	Weekly	Note 1
Initial Training	No charge for up to two people to attend the initial training program. \$1,500 per person for more than two people	Prior to attendance	See Item 11 of this Exhibit R regarding training program

<b>Type of Fee<sup>1</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Continuing Training, Annual & Other Meetings	To be determined by Cold Stone, not to exceed \$1,500 per year	As incurred	Payable to Cold Stone – Note 2
Digital menu boards	Varies: Currently \$150 per month	Monthly	Note 3
Equipment Rent of Cold Stone Assets	\$2,500 per month	Monthly	Note 4

Footnotes

<sup>1</sup> The sale of Cold Stone Products is included in the definition of Gross Sales as set forth in your Franchise Agreement for which you will pay us royalties and advertising fees. We, in turn, are responsible for any payments to Cold Stone attributable to your sale of Cold Stone Products. These fees are collected by us, are payable to us, and are non-refundable. The fees are uniformly imposed by us; however, we may, in our sole business judgment, reduce or waive an ongoing fee for a defined period of time.

<sup>2</sup> See Item 11 of this Exhibit R for further details. Does not include travel expenses or accommodation.

<sup>3</sup> See Item 8 of this Exhibit R for further details.

<sup>4</sup> See Item 10 of this Exhibit R for further details. This expense will arise if you do not purchase the Cold Stone Assets when you first begin selling the Cold Stone Products.

**ITEM 7  
ESTIMATED INITIAL INVESTMENT**

**New-Built Co-Branded Restaurant  
Franchise Agreement**

<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Initial Franchise Fee - Tim Hortons <sup>1</sup>	\$35,000	Lump Sum	Immediately	Us <sup>2</sup>
Initial Franchise Fee - Cold Stone <sup>1/</sup>	\$20,000	Varies	Either in full when you sign the Amendment or over 36 months	Us <sup>2/</sup>
Real Estate Taxes, Personal Property Taxes and CAM Charges <sup>3/</sup>	\$1,000 to \$10,100	As Arranged	As Incurred	Us, TDL, or other lessor or sublessor

<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Equipment and Signage <sup>4/ and 14/</sup>	\$479,000 to \$631,400	Lump sum	Before opening or commencing the sale of Cold Stone Products	Us <sup>2/</sup>
Real Estate <sup>5/</sup>	See Note 5	See Note 5	See Note 5	Lessor or sublessor or Property Seller
Planning and Development and Design Costs <sup>6/</sup>	\$20,000 to \$100,000	As Arranged	Prior to Opening	Us, TDL, Government Agencies, and approved service providers <sup>2/</sup>
Site Development Costs <sup>7/</sup>	\$100,000 to \$250,000	As Arranged	As Arranged	Contractors
Building Costs <sup>8/</sup>	\$25,000 to \$450,000	As Arranged	As Arranged/ Prior to Opening	Us and Contractors
Insurance <sup>9/</sup>	\$2,500 to \$21,500	As Arranged	Annually	Us, Insurers or Lessor/Sublessor
Initial Inventory	\$20,000 to \$34,000	Lump sum	Before opening or commencing the sale of Cold Stone Products	Suppliers <sup>2/</sup>
Professional and License Fees <sup>10/</sup>	\$1,500 to \$10,000	As Arranged	As Incurred	Attorneys, Accountants, government agencies
Grand Opening Advertising <sup>11/</sup>	\$5,500	Lump sum	Before opening or commencing the sale of Cold Stone Products	Us <sup>2/</sup>
Security Deposits <sup>12/</sup>	\$0 to \$10,000	As Arranged	As Incurred	Utilities, Lessor
Travel and Living Expenses While Training	\$500 to \$11,400	As incurred	As incurred	Airlines, hotels & restaurants
Employee Uniforms	\$1,000 to \$1,500	Lump sum	Before opening or commencing the sale of Cold Stone Products	Us <sup>2/</sup>

<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Development Assistance Fees <sup>13/</sup>	\$0 to \$50,000	As Incurred	Prior to Opening	Us
Additional Funds - 3 months	\$21,000	As incurred	As Incurred	Employees, vendors, suppliers, utilities, etc.
<b>Total</b>	\$732,000 to \$1,661,400			

Footnotes follow all tables.

#### **Sale of Cold Stone Products Within Renovated Tim Hortons Restaurant**

<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Initial Franchise Fee – Cold Stone <sup>1/</sup>	\$20,000	Varies	Either in full when you sign the Amendment or over 36 months	Us <sup>2/</sup>
Equipment and Signage <sup>4/ and 14/</sup>	\$69,700 to \$111,100	Lump sum	Before commencing the sale of Cold Stone Products	Us <sup>2/</sup>
Real Estate Taxes, Personal Property Taxes and CAM Charges <sup>3</sup>	\$500 to \$8,000	As Arranged	Monthly	Us, TDL, or other lessor or sublessor
Construction/Leasehold Improvements <sup>15/</sup>	\$15,000 to \$30,000	Lump sum	Before commencing the sale of Cold Stone Products	Us <sup>2/</sup>
Initial Inventory	\$5,000 to \$12,000	Lump sum	Before commencing the sale of Cold Stone Products	Suppliers <sup>2</sup>

<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Grand Opening Advertising	\$2,500 to \$5,000	Lump sum	Before commencing the sale of Cold Stone Products	Us <sup>2/</sup>
Travel and Living Expenses While Training	\$500 to \$5,000	As incurred	As incurred	Airlines, hotels & restaurants
Employee Uniforms	\$1,000 to \$1,500	Lump sum	Before commencing the sale of Cold Stone Products	Us <sup>2/</sup>
Permits and Licenses	\$100 to \$1,000	Lump sum	Before commencing the sale of Cold Stone Products	Governmental entities
Additional Funds - 3 months	\$1,000	As incurred	As incurred	Employees, vendors, suppliers, utilities, etc.
<b>Total</b>	<b>\$115,300 to \$195,100</b>			

Footnotes

<sup>1/</sup> Please see Item 5 for details about this expense. For details regarding the initial franchise fee owed to us for a Tim Hortons Restaurant, see Item 5 of the Tim Hortons Franchise Disclosure Document.

<sup>2/</sup> These fees are non-refundable.

<sup>3/</sup> If you are renovating an existing Restaurant, there are no additional real property expenses, security deposits or utility deposits due to your landlord as the Cold Stone Products will be sold in your existing Tim Hortons Restaurant. There will be additional personal property tax costs (in states that have a personal property tax) as a result of your higher equipment investment.

<sup>4/</sup> This range considers your purchase of all equipment for your Restaurant. If you are approved to lease the Cold Stone Assets, your equipment costs will be reduced by an estimated amount of \$52,000 to \$63,500.

<sup>5/</sup> Real Estate costs vary considerably according to the type of Restaurant, real estate values in your area, your real estate interest (leasehold or ownership), location, size of the site, code requirements and other factors, including labor, as well as whether you or your landlord develop the Restaurant. Factors that typically affect your real estate costs include your cost to negotiate your lease (or buy the property), fair market lease values and lease terms in your area, how the costs to renovate or develop the land, building and other site improvements are allocated between landlord and tenant and interest costs, among others.

Lease terms are individually negotiated and may vary materially from one location or transaction to another. Because of the numerous variables that affect the value of a particular piece of real estate, this initial investment table does not reflect the potential cost of real estate.

<sup>6/</sup> This category is only applicable if you are developing and will own or lease the property upon which the Restaurant premises are located. This estimate includes, among other items, architectural, engineering and design fees, as well as zoning and planning costs and building, health and fire permits. These estimates do not include extraordinary costs due to extensive redesign, permitting, variances, environmental issues, legal obstacles, etc.

<sup>7/</sup> This category is only applicable if you are developing and will own or lease the property upon which the Restaurant premises are located. This estimate includes the costs to develop the land and other site improvements, including exterior landscaping, electrical and water hookup, paving, sidewalks, lighting, etc. Some local governments may charge an additional amount for utility connections to offset their costs for maintaining water and sewer plants; these amounts are not included in the estimate provided. Costs can be higher if extensive storm water retention and landscaping is required or soil problems or other environmental issues are encountered. These ranges do not include unusual offsite costs including costs to bring utilities to the property for hookup or government imposed “impact fees”. Some local governments may also require a performance bond, which is not included in the above estimate.

<sup>8/</sup> Building Costs include the cost to construct a building’s shell structure prepped for installation of equipment. These costs only apply if you are building the Restaurant yourself. Building costs will vary by geographic region. Building costs for Kiosks can vary widely depending on kiosk type, physical location within a larger structure, and the size of the leased space. Adding a drive thru to any building type will increase the Building Costs. The costs estimated here are based on our experience and do not include metropolitan or unique development areas or special municipal building and zoning requirements that may present extraordinary acquisition costs.

<sup>9/</sup> This estimate is for the first year’s insurance premium. If you lease or sublease your Restaurant premises from us or one of our affiliates, you may be required to pay these insurance expenses to us, and the lessor/sublessor will remit your payment to the insurer or utility.

<sup>10/</sup> This category covers legal and accounting fees, and various licenses and permits such as occupancy and business licenses. \$7,000 dollars of this range is estimated to provide legal advice and services you may need if you are (with our approval) negotiating the purchase or lease of the Restaurant premises without assistance from us or our affiliates. This does not include legal fees for services provided in conjunction with processing and preparing necessary immigration documentation for non-U.S. citizens.

<sup>11/</sup> The grand opening advertising expenses for a Tim Hortons Standard Restaurant are included within the estimate for the new-built Co-Branded Restaurant. See Item 11 for more details of this expense.

<sup>12/</sup> Security deposits may be required by the landlord, utilities, and suppliers. Operators must furnish a security deposit for their Tim Hortons Restaurant. No Security Deposit is required by us if you renovate your existing Tim Hortons Restaurant to sell Cold Stone Products. The security deposit for Operators will be refunded (less any chargeable expenses as described in the Operator Agreement) when these agreements are terminated. No security deposit is due to us for your first Restaurant if you are a VetFran Participant. See Items 1 and 5 of Tim Hortons Franchise Disclosure Document for details.

<sup>13/</sup> This category covers our and/or our affiliates’ management and assistance through the site development process. These costs would only be incurred if you or your affiliate will develop and will own or lease the Restaurant’s premises.



<sup>14/</sup> See Item 10 for more details about this expense. If you will execute a Franchise Agreement and Amendment and rent the Cold Stone Assets, you will not be required to purchase them at that time and your overall initial investment amount will decrease.

<sup>15/</sup> To avoid excessive construction costs while renovating an existing Restaurant it is strongly recommended that you choose contractors carefully by obtaining several competitive bids before construction begins. These estimates are based on constructing the required leasehold improvements within an approximately 200 square foot area within your existing Restaurant and assumes the availability of electrical requirements of 400 amps 3-phase, and HVAC of one ton per 150 square feet.

The amounts of all of the non-fixed expenditures, other than the permits and licenses, will be determined when you contact and negotiate with the respective vendor, etc. The costs of permits and licenses will be determined by contacting the appropriate governmental entity.

Except as stated in Item 10 of this Exhibit R, no part of your initial investment to convert to a Co-Branded Restaurant will be financed by us or Cold Stone.

## **ITEM 8**

### **RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

Except as stated below, you have no obligation to purchase or lease goods, services, supplies, fixtures, equipment, inventory or computer hardware relating to the establishment or operation of your Co-Branded Restaurant from us or from any of our designees. As described in Item 5 of this Exhibit R, you have the option to purchase the Cold Stone Assets from us and, if you are renovating your existing Restaurant, to also retain us to construct leasehold improvements. You also have the option to acquire these items and services from unaffiliated third-party suppliers approved by us.

Cold Stone or its affiliates may receive rebates or allowances from certain suppliers on purchases made by Cold Stone's franchisees, and will also include purchases made by you. These rebates usually range from 1% to 5%. The rebates and allowances will be included in Cold Stone's general revenue, and may be used by Cold Stone for its general operating purposes as well as a variety of ongoing programs, including education, marketing, advertising, seminars and conferences, and the handling of inquiries and customer complaints. Cold Stone may use rebate and allowance funds received from suppliers to benefit the Cold Stone Creamery System, in its sole and absolute discretion.

Cold Stone has appointed designated or approved suppliers for nearly all of the Cold Stone Product purchases you must make. We estimate that approximately 95%-100% of your purchases and leases of goods and services relating to the sale of Cold Stone Products in your Co-Branded Restaurant will be for items purchased or leased from designated or approved vendors and suppliers.

Co-Branded Restaurants participating in the Co-Branding Program must install digital menu boards and purchase a service plan and subscription-based media updates. These digital menu boards replace existing menu boards and are used to display product information, pricing and advertising. The digital menu boards are connected to a "media engine" which is an internet-enabled computer. The digital menu boards and media engine are included in the equipment described in Item 5 of this Exhibit R. The designated service provider for the service plan and subscription-based media updates is EK3 Technologies Inc. We estimate your monthly payments for this will be \$50 per month.

In addition, your Co-Branded Restaurant must be consistent in color, design and style with the standards and specifications adopted and approved by us and Cold Stone, and we and they may modify those standards periodically. You must maintain the appearance and atmosphere of your Co-Branded

Restaurant, and the equipment and premises used in connection with your Co-Branded Restaurant, in accordance with the standards we and Cold Stone may adopt from time to time. Any variations in color, design, style, appearance or atmosphere must be approved in writing by us. Cold Stone’s current standards and specifications are included in their Operating Manual, which will be provided to you.

If you would like to purchase or lease any products, fixtures, furnishings, building components, equipment, decor, signs, paper goods, supplies, services, menu ingredients and other goods that will be used to sell Cold Stone Products or installed in a Co-Branded Restaurant from a vendor or supplier that is not on Cold Stone’s then-current list of approved vendors and suppliers, you must follow the approval process for suppliers described in Item 8 of this Franchise Disclosure Document.

Kona Coast Products, L.L.C. (“**Kona**”), an affiliate of Cold Stone, is currently one of the approved distributors of certain proprietary products, including certain ingredients, uniforms, printed materials, and other logo items of various Cold Stone brands. There are currently other approved suppliers of certain ingredients, uniforms, printed materials and logo items which are not affiliated with Cold Stone. You may, but are not required to, purchase these items from Kona.

None of our officers own an interest in any of the approved suppliers. None of Cold Stone's officers own an interest in any of the approved suppliers which are not affiliated with Cold Stone.

**ITEM 9**

**FRANCHISEE’S OBLIGATIONS**

**This table lists your principal obligations under the Amendment. It will help you find more detailed information about your obligations for participating in the Co-Branding Program in other items of this Exhibit R.**

<b>Obligation</b>	<b>Section in Amendment</b>	<b>Disclosure Document Item within this Exhibit R</b>
a. Site selection and acquisition/lease	Not Applicable	Not Applicable
b. Pre-opening purchases/leases	2	Items 5, 7, and 8
c. Site development and other pre-opening requirements	2	Items 8 and 11
d. Initial and ongoing training	3	Items 7 and 11
e. Opening	2, 4, 8	Item 11
f. Fees	5	Items 5 and 6
g. Compliance with standards and policies/Operating Manual	2, 4	Items 8, 11, and 14
h. Trademarks and proprietary information	6	Items 13 and 14

Obligation	Section in Amendment	Disclosure Document Item within this Exhibit R
i. Restrictions on products/services offered	2, 4	Items 8 and 16
j. Warranty and customer service requirements	Not Applicable	Not Applicable
k. Territorial development and sales quotas	Not Applicable	Item 12
l. Ongoing product/service purchases	Not Applicable	Item 8
m. Maintenance, appearance and remodeling requirements	Not Applicable	Item 8
n. Insurance	8	Items 7 and 8
o. Advertising	5	Items 6, 8 and 11
p. Indemnification	8	Not Applicable
q. Owner's participation/management staffing	Not Applicable	Not Applicable
r. Records/reports	Not Applicable	Not Applicable
s. Inspection/audits	Not Applicable	Not Applicable
t. Transfer	Not Applicable	Not Applicable
u. Renewal	Not Applicable	Not Applicable
v. Post-termination obligations	7	Item 17
w. Non-competition covenants	8	Item 17
x. Dispute resolution	Not Applicable	Not Applicable
y. Taxes/permits	2	Not Applicable
z. Securing non-competition and confidentiality covenants from certain individuals	8	Item 11

**Note: This table only describes the terms of the Amendment and, thus, supplements the table that appears at Item 9 at pages 32 – 36 of this Franchise Disclosure Document. Therefore, the disclosures that appear in that table also will apply to the Amendment.**

**ITEM 10**  
**FINANCING**

Except as stated below, we do not, directly or indirectly, offer you financing or guarantee any of your obligations.

**Rental Program for Franchisees**

If you are a franchisee, you must either (i) purchase the Cold Stone Assets with your own funds or third party financing or (ii) at our option, participate in our rental program where we may, but are not obligated to, offer to rent the Cold Stone Assets to you. We will not offer the rental if, in our sole business judgment, you have the financial ability to finance the purchase of the Cold Stone Assets with your own funds or third-party financing on reasonable commercial terms. If we offer you the option to rent the Cold Stone Assets from us, you will pay rent as follows: (i) the initial partial month (if you commence selling Cold Stone Products on a day other than the 1<sup>st</sup> of the month) will be rent free; and (ii) commencing on the first full month following the date on which you commence the sale of Cold Stone Products from your Co-Branded Restaurant you will pay a monthly rent of \$2,500, exclusive of any taxes, payable monthly in arrears.

You will continue paying the monthly rent of \$2,500 until you purchase the Cold Stone Assets from us. You may choose, at any time, to purchase the Cold Stone Assets from us. The purchase price for the Cold Stone Assets will be their original cost, as outlined in Item 5 of this Exhibit R, regardless of when during the rental period you purchase them from us. We will provide you with the cost of the Cold Stone Assets installed at your Co-Branded Restaurant upon request.

**Installment Payments for Initial Franchise Fee**

Whether you are going to operate a new restaurant that offers Tim Hortons products and Cold Stone Products or renovate an existing Tim Hortons Restaurant to allow for the sale of Cold Stone Products, you may pay the \$20,000 initial franchise fee in installments rather than in full at the time you sign the Amendment. The arrangement for the installment payment option is as follows:

1. You must make 36 equal consecutive monthly installments of \$600 principal, which includes interest at 5%, the first payment being due on the first day of the first full month following the month when you begin selling Cold Stone Products. Each subsequent payment will be due on the first of the month.
2. The annual interest rate will be 5%.
3. Any balance owing after the 36 consecutive monthly payments will be payable by the Monday of the week immediately following the date that the 36<sup>th</sup> payment is due.
4. If a payment is not made when due, then interest shall accrue at an additional 5% interest per annum on the full principal balance until all of the past-due amounts (including interest) are paid in full.
5. If any payment is not received within ten days after the due date, we have the option, upon written notice to you, to declare the entire remaining initial franchise fee balance due and payable immediately. If we exercise this option, you must pay the balance due within 3 days; if you fail to do so, you will be in default under the Franchise Agreement, and we may terminate the Agreement.

6. You may prepay the initial franchise fee, in whole or in part, at any time, without penalty. All payments will be applied first to any unpaid interest due, and then to the monthly installments of principal. Any prepayment will be applied in reverse order beginning with the last monthly installment.

7. If you are leasing the Cold Stone Assets and then purchase these assets, you must prepay the balance of the initial franchise fee (plus any accrued interest) then owing, within 5 days after purchasing the Cold Stone Assets.

We reserve the right to enter into financing arrangements with franchisees on terms more favorable than those described in this Item 10.

## **ITEM 11**

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

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

1. In Restaurant Assistance. Unless, in our determination, you or your general manager have sufficient prior training or experience we will send to your Co-Branded Restaurant two of our representatives who will provide you with up to 8 calendar days of on-site pre-opening and opening assistance, without charge. The timing, nature, and duration of such assistance will be at our sole discretion.

2. Cold Stone Training Program. After you sign the Amendment and before you open the Co-Branded Restaurant, we will train up to two people to operate the Co-Branded Restaurant using Cold Stone's recipes, formulae, food preparation procedures and business policies and practices (the "**Training Program**"). The Cold Stone Training Program will consist of the topics outlined in the Table below. However, certain portions of the Cold Stone Training Program may be altered or eliminated, and/or the number of hours may be adjusted, depending upon your background and skill-set. The following Table indicates the general subject matter, the number of hours of classroom training, and the number of hours of "on-the-job" training for each subject to be covered during the Training Program, and the location of the training. Cold Stone's instructors have been adequately trained in the ownership and operation of a Cold Stone Creamery franchise, including having at a minimum completed the entire Cold Stone Creamery Training Program, and having experience in training each of the subjects listed in the table below, with some trainers having five years' experience or more in training each of the subjects. Other personnel involved with on-the-job training of franchisees are Directors of Business Development and Managers of Regional Training, all who have more than one year experience with on-the-job training. Further, substitute instructors may present certain portions of the Training Program. During the Training Program, the following instructional materials will be used: manuals, videos, and tests.

You must satisfactorily complete the Cold Stone Training Program, in our sole judgment. Attendance at the entire Training Program is mandatory. The Cold Stone Training Program is conducted at Cold Stone's training facility in Scottsdale, Arizona and is approximately 40 hours in length.

In connection with the Training Program, you may be tested and will be evaluated upon, among other things, your competence in performing the skills necessary to operate the Co-Branded Restaurant, your aptitude for operating the Co-Branded Restaurant, your suitability to operate within the Cold Stone system and the operation of your Co-Branded Restaurant's effect on Cold Stone's goodwill and reputation, the Cold Stone Products and the Cold Stone Marks. We may require you to attend additional training if, in our sole judgment, we determine that you have not satisfactorily completed the Training

Program. If you fail to successfully complete the Cold Stone Training Program to our satisfaction, you will not be permitted to participate in the sale of Cold Stone products or convert your Restaurant to a Co-Branded Restaurant.

Neither you nor anyone else attending the Cold Stone Training Program will be deemed to be Cold Stone’s franchisee or employee for any purpose.

The Training Program will be provided free of charge for up to two people. The fee payable to us for the third and any additional attendee is \$1,500 per additional Training Program per person. Training of additional people may not be held at the same time as training of the initial two people. All Training Program attendees must pay their own travel, lodging and meal expenditures in connection with attending both Stages of the Training Program.

Additional training programs and refresher courses may be required from time to time. We may require you, in our sole discretion, to pay a fee for additional training programs, which will not exceed \$1,500 per year for one person to attend. You will be required to pay your own travel, lodging and meal expenditures in connection with attendance.

### TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of on-the-job training	Location
Classroom Training	40	0	Scottsdale, AZ

3. Cold Stone Operating Manual. Before you open your Co-Branded Restaurant, we will loan to you a copy of Cold Stone’s operating manual (“**Cold Stone Operating Manual**”), which contains standards of operations, the equipment and fixtures required to operate the franchise, operating procedures and policies. The Cold Stone Operating Manual presently contains 396 pages. The table of contents of the Cold Stone Operating Manual is contained in Attachment C to this Exhibit R.

You must operate your Co-Branded Restaurant strictly in accordance with the operating procedures and policies, as contained in the Cold Stone Operating Manual, as it may be amended from time to time. The Cold Stone Operating Manual is **strictly confidential** and must be returned promptly to us upon your Restaurant ceasing to be a Co-Branded Restaurant.

4. List of Approved Vendors and Suppliers; Coordinating Ordering and Delivery of Equipment and Signage. Before you open your Co-Branded Restaurant, we will provide you with a copy of Cold Stone’s list of approved vendors and suppliers for all food, supplies, equipment, signage, decor and other goods and services. In addition, we will coordinate the ordering and delivery of Cold Stone equipment, signage, leasehold improvements and construction. Unless we approve otherwise, we or our designee will install these approved items in your Restaurant. You will be responsible for coordinating all other matters identified in Item 5 of this Exhibit R.

### Advertising

Please refer to Item 11 in Cold Stone’s franchise disclosure document for information on how Cold Stone spends advertising fees.

Under the Co-Branding Program all, or a portion, of the advertising contribution (equal to 2.5% of the Gross Sales attributable to the sale of Cold Stone Products) that you make to us will be remitted by us to the Cold Stone Advertising Fund for use in promoting the sale of Cold Stone Products and the Cold Stone system.

You are required to spend \$5,500 to promote the grand opening of Cold Stone Product sales at your new-built Co-Branded Restaurant. We will, however, for renovated Co-Branded Restaurants reduce the amount you are required to spend to promote the grand opening of Cold Stone Product sales at your Co-Branded Restaurant from \$5,500 to \$2,500. Your grand opening promotion fees will be paid directly to us and we will promote the grand opening on your behalf or provide you with your grand opening advertising and promotional materials. We may, at our option, elect to contribute to the amount that you are required to spend on your grand opening promotion fees. We do not contribute any amount to Restaurants that are being opened in the Buffalo Designated Marketing Area. Franchisees who take over operations of an open Restaurant are not required to pay grand opening promotion fees.

#### **Time between Signing the Amendment and the Commencement of Sales of Cold Stone Products in Existing Renovated Co-Branded Restaurants**

If you are renovating your existing Restaurant, once you decide to participate in the Co-Branding Program, we estimate that the time period before you can commence the sale of Cold Stone Products in your Co-Branded Restaurant will range from zero to six weeks. The factors that will affect the time frame include (i) the installation of required leasehold improvements, fixtures, equipment, signage and other required modifications to your Co-Branded Restaurant premises; and (ii) satisfactory completion of the Cold Stone Training Program.

### **ITEM 12**

#### **TERRITORY**

You will not receive an exclusive territory. You may face competition from other (i) Cold Stone Creamery franchisees or Cold Stone company or affiliate owned outlets, (ii) other Restaurants that will also sell Cold Stone Products, and (iii) other channels of distribution or competitive brands that Cold Stone controls. We (and/or our affiliates) may establish other franchised or company-owned Co-Branded Restaurants that may compete with your location, including across the street from your location or in the same venue as your location. One or more future Co-Branded Restaurants may have an adverse effect on the revenues and profitability of existing Co-Branded Restaurants, including your Co-Branded Restaurant.

We will endeavor to resolve any conflicts which arise from the operation of your Co-Branded Restaurant concerning our distribution activities, or involving territory, customer or support. If you have a conflict, you should contact our General Counsel, Jill Sutton, for her independent review and decision. Conflict cases will be addressed on a case-by-case basis.

The Amendment does not provide you with any options, rights of first refusal, or similar rights to acquire additional Co-Branded Restaurants.

There are no restrictions on the customers to whom you may sell the Cold Stone Products, but all sales must be made at your Co-Branded Restaurant premises. You may not sell any Cold Stone Products from or to any location other than your Co-Branded Restaurant premises.

**ITEM 13**

**TRADEMARKS**

Co-Branded Restaurants will have the right to use the following Cold Stone Marks that are licensed to Cold Stone by Cold Stone Creamery, Inc. (in accordance with a License Agreement dated August 6, 2010 – the “**2010 Cold Stone License Agreement**”) and which are registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”):

<b>Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>
<b>Cold Stone Creamery</b> (with design, International Class 42)	1968506	April 16, 1996
<b>It’s A Great Day For Ice Cream</b> (words only, Class 42)	2492521	September 25, 2001
<b>Cold Stone Creamery</b> (words only, Class 42)	2542783	February 26, 2002
<b>Cold Stone</b> (words only, Class 42)	2691919	March 4, 2003
<b>Cold Stone Creamery</b> (with design, Class 43)	2779569	November 4, 2003
<b>Cold Stone Creamery</b> (words only, Class 35)	3103205	June 13, 2006
<b>Cold Stone Creamery</b> (words only, Classes 30 and 32)	3161605	October 24, 2006
<b>Cold Stone Creamery</b> (with design, Class 43)	2779570	November 4, 2003
<b>Cold Stone Creamery</b> (with design, Class 43)	2779566	November 4, 2003
<b>Cold Stone Creamery</b> (with design, Class 43)	2779567	November 4, 2003
<b>Creations Cold Stone Originals</b> (stylized, Class 43)	2789528	December 2, 2003
<b>Medallion Logo</b> (design only, Class 43)	2877683	August 24, 2004
<b>Cake Batter Ice Cream</b> (words only, Class 30)	3167072	November 7, 2006
<b>Red Pan</b> (words only, Class 43)	3124657	August 1, 2006
<b>Mine</b> (word only, Class 30)	3352116	December 11, 2007
<b>Ours</b> (word only, Class 30)	3352117	December 11, 2007
<b>Everybody’s</b> (word only, Class 30)	3356183	December 18, 2007



<b>Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>
<b>10 Minute Vacation</b> (words only, Class 43)	3392391	March 4, 2008
<b>Cold Stone Creamery</b> (with design, Class 30)	3708030	November 10, 2009
<b>Cold Stone Creamery</b> (with design and claim to colors red, yellow, and white as features of the mark, Class 43)	3714496	November 24, 2009
<b>Cold Stone Creamery</b> (with design and claim to colors red, yellow, and white as features of the mark, Class 32)	3708156	November 10, 2009
<b>Cheesecake Fantasy</b> (words only, Class 30)	2797563	December 23, 2003
<b>Apple Pie A La Cold Stone</b> (words only, Class 30)	2724383	June 10, 2003
<b>Coffee Lovers Only</b> (words only, Class 30)	2721601	June 3, 2003
<b>Founder's Favorite</b> (words only, Class 30)	2717637	May 20, 2003
<b>Berry Berry Berry Good</b> (words only, Class 30)	2717638	May 20, 2003
<b>Mud Pie Mojo</b> (words only, Class 30)	2856910	June 22, 2004
<b>Germanchokolätekäke</b> (words only, Class 30)	3572559	February 10, 2009
<b>Mint, mint, Chocolate, Chocolate Chip</b> (words only, Class 30)	3572558	February 10, 2009
<b>All Lovin' No Oven</b> (words only, Class 30)	3606053	April 14, 2009
<b>That's How I Roll</b> (words only, Class 30)	3606052	April 14, 2009
<b>The Pie Who Loved Me</b> (words only, Class 30)	3606051	April 14, 2009
<b>IMIX America</b> (class 43)	3624030	May 19, 2009
<b>Cookie Mintster</b> (words only, Class 30)	3619308	May 12, 2009
<b>Peanut Butter Cup Perfection</b> (words only, Class 30)	3619304	May 12, 2009
<b>Cookie Doughn't You Want Some</b> (words only, Class 30)	3619300	May 12, 2009

<b>Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>
<b>Strawberry Banana Rendezvous</b> (words only, Class 30)	3594831	March 24, 2009
<b>Banana Caramel Crunch</b> (words only, Class 30)	3597903	March 31, 2009
<b>Our Strawberry Blonde</b> (words only, Class 30)	3580400	February 24, 2009
<b>Chocolate Devotion</b> (words only, Class 30)	3580399	February 24, 2009

All affidavits of use required to be filed for the federally registered Cold Stone Marks have been filed. There are no (a) presently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court, (b) pending infringement or cancellation proceedings or (c) pending material litigation involving the principal Cold Stone Marks.

In addition, Cold Stone owns and has applied to register the following Trademark with the USPTO on the Principal Register:

<b>Mark</b>	<b>Serial Number</b>	<b>Filing Date</b>
<b>Ultimate Ice Cream Experience</b>	88/879,300	March 18, 2013

Neither Cold Stone nor its affiliates have a federal registration for the trademark for which an application for trademark registration is pending. Therefore, this trademark does not have as many legal benefits and rights as a federally registered trademark. If Cold Stone's right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.

There are no agreements currently in effect which limit our right to use or license the use of the Cold Stone Marks which are in any manner material to you.

There are no currently effective determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, or any pending opposition or cancellation proceeding, or any pending material litigation, involving the Cold Stone Marks which is relevant to their use by you.

We have entered into the Master License Agreement with Cold Stone. This Master License Agreement gives us the right to use, and to license our franchisees to use, the Cold Stone Marks listed above solely in connection with the sale of Cold Stone Products at Co-Branded Restaurants. Either party may terminate the Master License Agreement upon the occurrence of a material breach of the agreement or upon certain other events. In the event of termination both we and our franchisees must immediately discontinue any further use of the Cold Stone Marks

There are no superior prior rights or infringing uses of the principal Cold Stone Marks actually known to Cold Stone or its affiliate, which rights or uses could materially affect your use of the principal Cold Stone Marks in any state. There are no agreements currently in effect that significantly limit Cold Stone's rights to use or license the use of the principal Cold Stone Marks. You must promptly notify us of any

suspected unauthorized use of, or challenge to the validity of, the Cold Stone Marks or any challenge to Cold Stone’s ownership of, or right to use or license others to use, the Cold Stone Marks. Cold Stone will have the right to direct and control any administrative proceeding or litigation involving the Cold Stone Marks, including any settlement thereof. Cold Stone has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Cold Stone Marks. We, or Cold Stone, will defend you against any third-party claim, suit, or demand arising out of your use of the Cold Stone Marks. If we, in our sole discretion, determine that you have used the Cold Stone Marks in a manner authorized by the Amendment, the cost of such defense, including the cost of any judgment or settlement, will be borne by us. If we, in our sole discretion, determine that you have not used the Cold Stone Marks in a manner authorized by the Amendment, the cost of such defense, including the cost of any judgment or settlement, will be borne by you. In the event of any litigation relating to your use of the Cold Stone Marks, you must execute any and all documents and do such acts as may, in our opinion, be necessary to carry out such defense or prosecution, including, but not limited to, becoming a nominal party in any legal action. Except to the extent that such litigation is the result of your use of the Cold Stone Marks in a manner inconsistent with the terms of the Amendment, we will reimburse you for your out-of-pocket litigation costs in doing such acts.

We, or Cold Stone, may require you to use different trademarks for use in identifying the Cold Stone Products if the Cold Stone Marks can no longer be used, or if Cold Stone, in its sole discretion, determines that substitution of different proprietary marks will be beneficial to the Cold Stone system. In such circumstances, the use of the substituted trademarks will be governed by the terms of the Amendment.

**ITEM 14**

**PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

Cold Stone’s affiliate owns proprietary information and rights in numerous items, such as menu formats, advertising designs, packaging, processes, techniques, formulae for our ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages, soft drinks and other frozen dessert products and related products, the method of production and storage of the ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverages, soft drinks and other frozen dessert products and related products, and information contained in the Cold Stone Operating Manual. Some of those items are suitable for patent and/or copyright protection and/or are protectable as trade secrets. Cold Stone and its affiliate claim all statutory copyrights that attach to all, or part of, any original materials used in the Cold Stone system, including their Cold Stone Operating Manual, advertising and promotional materials, and all other written materials we provide you.

To date, neither Cold Stone nor its affiliates have registered any items for copyright protection. However, their copyright protection will extend for 100 years from the date of each item’s creation or 75 years from the date of each item’s publication, whichever is shorter.

An affiliate of Cold Stone has obtained the following design patents from the USPTO:

<b>Title</b>	<b>Patent Number</b>	<b>Issue Date</b>
Combined Cake and Ice Cream Dessert	D550,927	September 18, 2007
Combined Cake and Ice Cream Dessert	D571,526	June 24, 2008

One issued design patent (D550,927) relates to ornamental features and the design of the ice cream cake sold under the trademark Midnight Delight®. This patent's term is fourteen years from the issuance date of September 18, 2007. The other issued design patent (D571,526) related to ornamental features and the design of the ice cream cake sold under the trademark Strawberry Passion™. This patent's term is fourteen years from the issuance date of June 24, 2008. Except as stated above, there are no: (a) presently effective material determinations of the USPTO, the United States Copyright Office, or any state or federal court; (b) pending infringement or cancellation proceedings; or (c) pending material litigation involving the design patents.

We do not know of any: (a) current material determinations of the USPTO, the United States Copyright Office, or any state or federal court; or (b) pending infringement or cancellation proceedings that could materially affect the franchisee.

The Cold Stone Operating Manual is an integral part of the Cold Stone system. All of the disclosures appearing in Item 14 at page 55 of this Franchise Disclosure Document also apply with respect to a) the Cold Stone Operating Manual and b) any confidential information you may receive about Cold Stone or the manner in which it conducts business.

You and your Restaurant may also be required to sign Cold Stone's Confidentiality and Non-Competition Agreement in the form appearing as Attachment C to the Amendment.

## **ITEM 16**

### **RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must offer and sell at your Co-Branded Restaurant the Cold Stone Products, in a manner consistent with Cold Stone's comprehensive standards and requirements. In addition, we may incorporate new products and services that we believe will be successful.

You will be obligated to offer and sell those new Cold Stone Products and to participate in any Cold Stone local, regional and promotional programs, initiatives and campaigns adopted by us in which we require you to participate. We reserve the right to designate which of our Co-Branded Restaurants may, or will be required to, participate in new product or service tests, new or modified product or service offerings and other programs and initiatives that we may periodically develop. If we designate you for participation in any such program, initiative or campaign, you must participate when and as required by us. There are no limits on our right to require you to offer and sell those new products or to participate in those programs, initiatives and campaigns.

You may not offer or sell any products or services specified by us in any configuration, form or manner (including items for resale) other than that specifically approved by us. You may not market your Co-Branded Restaurant or use the Cold Stone Marks on the Internet.

**ITEM 17**

**RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

**Franchise Agreement**

The following table lists certain important provisions of the Amendment. You should read these provisions in the Amendment attached to this Addendum as Attachment A.

<b>Provision</b>	<b>Section in Amendment to Franchise Agreement*</b>	<b>Summary</b>
a. Length of the term	1.2	Up to 20 years
b. Renewal or extension of the term	Not Applicable	Not Applicable
c. Requirements for you to renew or extend	Not Applicable	Not Applicable
d. Termination by you	Not Applicable	Not Applicable
e. Termination by us without cause	7.3	Immediately upon termination of the Master License Agreement
f. Termination by us with cause	7.1, 7.2	See (g) and (h)
g. "Cause" defined – curable defaults	7.3	Failure to maintain standards; unauthorized business or sale of unauthorized products; failure to obtain consent as required by the Amendment; failure to comply with the Operating Manual; breach of related agreements
h. "Cause" defined – non-curable defaults	7.1	Abandonment of the sale of Cold Stone Products; misuse of the Cold Stone Marks; unauthorized disclosure of confidential information; unauthorized transfer of your Co-Branded Restaurant; termination of the Franchise Agreement; transfer of your Tim Hortons Restaurant without transfer of the Cold Stone rights

Provision	Section in Amendment to Franchise Agreement*	Summary
i. Your obligations on termination/nonrenewal	7.5	Cease to identify as a Co-Branded Restaurant; return Operating Manual; cease using any Cold Stone’s proprietary information and renovate the Restaurant to remove the Cold Stone Marks and the trade dress; Pay all amounts outstanding to us and our affiliates within 10 days
j. Assignment of the contract by us	Not Applicable	Not Applicable
k. “Transfer” by you – definition	Not Applicable	Not Applicable
l. Our approval of transfer by you	Not Applicable	Not Applicable
m. Conditions for our approval of transfer	Not Applicable	Not Applicable
n. Our right of first refusal to acquire your business	Not Applicable	Not Applicable
o. Our option to purchase your business	Not Applicable	Not Applicable
p. Your death or disability	Not Applicable	Not Applicable
q. Non-competition covenants during the term of the franchise	8.6, 8.7	You and your principals (and their immediate family members) may not own, operate, or have any relationship with, any business that is the same or similar, or offers products or services which are the same or similar, to a Co-Branded Restaurant (collectively “ <b>Similar Business</b> ”), nor employ or seek to employ persons already employed by us or by any of our franchisees.

<b>Provision</b>	<b>Section in Amendment to Franchise Agreement*</b>	<b>Summary</b>
r. Non-competition covenants after the franchise is terminated or expires	8.6, 8.7	You and your principals may not for a period of 1 year following the termination of the Amendment own, operate, or have any relationship with, a Similar Business which is located (i) at the Co-Branded Restaurant premises; (ii) within a 2 mile radius of the Co-Branded Restaurant premises; or (iii) within a 2 mile radius of any other Restaurant operated by us, Cold Stone, or any of our respective franchisees or affiliates at the time you signed the Franchise Agreement.
s. Modification of the agreement	Not Applicable	Not Applicable
t. Integration/merger clause	Not Applicable	Not Applicable
u. Dispute resolution by arbitration or mediation	Not Applicable	Not Applicable
v. Choice of forum	Not Applicable	Not Applicable
w. Choice of law	Not Applicable	Not Applicable

**Note: Section references are to the Amendment to Tim Hortons Franchise Agreement for Co-Branded Restaurant, unless stated otherwise. This table must be read in conjunction with the table relating to the Franchise Agreement which appears at pages 57 to 62 of this Franchise Disclosure Document. The Franchise Agreement provisions also are applicable and will apply to the sale of Cold Stone Products at your Co-Branded Restaurant.**

## **ITEM 20**

### **OUTLETS AND FRANCHISEE INFORMATION**

Table No. 1\*

#### **Systemwide Outlet Summary For years 2011 to 2013**

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2011	71	91	+20
	2012	91	102	+11
	2013	102	105	+3

Company- Owned	2011	2	1	-1
	2012	1	1	0
	2013	1	1	0
Total Outlets	2011	73	92	+20
	2012	92	103	+11
	2013	103	106	+3

Table No. 2\*

**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
For years 2011 to 2013**

Column 1 State	Column 2 Year	Column 3 Number of Transfers
Ohio	2011	0
	2012	1
	2013	0
New York	2011	3
	2012	3
	2013	4
Maine	2011	0
	2012	0
	2013	2
Totals	2011	3
	2012	4
	2013	6



Table No. 3\*

**Status of Franchised Outlets  
For years 2011 to 2013**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Termina- tions	Col. 6 Non- Renewals	Col. 7 Reacquired by Franchisor	Col. 8 Ceased Opera- tions- Other Reasons	Col. 9 Outlets at End of the Year
Kentucky	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
Maine	2011	8	2	0	0	1	0	9
	2012	9	3	0	0	1	0	11
	2013	11	1	3	0	1	0	8
Michigan	2011	15	8	0	0	0	0	23
	2012	23	6	0	0	0	0	29
	2013	29	6	0	0	0	0	35
New York	2011	23	4	0	0	0	0	27
	2012	27	1	0	0	0	0	28
	2013	28	2	1	0	1	0	28
Ohio	2011	18	6	0	0	2	0	22
	2012	22	2	0	0	0	0	24
	2013	24	0	0	0	0	0	24
Pennsylvania	2011	3	1	0	0	0	0	4
	2012	4	0	0	0	0	0	4
	2013	4	0	0	0	0	0	4
Rhode Island	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Virginia	2011	1	1	0	0	0	0	2
	2012	2	0	0	0	0	0	2
	2013	2	0	0	0	0	0	2
West Virginia	2011	2	0	0	0	0	0	2
	2012	2	0	0	0	0	0	2
	2013	2	0	0	0	0	0	2
Maryland	2011	0	1	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
All Other States	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Total	2011	71	23	0	0	3	0	91
	2012	91	12	0	0	1	0	102
	2013	102	9	4	0	2	0	105

Table No. 4\*

**Status of Company-Owned Outlets  
For years 2011 to 2013**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisee	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisee	Col. 8 Outlets at End of the Year
Maine	2011	1	0	1	0	1	1
	2012	1	0	0	0	1	0
	2013	0	0	0	0	0	0
New York	2011	1	0	0	0	1	0
	2012	0	0	0	0	0	0
	2013	0	0	0	0	0	0
Pennsylvania	2011	0	0	0	0	0	0
	2012	0	1	0	0	0	1
	2013	1	0	0	0	0	1
All Other States	2011	0	0	0	0	0	0
	2012	0	0	0	0	0	0
	2013	0	0	0	0	0	0
Total	2011	2	0	1	0	2	1
	2012	1	1	0	0	1	1
	2013	1	0	0	0	0	1

Table No. 5\*

**Projected Openings As Of December 29, 2013**

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlet In The Next Fiscal Year	Column 4 Projected New Company-Owned Outlet in the Next Fiscal Year
Michigan	0	6	0
New Jersey	0	1	0
Ohio	0	1	0
New York	1	0	0
Total	0	8	0

\* All Item 20 tables include all Co-Branded Restaurants. References to opened outlets include newly-built Co-Branded Restaurants and existing Tim Hortons outlets in which Cold Stone Creamery was added.

If you participate in the Co-Branding Program, your contact information may be disclosed to other franchisees when you leave the franchise system. Some of Cold Stone's franchisees have signed confidentiality clauses during the last three fiscal years. In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the Cold

Stone Creamery franchise system. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

A list of the Co-Branded Restaurants as of March 26, 2014 is attached as Attachment E. The name and last known home address and telephone number of every franchisee who operated a Co-Branded Restaurant who has had an agreement terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under our Franchise Agreement from January 1, 2012 to December 29, 2013, or who has not communicated with us within 10 weeks of the date of this disclosure document is also listed on Attachment E.

The Cold Stone Creamery franchise disclosure document contains a list of current and former Cold Stone franchisees. If you are considering participating in the Co-Branding Program by converting your Restaurant to a Co-Branded Restaurant you are encouraged to contact current and former Cold Stone franchisees.

## **ITEM 22** **CONTRACTS**

- Attachment A Form of Amendment to Tim Hortons Franchise Agreement for Co-Branded Restaurant
- Attachment B Confidentiality and Non-Competition Agreement
- Attachment C Amendment to Tim Card Addendum to Allow for the Redemption of Cold Stone Creamery Gift Cards
- Attachment D Table of Contents to Cold Stone Operating Manual
- Attachment E List of Co-Branded Restaurants

**AMENDMENT TO TIM HORTONS FRANCHISE AGREEMENT  
FOR CO-BRANDED RESTAURANT**

THIS AMENDMENT (“**Amendment**”) to the Tim Hortons Franchise Agreement is made effective as of \_\_\_\_\_, 20\_\_\_\_, (“**Effective Date**”) among Tim Hortons USA Inc., a Delaware corporation (“**Franchisor**”) and the undersigned “**Franchisee**.”

WHEREAS, Kahala Franchising, L.L.C., an Arizona limited liability company (“**Cold Stone**”), has developed a system for the sale of ice cream, frozen yogurt, cakes, pies, smoothies, shakes, specialty beverage products and other frozen dessert products (“**Cold Stone Products**”) under the Cold Stone Creamery® name and associated trademarks and service marks (“**Cold Stone Marks**”); the Cold Stone Products and Cold Stone Marks being collectively referred to as the “**Cold Stone System**”;

WHEREAS, Cold Stone's predecessor, Kahala Franchise Corp., a Delaware corporation and Franchisor have entered into an Amended and Restated Master License Agreement dated November 6, 2009 which Master License Agreement was assigned by Kahala Franchise Corp. to Cold Stone on August 6, 2010 (“**Master License Agreement**”) whereby Cold Stone has permitted Franchisor and Franchisor's franchisees to use the Cold Stone Marks and sell the Cold Stone Products in franchisees' Franchised Business Premises, as well as in Franchisor and Franchisor's affiliate-owned retail restaurants;

WHEREAS, Franchisee has entered into a Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_, (“**Franchise Agreement**”) with Franchisor for the operation of a Tim Hortons Franchised Business at the Franchised Business Premises; and

WHEREAS, Franchisee wishes to enter into this Amendment to its Franchise Agreement in order to supplement its existing product offerings by also being able to sell certain Cold Stone Products and use certain Cold Stone Marks as part of its Franchised Business conducted at the Franchised Business Premises.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. GRANT**

**1.1. Grant.** Franchisor grants to Franchisee, and Franchisee accepts from Franchisor, during the term of this Amendment, a limited right to use the Cold Stone System and Cold Stone Marks to produce and sell the Cold Stone Products at the Franchised Business Premises (the “**Cold Stone Rights**”). To effectuate the grant of the Cold Stone Rights, the term “Tim Hortons System” appearing in the first WHEREAS of the Franchise Agreement is amended to include the term “Cold Stone Products,” and the term “Proprietary Marks” appearing in the second WHEREAS of the Franchise Agreement is amended to include the Cold Stone Marks set forth in Attachment A. Notwithstanding the foregoing, nothing in this Amendment will be construed to mean that Franchisor or Franchisee has any rights to the Cold Stone Products, (except for any rights Franchisor may have as provided in the Master License Agreement), or any ownership of the rights to, interest in, and goodwill of the Cold Stone Marks.

**1.2. Term of Grant.** The term of this Amendment shall commence on the Effective Date and, unless sooner terminated pursuant to Section 7 of this Amendment, shall end upon the earlier of: (a) the expiration or termination of the Franchise Agreement, including all renewals (if applicable), or (b) the date which is 20 years from the date when Franchisee commenced selling the Cold Stone Products pursuant to Section 4.2.

## 2. DEVELOPMENT OF FRANCHISED BUSINESS PREMISES

**2.1. Conversion and Design.** Franchisee acknowledges that the layout, design, decoration and color scheme associated with the Cold Stone System is an integral part thereof; accordingly, Franchisee will convert, design and decorate that portion of the Franchised Business Premises as illustrated on the floor plan attached hereto as Attachment B as specified by Franchisor for use in the sale of Cold Stone Products, in accordance with the plans and specifications which are contained in the Confidential Operating Manual (the “**Manual**”), as set forth in Section 4.1(c).

**2.2. Signs.** Franchisee must acquire for use at the Franchised Business Premises all signage and other items that display the Cold Stone Marks which comply with the standards and specifications that are contained in the Manual, as set forth in Section 4.1(c). It is Franchisee’s sole responsibility to ensure that any signs comply with applicable local ordinances, building codes and zoning regulations. Any modifications to the standards and specifications for signs that must be made due to local ordinances, codes or regulations must be submitted to Franchisor for prior written approval. Franchisee acknowledges the Cold Stone Marks, or any other name, symbol or identifying marks on any signs associated with the Cold Stone System may only be used in accordance with Franchisor’s standards and specifications and only with the prior written approval of Franchisor.

**2.3. Equipment.** Franchisee must acquire for use at the Franchised Business Premises and in connection with the Cold Stone System, equipment of a type and in an amount which complies with the standards and specifications of Franchisor. Franchisee acknowledges that the type, quality, configuration, capability and/or performance of the equipment are all standards and specifications which are a part of the Cold Stone System and therefore such equipment must be purchased, leased, or otherwise obtained in accordance with Franchisor’s standards and specifications and only from suppliers or other sources approved by Franchisor.

### **[alternate Equipment Rental provision]**

**Equipment.** Before Franchisee will be permitted to use the Cold Stone System the Franchised Business Premises must be equipped with equipment, fixtures and signage of a type and in an amount which complies with the standards and specifications of Franchisor. Franchisor agrees to rent to Franchisee the equipment, fixtures and signage described in Attachment C (and any additional equipment in connection with the preparation of the Cold Stone Products as may be provided by Franchisor from time to time) (hereinafter the “**Cold Stone Assets**”) on an “as is, where is” basis during the currency of this Amendment commencing on the date first set out above upon the following terms and conditions:

(a) Franchisee’s right to possession of the Cold Stone Assets arises solely out of this Amendment.

(b) Franchisee shall pay rent as follows: (i) the initial partial month (if sale of Cold Stone Products commences on a day other than the 1<sup>st</sup> of the month) will be rent free; and (ii) commencing on the first full month following the date on which the sale of Cold Stone Products from your Co-Branded Restaurant commences Franchisee shall pay a monthly rent of \$2,500, exclusive of any taxes, payable monthly in arrears.

(c) Franchisee shall continue paying monthly rent until the earlier of: (i) this Amendment expires or is terminated; or (ii) Franchisee purchases the Cold Stone Assets from Franchisor. Franchisee may, at any time during the term of this Amendment, purchase the Cold Stone Assets from Franchisor. In such event, Franchisee shall pay a purchase price of **[amount]** for the Cold Stone Assets. If Franchisee purchases the Cold Stone Assets, Franchisee must also pay any outstanding balance on the initial franchise fee owing pursuant to Section 0.

(d) Franchisee acknowledges that the Cold Stone Assets are the sole and exclusive property of Franchisor. Unless the Cold Stone Assets are purchased by Franchisee in accordance with the terms of this Amendment, Franchisee shall deliver up possession of the Cold Stone Assets to Franchisor upon the expiration or termination of this Amendment.

(e) Franchisee shall not grant a security interest in the Cold Stone Assets to any other party, nor shall Franchisee permit or suffer the Cold Stone Assets to be liened or encumbered in any way.

(f) Franchisee shall be responsible for paying any and all sales and use taxes, business taxes or personal property taxes exigible in connection with the rental of the Cold Stone Assets.

**2.4. Permits and Licenses.** Franchisee shall obtain all permits and certifications as may be required to lawfully sell Cold Stone Products, together with all certifications from government authorities having jurisdiction over the site. Franchisee must certify to Franchisor before commencing the sale of Cold Stone Products that all requirements for construction and operation have been met, including without limitation, zoning, access, sign, health, safety requirements, building and other required construction permits, licenses to do business and fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire clearances.

### 3. TRAINING

**3.1. Initial Training Program.** Franchisee or, if Franchisee is not an individual, the person designated by Franchisee to assume primary responsibility for the management of the Franchised Business, (“**General Manager**”) is required to attend and successfully complete the initial training program which is offered by Cold Stone at a Cold Stone training location designated by Cold Stone. Franchisee may at its option send an additional person to the training program. The initial training program will be provided without charge of a tuition or fee. Franchisee will be responsible for any and all travel and living expenses incurred in connection with attendance at the training program. Franchisee’s attendee(s) must successfully complete the initial training program prior to Franchisee’s sale of Cold Stone Products. The initial training program will consist of five (5) days of instruction at a location designated by Cold Stone; provided, however, that Cold Stone reserves the right to waive a portion of the training program or alter the training schedule, if in Cold Stone’s sole discretion, Franchisee or General Manager has sufficient prior experience or training.

### 4. DEVELOPMENT ASSISTANCE

**4.1. Franchisor’s Development Assistance.** Franchisor or its designee will provide Franchisee with the following assistance:

(a) Provision of the initial training program, as described in Section 3.

(b) Direction regarding the required size, conversion, design and decoration of the portion of the Franchised Business Premises to be used for the sale of Cold Stone Products, plus specifications concerning signs, seasonal graphics, equipment, and other required or recommended items.

(c) Lend Franchisee a copy of the Manual containing the standards, specifications, policies and other directives and information germane to the Cold Stone System and the preparation and sale of the Cold Stone Products. Franchisee must treat the Manual in the same

manner and subject to the same rights and obligations as Franchisor's current Confidential Operating Manual under Article VII of the Franchise Agreement.

(d) Unless, in Franchisor's determination, Franchisee or the General Manager have sufficient prior training or experience Franchisor will send to Franchisee's Franchised Business Premises two representatives ("**Site Representatives**") who will be present for up to eight (8) days beginning approximately three (3) days prior to the commencement of Franchisee's sale of Cold Stone Products, but if Franchisee's commencement date is on or near a holiday, the Site Representatives will not begin the in-Restaurant assistance until three (3) days after the holiday. Holidays will include, but not be limited to, New Year's Day, Easter, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Hanukkah and Christmas. There will be no charge to Franchisee for the Site Representatives' assistance described in this subsection (d).

**4.2. Prior Approval for Commencing the Sale of Cold Stone Products.** Franchisee shall not commence sales of Cold Stone Products unless and until Franchisor has furnished written authorization to do so, which authorization is contingent on Franchisee's full compliance with all of its pre-opening obligations, as set forth in this Amendment.

## 5. PAYMENTS & REPORTS

**5.1 Gross Sales.** The term "Gross Sales" as defined in Franchise Agreement Section 4.03 is amended to also include the total amounts received from the sale of Cold Stone Products.

**5.2 Initial Franchise Fee.** In consideration of the Cold Stone Rights granted herein Franchisee shall pay to Franchisor at the time of execution of this Amendment an initial franchise fee of \$20,000, which payment shall be deemed fully earned and non-refundable when made, in consideration of the administrative and other expenses incurred by Franchisor in entering into this Amendment.

### **[Alternate franchise fee provision where franchise fee paid over time]**

**Initial Franchise Fee.** In consideration of the Cold Stone Rights granted herein Franchisee shall pay to Franchisor at the time of execution of this Amendment an initial franchise fee of \$20,000, which payment shall be deemed fully earned and non-refundable when made, in consideration of the administrative and other expenses incurred by Franchisor in entering into this Amendment. The initial franchise fee, together with interest thereon at the rate of five percent (5%) and calculated annually in arrears, shall be amortized over 36 months paid in 36 equal, consecutive monthly installments of principal and interest. Payment of the initial franchise fee shall commence on the first day of the first full month following the date on which Franchisee commences the sale of Cold Stone Products (the "**Commencement Date**"). Any balance owing with respect to this initial franchise fee and interest accruing thereon after 36 consecutive monthly payments shall be payable by the Monday of the week immediately following the date that the 36th payment is due. In the event a payment is not made when due, then interest shall accrue from the due date at the interest rate referenced above, plus five percent (5%), (the "**Default Rate**") and the Default Rate shall apply until such past due amounts (including interest), are paid in full. If any payment is not received within ten days after the due date, Franchisor may, upon written notice to Franchisee, declare the entire remaining initial franchise fee balance due and payable immediately; in such event, Franchisee shall pay the balance due within three (3) days thereafter, and failure to make such payment shall constitute a default under the Franchise Agreement. Franchisee may prepay the initial franchise fee, in whole or in part, at any time, without penalty. Any and all payments, including without limitation prepayments, shall be applied first to any unpaid interest due, and then to the monthly installments as set forth above, in reverse order beginning with the last monthly installment.

**5.3. Royalties on Gross Sales of Cold Stone Products.** The royalty fee payable pursuant to Franchise Agreement Section 4.01 that is attributable to the Gross Sales of Cold Stone Products is six percent (6%).

**5.4. Advertising Contribution on Gross Sales of Cold Stone Products.** The advertising contribution payable pursuant to Franchise Agreement Section 8.00 that is attributable to the Gross Sales of Cold Stone Products is two and one half percent (2.5%). Franchisee acknowledges and agrees that this advertising contribution will be remitted by Franchisor to Cold Stone, and that Cold Stone may use any such monies for the purpose of promoting the Cold Stone System. Franchisee acknowledges that Franchisor does not control the expenditure of any such advertising contributions remitted to Cold Stone.

**5.5. Initial Advertising and Promotion Fee.** Simultaneously with the execution of this Amendment, Franchisee shall pay Franchisor a grand opening promotion fee of Five Thousand Dollars (\$5,000). Franchisor shall use the fee in the manner Franchisor deems appropriate, for the purpose of publicizing the availability of Cold Stone Products at Franchisee's Premises.

**5.6. Reports.** The Gross Sales reports required by Sections 4.01 and 4.02 of the Franchise Agreement shall separately detail the Gross Sales derived from the sale of Cold Stone Products. Franchisee acknowledges and agrees that Franchisor may share with Cold Stone the sales reports and profit and loss statements required by Sections 4.01, 4.02 and 9.03 of the Franchise Agreement.

## **6. TRADEMARKS, TRADE NAMES AND PROPRIETARY INTERESTS**

**6.1 Cold Stone Marks.** Franchisee acknowledges that Cold Stone and Franchisor have the right to use and to permit others to use the Cold Stone Marks listed in Attachment A, and that Franchisee's right to use the Cold Stone Marks is derived solely from this Amendment and is limited to the exercise of the Cold Stone Rights granted by and in compliance with this Amendment. Franchisee's use of the Cold Stone Marks in any manner other than as specifically authorized by this Amendment will constitute an infringement of Cold Stone and Franchisor's rights in and to the Cold Stone Marks. Franchisee acknowledges and agrees that usage of the Cold Stone Marks and any goodwill or reputation established thereby will inure to Cold Stone's and Franchisor's benefit, and that this Amendment does not confer any goodwill, reputation or other interests in the Cold Stone Marks upon Franchisee (other than the right to display the Cold Stone Marks in compliance with this Amendment). All provisions of this Amendment also will be applicable to any additional Cold Stone Marks that Cold Stone and Franchisor may hereinafter permit Franchisee to use. Franchisee acknowledges that it has not acquired any right, title or interest in any Cold Stone Marks except as is authorized and governed by this Amendment. Except as permitted in the Manual, Franchisee agrees not to use any Cold Stone Marks as part of an electronic mail address or on any sites on the Internet or World Wide Web and Franchisee agrees not to use or register any of the Cold Stone Marks as a domain name on the Internet.

**6.2 Cold Stone Products.** Franchisee hereby acknowledges that Cold Stone owns and controls the Cold Stone System, all of which constitute trade secrets of Cold Stone, and Franchisee acknowledges that Cold Stone has valuable rights in and to such trade secrets. Franchisee further acknowledges that it has not acquired any right, title or interest in the Cold Stone System except for the right to use the Cold Stone Marks and sell Cold Stone Products in strict compliance with the terms of this Amendment.

**6.3. Cold Stone's Reservation of Rights.** Franchisee acknowledges that the rights granted in this Amendment are non-exclusive and that, pursuant to the Master License Agreement, Cold Stone retains the rights, among others: (1) to use, and to license others to use, the Cold Stone System for the operation of Cold Stone Creamery restaurants, kiosks, satellite restaurants, temporary restaurants and other co-branded restaurants, at any location other than at the Franchised Business Premises; (2) to use the Cold Stone System to identify services and products, promotional and marketing efforts or related items, and to



identify products and services similar to or the same as those which Franchisee will sell, but made available through alternative channels of distribution other than through traditional Cold Stone Creamery restaurants, at any location other than at the Franchised Business Premises, including, but not limited to, through satellite restaurants, temporary restaurants, kiosks, other co-branded restaurants, by way of mail order, (including electronic mail order), the Internet, catalog, telemarketing, other direct marketing methods, television, restaurant display or through the wholesale sale of its products to unrelated retail outlets or to candy distributors or outlets located in stadiums, arenas, airports, turnpike rest stops or supermarkets; and (3) 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 restaurants selling ice cream and frozen confections, at any location other than at the Franchised Business Premises, which restaurants are the same as, or similar to, or different from a traditional Cold Stone Creamery restaurant or a satellite restaurant, a temporary restaurant, a co-branded restaurant or a kiosk, on any terms and conditions as Cold Stone deems advisable, and without granting Franchisee any rights therein.

**6.4. Creative Ownership.** All copyrightable works created by Franchisee or any of its owners, officers or employees in connection with the use of the Cold Stone System will be the sole property of Cold Stone. Franchisee assigns all proprietary rights, including copyrights, in these works to Cold Stone without additional consideration. Franchisee hereby assigns and will execute such additional assignments or documentation to effectuate the assignment of all intellectual property, inventions, copyrights and trade secrets developed in part or in whole in relation to the Cold Stone System during the term of this Amendment, as Cold Stone may deem necessary in order to enable it, at its expense, to apply for, prosecute and obtain copyrights, patents or other proprietary rights in the United States and in foreign countries or in order to transfer to Cold Stone all right, title, and interest in said property. Franchisee will promptly disclose to Franchisor and Cold Stone all inventions, discoveries, improvements, recipes, creations, patents, copyrights, trademarks and confidential information relating to the Cold Stone System which it or any of its owners, officers or employees has made or may make solely, jointly or commonly with others and will promptly create a written record of the same. In addition to the foregoing, Franchisee acknowledges and agrees that any improvements or modifications, whether or not copyrightable, directly or indirectly related to the sale of Cold Stone Products, will be deemed to be a part of the Cold Stone System and will inure to the benefit of Cold Stone.

**6.5 Non-Disparagement.** Franchisee agrees that it will not take any action or make any statements to any third parties that would constitute a criticism, denigration or disparagement of Cold Stone or Franchisor, their employees, representatives or agents, or the Cold Stone System or that would tend to be injurious to the reputation or goodwill of Cold Stone or Franchisor, their employees, representatives or agents, or the Cold Stone System, or which may interfere in any manner with the business affairs or business relations of Cold Stone or Franchisor, their employees, representatives or agents.

**6.6. Gift Cards.** Section 9.09 of the Franchise Agreement is amended to include the Cold Stone gift card program(s). Franchisee acknowledges and agrees that it will, at Franchisor's request, participate in Cold Stone's gift card program(s) and, at Franchisor's request, will enter into any agreement(s) with Franchisor, Cold Stone or the gift card service provider approved by Franchisor with respect to such participation.

## 7. TERMINATION

**7.1. Termination by Franchisor - Effective upon Notice.** Franchisor has the right, at its option, to terminate this Amendment and the Cold Stone Rights granted Franchisee hereunder, without affording Franchisee any opportunity to cure any default (subject only to any termination pre-requisites in any state franchise law whose applicability, as a matter of law supersedes the choice-of-law provision set forth in

Franchise Agreement Section 17.00), effective upon receipt by Franchisee of written notice upon the occurrence of any of the following events:

(a) **Abandonment.** If Franchisee ceases to sell the Cold Stone Products for a period of five (5) consecutive days, or any shorter period that indicates an intent by Franchisee to discontinue sale of the Cold Stone Products, unless and only to the extent that full operation of the Franchised Business is suspended or terminated due to fire, flood, earthquake or other similar causes beyond Franchisee's control and not related to the availability of funds to Franchisee;

(b) **Misuse of Cold Stone Marks.** If, within ten (10) days after notification from Franchisor, Franchisee fails, with respect to the Cold Stone Marks, either to correct any misuse, or to follow Franchisor's directions and guidelines concerning proper use;

(c) **Unauthorized Disclosure.** If Franchisee intentionally or negligently discloses to any unauthorized person the contents of or any part of the Manual or any other trade secrets or confidential information;

(d) **Unauthorized Transfer.** If Franchisee sells, transfers or otherwise assigns the Cold Stone Rights granted by this Amendment, or attempts to transfer in any manner not in full compliance with the transfer provisions set forth in Franchise Agreement, Article XI; or attempts to transfer this Amendment except as part of the transfer of the Franchise Agreement. Franchisee specifically understands and agrees that this Amendment is indivisible from the Franchise Agreement, and may not be transferred except as part of an approved transfer of the Franchise Agreement.

(e) **Termination of Tim Hortons Franchise Agreement.** If Franchisee's Franchise Agreement terminates or expires for any reason.

**7.2. Termination by Franchisor - Thirty Days Notice.** Franchisor has the right to terminate this Amendment and the Cold Stone Rights granted hereunder (subject only to any termination pre-requisites in any state franchise law whose applicability, as a matter of law supersedes the choice-of-law provision set forth in Franchise Agreement Section 17.00), effective upon thirty (30) days written notice to Franchisee, if Franchisee breaches any other provision of this Amendment and fails to cure the default during such thirty (30) day period. In that event, this Amendment will terminate without further notice to Franchisee, effective upon expiration of the thirty (30) day period. Defaults include, but are not limited to, the following:

(a) **Failure to Maintain Standards.** Franchisee fails to maintain the then-current operating procedures and adhere to the specifications and standards established by Franchisor as set forth herein or in the Manual or otherwise communicated to Franchisee;

(b) **Deceptive Practices.** Franchisee engages in any unauthorized business or practice or sells any unauthorized product or service under the Cold Stone Marks or under a name or mark which is confusingly similar to the Cold Stone Marks;

(c) **Failure to Obtain Consent.** Franchisee fails, refuses or neglects to obtain Franchisor's prior written approval or consent as required by this Amendment;

(d) **Failure to Comply with Manual.** Franchisee fails or refuses to comply with the then-current requirements of the Manual; or

(e) **Breach of Related Agreement.** Franchisee defaults under any term of the Franchise Agreement, lease, sublease or lease assignment for the Franchised Business Premises, any equipment lease or any other agreement material to the Cold Stone Creamery restaurant or any other agreement or amendment between Franchisor and Franchisee and such default is not cured within the time specified in such lease, sublease, other agreement or other Amendment. Provided, however, so 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 Franchisor or its affiliates and Franchisee, as Franchisee is given under this Amendment

Notwithstanding the foregoing, if the breach is curable, but is of a nature which cannot be reasonably cured within such thirty (30) day period and Franchisee has commenced and is continuing to make good faith efforts to cure the breach during such thirty (30) day period, Franchisee will be given an additional reasonable period of time to cure the same, and this Amendment will not automatically terminate without written notice from Franchisor.

**7.3. Termination of Master License Agreement.** Franchisee acknowledges that the Cold Stone Rights granted hereunder are granted pursuant to, and remain conditional upon, the continued existence of, the Master License Agreement. This Amendment and the Cold Stone Rights will automatically terminate upon the expiration or termination of the Master License Agreement, regardless of the cause of such termination.

**7.4. Scope of Termination.** At Franchisor's option, a termination under Sections 7.1 or 7.2 may relate solely to Franchisee's rights and obligations under this Amendment with respect to the Cold Stone System and shall not affect the validity or ongoing enforceability of the Franchise Agreement. Termination of this Amendment for any reason does not release Franchisee or Franchisor from their respective obligations under any other agreement, including any lease or promissory note, between the parties.

**7.5. Obligations of Franchisee upon Termination or Expiration of Cold Stone Rights.** Franchisee is obligated upon termination or expiration of its right to use the Cold Stone System to immediately:

(a) Cease use of and immediately remove all Cold Stone Marks, including but not limited to signs, symbols, devices, trade names, trademarks, or other materials.

(b) If deemed necessary by Franchisor, paint or otherwise change the interior and exterior of Franchisee's Franchised Business Premises to remove any trade dress or other leasehold improvements, equipment, fixtures, etc. that are the identified with the Cold Stone System and to restore the Franchised Business Premises to conditions reasonably similar to those prior to the conversion pursuant to Section 2.1 of this Amendment.

(c) Deliver to Franchisor all items of inventory that bear a Cold Stone Mark including but not limited to logo, signs, sign-faces, advertising materials, forms and other materials.

(d) Deliver to Franchisor the Manual provided pursuant to Section 4.1(c) and all other information, documents and copies thereof associated with the Cold Stone System.

(e) Promptly take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to Franchisee's use of any Cold Stone Marks which are under the exclusive control of Cold Stone or, at the option of Cold Stone, assign the same to the Cold Stone.

(f) If applicable, notify all telephone directory publishers of the termination or expiration of Franchisee's right to use any regular, classified or other telephone directory listings associated with any Cold Stone Mark and to authorize transfer thereof to Franchisor or its designee. Franchisee acknowledges that, as between Franchisee and Cold Stone, Cold Stone has the sole rights to and interest in all directory listings associated with any Cold Stone Mark. Franchisee authorizes Cold Stone, and hereby appoints Cold Stone and any of its officers as Franchisee's attorney-in-fact, to direct the telephone directory publishers to transfer or cancel any directory listings relating to the Cold Stone Creamery restaurant to Cold Stone or its designee. Should Franchisee fail or refuse to do so, the telephone directory publishers may accept such direction or this Amendment as conclusive of Cold Stone's exclusive rights in such directory listings and Cold Stone's authority to direct their transfer or cancellation.

(g) Sign a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor, Cold Stone, their affiliates and their respective officers, directors, employees and agents.

(h) If applicable, take such action as may be required to remove from the Internet all sites referring to Franchisee's former association with the Cold Stone System and to cancel or assign to Cold Stone or its designee, in Cold Stone's sole discretion, all rights to any domain names for any sites on the Internet that refer to any such association.

## 8. MISCELLANEOUS PROVISIONS

**8.1. Indemnification.** Section 16.02 of the Franchise Agreement is hereby amended to include Cold Stone, its subsidiaries, parents, and affiliates, and their respective shareholders, directors, officers, employees, agents, successors and assigns in the definition of "Indemnitees". All references in Section 16.02 to Franchisor shall be amended to include "Cold Stone" to the extent applicable to the Cold Stone System.

**8.2. Insurance.** All of Franchisee's insurance obligations under Franchise Agreement Article X shall be expanded to also include Cold Stone, including, but not limited to, adding Cold Stone and its affiliates and their respective directors, shareholders, employees and agents as additional insureds, with primary non-contributory coverage, on all insurance policies that Franchisee is obligated to maintain pursuant to the Franchise Agreement, and well as any additional insurance coverage, policy amounts, or other obligations that may be contained in the Manual.

**8.3. Ratification of Franchise Agreement.** This Amendment is an integral part of the Franchise Agreement. Except as modified or supplemented by this Amendment, the terms of the Franchise Agreement are ratified and confirmed.

**8.4. Entire Agreement.** This Amendment, the Attachments hereto, and the documents referred to herein, constitute the entire and complete agreement between the parties concerning the subject matter hereof, and supersede any and all prior agreements between the parties, no other representations having induced Franchisee to execute this Amendment. Franchisee acknowledges that it is neither aware of nor relying upon any oral or written representation or understanding which is contrary to the terms and conditions of this Amendment or the contents of any document furnished to Franchisee. No amendment, change, or variance from this Amendment will be binding on either party unless mutually agreed to by the parties and executed by them or their authorized officers or agents in writing.

**8.5. Construction of Amendment.** Franchisor and Franchisee agree that the purpose of this Amendment is to supplement the Franchise Agreement and not to change or alter the terms of the Franchise Agreement, except as necessary to accomplish the objective of this Amendment. Therefore, the

terms of the Franchise Agreement and the terms of this Amendment conflict, the agreements shall be construed, to the maximum extent possible, to avoid any direct conflict and, if such construction is unavoidable, then the terms of the Franchise Agreement govern. All capitalized terms not otherwise defined herein have the meanings set forth in the Franchise Agreement. Franchisee specifically acknowledges and agrees that all of the rights and obligations arising out of this Amendment, as well as all of the events relating to the negotiation, execution, performance or termination of this Amendment, have been, are and will in the future be strictly between Franchisee and Franchisor. Franchisee further acknowledges and agrees that Cold Stone (a) is not a party to this Amendment; (b) has not undertaken to perform any obligation directly to Franchisee in this Amendment or otherwise; and (c) has not assumed any duty directly to Franchisee in this Amendment or otherwise. Accordingly, Franchisee agrees to look solely to Franchisor with respect to the performance of all actions and circumstances described in this Amendment, as well as for any claims or causes of action that arise from or relate to the actions and circumstances described in this Amendment.

**8.6. Covenant from Individuals.** At Franchisor's request, each individual referenced in Franchise Agreement Section 13.06 will sign the Cold Stone non-competition and confidentiality covenant attached hereto as Attachment D.

**8.7. Non-Competition.** Franchisee acknowledges and agrees that the Cold Stone Products will be included within the meaning of the phrase "same or similar" that appears in-term and post-term non competition covenant set forth in Franchise Agreement Sections 13.01 and 13.02. For purposes of Sections 13.01 and 13.02, any references to Franchisor shall also include Cold Stone.

**8.8. Notices.** Any notices required by this Amendment shall be provided in the manner specified in Franchise Agreement section 18.01.

**8.9. Third Party Beneficiary.** The Parties agree that Cold Stone shall have the right to enforce as a third party beneficiary the provisions of Sections 2.1, 2.2, 2.3, 5.2, 5.3, 5.4, 5.6, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1(a), 7.1(b), 7.1(c), 7.1(d), 7.2(a), 7.2(b), 7.2(d), 7.5(a), 7.5(b), 7.5(c), 7.5(d), 7.5(e), 7.5(f), 7.5(h), 8.5, 8.7, and 8.9 against Franchisee for Franchisee's breach of its contractual obligations therein and shall be entitled to proceed directly against Franchisee.

**8.10. Limitation on Liability.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FRANCHISEE ACKNOWLEDGES THAT FRANCHISOR AND COLD STONE HAVE PROVIDED POINT-OF-SALE SYSTEM SOFTWARE AND/OR SALES TAX INFORMATION THAT MAY BE USED BY FRANCHISEE WITH RESPECT TO THE OPERATION OF ITS POINT-OF-SALE CASH REGISTER SYSTEMS. FRANCHISEE ACKNOWLEDGES THAT FRANCHISOR AND COLD STONE MAKE NO REPRESENTATIONS, GUARANTEE OR WARRANTY, EXPRESSED OR IMPLIED, REGARDING THE SOFTWARE, SALES TAX INFORMATION, UPDATE OR UPGRADE (COLLECTIVELY THE "SOFTWARE") OR ITS INTENDED USE BY FRANCHISEE. SPECIFICALLY, FRANCHISOR AND COLD STONE PROVIDE ALL SOFTWARE "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. FRANCHISOR AND COLD STONE MAKE NO REPRESENTATIONS CONCERNING THE QUALITY OF THE SOFTWARE AND DO NOT PROMISE THAT THE SOFTWARE WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION.

**IN WITNESS WHEREOF**, the parties have executed this Amendment as of the Effective Date defined above.

**TIM HORTONS USA INC.**

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

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

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

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

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

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

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

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

Legal Dept. \_\_\_\_\_

**FRANCHISEE:**

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

\_\_\_\_\_

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

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

Consent to terms and Guarantee:

Guarantors, pursuant to the Guarantee, Indemnification and Acknowledgement (“Guarantee”) attached to the Franchise Agreement, acknowledge and agree that their Guarantee extends to Franchisee’s duties and obligations pursuant to this Amendment.

\_\_\_\_\_  
Guarantor

\_\_\_\_\_  
Guarantor

ACKNOWLEDGED AND CONSENTED TO ONLY:

KAHALA FRANCHISING, L.L.C.

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

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

*Attachment B to Exhibit R*

**CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

This **AGREEMENT** is made effective as of \_\_\_\_\_, 201 , (“**Effective Date**”) by and among Kahala Franchising, L.L.C., Cold Stone Creamery, Inc., and their affiliates (collectively “**Cold Stone**”) and \_\_\_\_\_, the undersigned owner, manager or employee (“**Party**”) of \_\_\_\_\_ (“**Franchisee**”), a franchisee of Tim Hortons USA Inc. (“**Tim Hortons**”).

Cold Stone's predecessor, Kahala Franchise Corp. and Tim Hortons entered into an Amended & Restated Master License Agreement dated November 6, 2009 which Master License Agreement was assigned by Kahala Franchise Corp. to Kahala Franchising, L.L.C. on August 6, 2010 (“**Master License Agreement**”) to permit Tim Hortons to grant permission to its franchisees (“**Tim Hortons Franchisees**”) to use Cold Stone’s trademarks and to sell Cold Stone products within their Tim Hortons restaurants. In addition, Tim Hortons will under the terms of the Master License Agreement permit Cold Stone to grant permission to its franchisees (“**Cold Stone Franchisees**”) to use Tim Hortons’ trademarks to sell Tim Hortons products within their Cold Stone Creamery restaurants. Cold Stone will be responsible for training the Tim Hortons Franchisees in the production and sale of Cold Stone products; however Tim Hortons will be supporting the Tim Hortons Franchisees after they begin operations.

Franchisee and Tim Hortons have entered, or will enter, into an Amendment to Franchise/Operator Agreement for Co-Branded Restaurant (the “**Amendment**”) to permit Franchisee to use Cold Stone’s trademarks and to sell Cold Stone products within its Tim Hortons restaurant.

Party, in consideration of the receipt and/or use of the Operations Manual and other information proprietary to Cold Stone, including but not limited to, methods, strategies, trade secrets, recipes and other confidential data and techniques developed by Cold Stone relating to the operations, marketing, training and advertising of Cold Stone products, (collectively referred to as “**Proprietary Information**”), agrees with Cold Stone as follows:

(1) Party acknowledges that the Operations Manual and other Proprietary Information now or hereafter provided to Party by Cold Stone is proprietary to Cold Stone and must be held in the utmost and strictest confidence.

(2) Party represents and agrees that Party will not, without the prior written consent of Cold Stone, engage in any of the following actions:

(i) Duplicate or otherwise reproduce the Operations Manual or other Proprietary Information, except as necessary to train and support an employee of Franchisee;

(ii) Deliver or make available the Operations Manual or other Proprietary Information to any person other than an authorized representative of Cold Stone, an authorized representative of Tim Hortons or an employee of Franchisee;

(iii) Discuss or otherwise disclose the contents of the Operations Manual or other Proprietary Information to any person other than an authorized representative of Cold Stone, an authorized representative of Tim Hortons or an employee of Franchisee; or

(iv) Use the Operations Manual or other Proprietary Information to his, her or its commercial advantage other than in connection with the production and sale of Cold Stone Products by Franchisee.

(3) Party, nor any member of his or her immediate family, shall engage in, or participate as an owner, officer, partner, member, manager, director, agent, employee, shareholder or otherwise in any Competitive Business for a period of one year (1) year from the date on which Party ceases to be associated with or an employee of Franchisee without having first obtained Cold Stone's written consent. For the purposes of this Agreement, "**Competitive Business**" shall mean any restaurant business that manufactures, produces, markets or sells ice cream, frozen yogurt, ice cream cakes or ice cream pies, (other than as an ancillary menu item) within, or for consumption within, a ten (10) mile radius of a Cold Stone Creamery restaurant, excluding businesses operated pursuant to agreements with Cold Stone.

(4) Party has acquired from Cold Stone confidential information regarding Cold Stone's trade secrets and franchised methods which, in the event of a termination or expiration of the Master License Agreement, could be used to injure Cold Stone. As a result, Party covenants and agrees not to use for any purpose, or disclose or reveal, during the term of his or her employment or other association with Franchisee and forever thereafter, to any person any Proprietary Information. In connection therewith, Party will fully and strictly comply with all security measures prescribed by Tim Hortons and/or Cold Stone for maintaining the confidentiality of all Proprietary Information. Upon the termination of Party's employment or other association with Franchisee, Party will deliver promptly to Tim Hortons or Cold Stone all documents containing Proprietary Information, whether or not prepared by or for Party.

(5) Notwithstanding the foregoing, Party may disclose Proprietary Information to a person who is bound by the terms of a similar provision or agreement regarding confidentiality to the extent that that disclosure is necessary in connection with that person's capacity with Franchisee. In addition, notwithstanding the foregoing, Party may use the Proprietary Information as shall be necessary in connection with the training of other employees of Franchisee or the production or sale of Cold Stone products within Franchisee's Tim Hortons restaurant.

(6) In addition, the following will not be subject to the provisions of Section 4:

(i) Information which is in the public domain as of the date of receipt by Party or which has subsequently been made part of the public domain without the fault of Party;

(ii) Information which is known to Party prior to the date of receipt by Party;

(iii) Information which becomes known to the Party or the public without a breach of any confidentiality agreement or provision in favor of Cold Stone; and

(iv) Information which is required by law to be disclosed or revealed, but only strictly to the extent required by law.

(7) Party agrees that during the term of the Amendment, and for a period of one (1) year thereafter, it shall in no way divert or attempt to divert the business of customers to any Competitive Business or otherwise intentionally interfere with the business relationship established with customers of any Cold Stone Franchisee's restaurant. It is understood that for purposes of this Agreement the business of Tim Hortons restaurants shall not be considered a Competitive Business

(8) The provisions of this Agreement shall survive any termination of Party's employment with Franchisee and the obligations hereunder shall continue even in the event of a termination or expiration of either the Master License Agreement or the Amendment.



(9) This Agreement will be governed by, and construed and enforced in accordance with, the law of Arizona, regardless of any conflict-of-law provisions to the contrary. Each party agrees that any litigation between the parties will be commenced and maintained only in the courts located in Maricopa County, Arizona, and each party consents to the jurisdiction of those courts; provided, however, that Cold Stone may seek to obtain injunctive relief in any court that Cold Stone may select. PARTY HEREBY WAIVES THE RIGHT TO A JURY TRIAL, WAIVES THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION IN ANY FORUM, INCLUDING, WITHOUT LIMITATION, ARBITRATION, AND WAIVES THE RIGHT TO SEEK OR COLLECT PUNITIVE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING, WITHOUT LIMITATION, ARBITRATION. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, PARTY AND COLD STONE AGREE THAT ANY CLAIMS UNDER, ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWO YEARS OF THE DATE ON WHICH THE UNDERLYING CAUSE OF ACTION ACCRUED, AND PARTY HEREBY WAIVES ANY RIGHT TO BRING ANY SUCH ACTION AFTER SUCH TWO-YEAR PERIOD.

**IN WITNESS WHEREOF**, this Agreement is deemed to be effective as of the Effective Date.

**AGREED TO BY:**

**PARTY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**FRANCHISEE**

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

**KAHALA FRANCHISING, L.L.C.**

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

**AMENDMENT TO TIM CARD ADDENDUM TO ALLOW FOR THE REDEMPTION OF  
COLD STONE CREAMERY GIFT CARDS**

THIS AMENDMENT ("AMENDMENT") is made AS OF THE DATE EXECUTED BY Franchisor, Franchisee and Guarantors (as defined on the execution page) below and supplements, amends and forms a part of the Tim Card Addendum (hereinafter "Tim Card Addendum") entered into by the parties hereto.

WHEREAS Franchisor, Franchisee and Guarantors have entered into a franchise agreement (the "Franchise Agreement") with respect to the operation of the Co-Branded Restaurant located at the address described on the execution page hereof (the "Restaurant");

AND WHEREAS, pursuant to the Franchise Agreement, Franchisee operates the Restaurant;

AND WHEREAS, pursuant to the Tim Card Addendum, Franchisee agreed to participate in the program (the "Tim Card Program") to offer stored value cards (each, a "Tim Card") and related services to customers of Tim Hortons Restaurants, which such cards can be used by customers to purchase goods and services at participating Tim Hortons Restaurants;

AND WHEREAS, Franchisor has entered into a master license agreement with Kahala Franchise Corp. ("Cold Stone"), as amended by Franchisor and Cold Stone from time to time (the "Master License Agreement"), under which certain of Franchisor's authorized franchisees will sell Cold Stone products at their retail locations, as well as redeem Cold Stone Gift Cards;

AND WHEREAS Franchisor and Cold Stone have entered into an Addendum to the Master License Agreement in order to allow for the redemption of Cold Stone Creamery Gift Cards ("Cold Stone Cards") at Tim Hortons restaurants in the United States (the "Cold Stone Addendum");

AND WHEREAS Franchisee has entered into a Participation Agreement (the "Participation Agreement") with ValueLink, LLC aka First Data Prepaid Services, the operator of the Tim Card Program (the "Program Provider");

AND WHEREAS Franchisor has entered into an Amendment to its agreement with Program Provider whereby Program Provider has agreed to process the redemption of Cold Stone Cards at participating Co-Branded Restaurants in the United States (the "FDPS Amendment");

AND WHEREAS Franchisor, Franchisee and Guarantor wish to amend the Tim Card Addendum so that Franchisee may redeem Cold Stone Cards at the Restaurant;

NOW THEREFORE, in consideration of the mutual covenants herein contained, Franchisor, Franchisee and Guarantors agree to amend the Tim Card Addendum as follows:

- 1) Franchisee agrees to process redemptions of Cold Stone Cards at the Restaurant to permit Franchisor or its designee and/or Program Provider to manage the funds collected from customers in relation to same, and to co-operate in the maintenance, management and reconciliation of such funds.
- 2) Franchisee agrees that all of its obligations as described in the Tim Card Addendum relating to the processing of Tim Cards shall now apply mutatis mutandis to the processing of Cold Stone Cards, save and except as follows:

- a) The Cold Stone Cards and any related software or hardware shall not be considered Program Equipment and shall not form part of the TIM HORTONS SYSTEM;
- b) The Cold Stone Cards shall not form part of the Program Marks and shall not constitute Tim Hortons Trade Marks as defined in the Franchise Agreement.
- c) Settlements for transactions using Cold Stone Cards will be completed in a parallel process to the existing settlement process used for Tim Card transactions, using a separate ACH funds movement, and in coordination with the Cold Stone's gift card procedures, as applicable. At the end of each settlement period, Program Provider will initiate an ACH transaction for the net settlement of the Cold Stone Card activity which occurred at Franchisee's restaurant(s) through debits and credits to the location banking account and the Cold Stone corporate banking account associated with the Cold Stone gift card program.
- d) Franchisee acknowledges and agrees that Franchisor shall not be liable for, without limitation, any damages incurred by Franchisee as a result of Cold Stone or Program Provider having insufficient funds in their respective bank accounts to reimburse/credit Franchisee for any amounts owing to Franchisee, or as a result of a processing error by Program Provider or Cold Stone.
- e) Franchisee agrees to purchase any and all equipment necessary to commence processing Cold Stone Cards, as well as any installation costs associated therewith, which equipment shall be used solely for the processing of Cold Stone Cards and shall not be tampered with, manipulated or re-engineered for any other purpose or use whether during or after the end of the term of this Agreement.
- f) Franchisee shall permit Cold Stone or its designee and/or Program Provider to manage the funds collected from customers relating to Cold Stone Card redemptions. Such management shall include the movement of funds from Cold Stone's account to the account of Franchisee to pay for products or services purchased by customers at the Restaurant using Cold Stone Cards, and collection from Franchisee of fees due to Cold Stone in relation to the Cold Stone Cards. In addition, Franchisee must co-operate in the maintenance, management and reconciliation of such funds. The processes, procedures and rules governing funds management are set forth in Schedule A to this Amendment. Franchisee agrees to abide by all processes and procedures (including, but not limited to, the processes and procedures described in Schedule A) proscribed by Cold Stone from time to time in relation to the redemption of Cold Stone Cards (the "Cold Stone Procedures"), as well as any processes and/or procedures established by Franchisor in connection with same.
- g) Franchisee hereby consents to the management of funds in relation to the Cold Stone Cards by Cold Stone and Program Provider in accordance with Schedule A, and shall comply with its obligations set forth in this Amendment, in the Schedules hereto, and in the Cold Stone Procedures as such Amendment, Schedules or the Cold Stone Procedures may be modified by Cold Stone, Program Provider or Franchisor from time to time.
- h) Franchisee shall pay the fees relating to the redemption of Cold Stone Cards at the Restaurant as set forth in Schedule B attached hereto. Franchisee shall pay all applicable taxes on such fees, if any.
- i) In the event that Franchisor is required or elects to modify either the Cold Stone Addendum or the FDPS Amendment that results in a change to the processing of Cold Stone Cards by Franchisee in any way (or the fees payable by Franchisee in relation to same), Franchisee agrees to implement those changes immediately in order to comply with Franchisor's requirements under either the Cold Stone Addendum or the FDPS Amendment or any amendments thereto, as the case may be.

3) Except as specifically amended hereby, the Tim Card Addendum will remain in full force and effect as in existence on the date hereof and is hereby ratified and confirmed in all respects.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**SIGNATURE PAGES IMMEDIATELY FOLLOW**



**Part 3 - To be completed by Restaurant Guarantors**

<b>Guarantors Signatures</b> (Where Guarantors are persons e.g. Mr. John Smith)	
Restaurant Number: _____ One Restaurant # per Agreement Only)	
Guarantor 1: (Insert signature, name and date of guarantor listed on the restaurant's franchise agreement)  Signature: _____ (Please Sign)  Name: _____ (Please Print)  Date: _____ (Please Print)	Guarantor 2: (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  Signature: _____ (Please Sign)  Name: _____ (Please Print)  Date: _____ (Please Print)
Guarantor 3: (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  Signature: _____ (Please Sign)  Name: _____ (Please Print)  Date: _____ (Please Print)	Guarantor 4: (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  Signature: _____ (Please Sign)  Name: _____ (Please Print)  Date: _____ (Please Print)
Guarantor 5: (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  Signature: _____ (Please Sign)  Name: _____ (Please Print)  Date: _____ (Please Print)	Guarantor 6: (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)  Signature: _____ (Please Sign)  Name: _____ (Please Print)  Date: _____ (Please Print)

**Part 4 - To be completed by Restaurant Guarantors**

**Guarantors Signatures (Where Guarantors are Corporations or other)**

Restaurant Number: \_\_\_\_\_

One Restaurant # per Agreement Only)

Name of Guarantor: \_\_\_\_\_

(Print: Guarantor Company/Legal Entity (which can be found on your most recent franchise agreement for the restaurant)

Signing Officer 1: (Insert signature, name and date of officer signing on behalf of the Guarantor)

Signing Officer 2: (If applicable, insert signature, name and date of other officer signing on behalf of the Guarantor)

Signature: \_\_\_\_\_  
(Please Sign)

Signature: \_\_\_\_\_  
(Please Sign)

Name: \_\_\_\_\_  
(Please Print)

Name: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_  
(Please Print)

Name of Guarantor: \_\_\_\_\_

(If Applicable, include other Guarantor Company/Legal Entity (which can be found on your most recent franchise agreement for the restaurant)

Signing Officer 1: (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)

Signing Officer 2: (If applicable, insert signature, name and date of other guarantors listed on the restaurant franchise agreement)

Signature: \_\_\_\_\_  
(Please Sign)

Signature: \_\_\_\_\_  
(Please Sign)

Name: \_\_\_\_\_  
(Please Print)

Name: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_  
(Please Print)

I/we have authority to bind the Corporation

**SCHEDULE A — MANAGEMENT OF COLD STONE CARD FUNDS**

Cold Stone Creamery, Inc. ("Cold Stone") is using a centralized approach to manage the movement of Program funds. In this approach, funds are moved between Franchisee's bank account and a Cold Stone-controlled central bank account each week. All fund movements are managed by the Program Provider through its settlement process (described below) on Cold Stone's behalf, meaning that the funds are moved by Program Provider between Franchisee's bank account and Cold Stone's central bank account.

From Franchisee's perspective, the process works as follows:

Customers activate and load a **Cold Stone Gift Card** - that is, a customer comes into a Restaurant and puts for example, \$20 on a **Cold Stone Gift Card**. This represents a deposit to the central bank account from the Restaurant's bank account. Other customers come in to purchase product with their cards. This represents a withdrawal from the central bank account and becomes a deposit into the Restaurant's bank account to pay for the product.

Each Thursday, the net amount of all the deposits and withdrawals for the previous Wednesday through Tuesday are either pushed or pulled from the central bank account.

Example 1 of the weekly net settlement is as follows:

Total Redemptions (product purchases)	\$ 500
Total Activations or Reloads	<u>\$(300)*</u>
Net Settlement (credit to Franchisee's bank account)	\$200

\* Restaurant keeps \$300 received from either Cash or Credit deposit

Example 2 of the weekly net settlement is as follows:

Total Redemptions (product purchases)	\$ 300
Total Activations or Reloads	<u>\$(500)*</u>
Net Settlement (Debit to Franchisee's bank account)	\$(200)

\* Restaurant keeps \$500 received from either Cash or Credit deposit



Reconciliation

- It is Franchisee's obligation to reconcile the amount settled weekly with the bank statement to ensure the amounts match, in addition to performing the normal end of day reconciliations at the POS terminal level.

Monthly Fees

In addition to the weekly settlements, there will be a pull from the Franchisee's bank account once a month of the following fees: 9% of all of the value of redemption transactions occurring from the 24<sup>th</sup> of the previous month through the 23<sup>rd</sup> of the current month. The debit to the Franchisee's bank account will occur on the 25<sup>th</sup> of each month for the prior month's activity. If the 25<sup>th</sup> of the month occurs on a Saturday, Sunday or holiday, the debit to the Franchisee's account will occur on the next business day.

Example of the Monthly Fee calculation is as follows:

Total Redemptions in the Month (product purchases)	\$ 1200
Monthly Fee is 9% x \$1200	\$108

It is the Franchisee's obligation to ensure that its bank account contains sufficient funds at all times to cover any "pull" to the central bank account (including pulls to cover the weekly pull in respect of Cold Stone gift card loads, and all other fees payable by Franchisee in respect of the Program).

Also, in order to facilitate the management of the weekly and monthly settlements, all participating Franchisees will have to complete an ACH enrolment form with the Program Provider in order to provide electronic funds transferor net settlement and Monthly Fees as described above.

**SCHEDULE B— COLD STONE CARD FEES**

The CSC Transaction fee shall be 9% of each successful redemption transaction involving a CSC Gift Card. "**CSC Transaction**" is defined as redemptions only performed with a Cold Stone Card. Said fee shall be in US dollars, all-inclusive, and there shall be no other fees (including, but not limited to, IVR, Help Desk, administration, transaction, balance confirmation/inquiries, voids, activations, loads, reloads, online transactions, settlement fees, third party service provider fees, maintenance or inactivity fees).

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**LIST OF CURRENT FRANCHISEES OF  
CO-BRANDED TIM HORTONS/COLD STONE CREAMERY RESTAURANTS**

The name, restaurant address, and telephone number of all current franchisees as of December 29, 2013 are listed below.

**Kentucky**

RDNKY, Inc.  
Rebecca Nichols  
2524 Winchester Ave.  
Ashland, KY 41101  
(606) 325-3093

RSR, LLC  
Shane & Rebecca Reagh  
398 US Route 1  
Scarborough, ME 04074  
(207) 885-1330

Cynthia Santos  
291 Maine Mall Rd.  
South Portland, ME 04106  
207-774-1555

**Maine**

J.J.Myers, LLC  
Jamie and Jayne Myers  
594 Broadway  
Bangor, ME 04401  
(207) 262-0171

RSR, LLC  
Shane Reagh and Rebecca Wentzell  
333 Main Street  
Waterville, ME 04901  
207-877-7757

J.J. Myers, LLC  
Jamie & Jayne Myers  
Walmart, 24 Walton Dr.  
Brewer, ME 04412  
207-989-1700

**Maryland**

Baker Enterprises 1 Aberdeen LLC  
Joel Baker  
Aberdeen Proving Grounds  
G Bldg 6002  
Aberdeen, MD 21005  
443-861-6564

J.J. Myers, LLC  
Jamie & Jayne Myers  
394 Wilson Street  
(aka 299 Chamberlain St)  
Brewer, ME 04412  
(207) 989-6319

**Michigan**

C & J Tober, Inc.  
Curtis and Jennifer Tober  
727 South Main Street  
Adrian, MI 49221  
517-265-8285

Ben'z Friends Café Inc.  
Mercedes Melo  
290 North Street  
Houlton, ME 04730  
207-521-0100

Penobscot Tims LLC  
Tyler and Angela Belk  
202 W Broadway  
Lincoln, ME 04457  
207-794-6495

Battle Creek D Ave, Ltd.  
Tom & Shannon Brady  
5180 Lake Michigan Dr.  
Allendale, MI 49401  
810-923-5429

KB Holdings, LLC  
Bonita Dam & Kristen Dam  
7642 N. Alger Rd.  
Alma, MI 48801  
989-463-0899

Boniko, LLC  
Bonita Dam and Kelly Maniko  
3460 Wilder Road  
Bay City, MI 48706  
(989) 686-7219

M&J Hall, Inc.  
Mike and Janice Hall  
41276 Ford Road  
Canton, MI 48187  
734-981-5236

Alma Enterprises, LLC  
Joseph Sayah and Raymondah El-Sayah  
1085 South Gratiot  
Clinton Township, MI 48043  
586-469-0362

Ashley-Bleu Diamond, Inc.  
Johnson, Wanda  
22230 Woodward Avenue  
Ferndale, MI 48220  
248-546-2573

Boom-Hort Incorporated  
Ken Boomer  
142 N. Main Street  
Frankenmuth, MI 48734  
989-652-2759

Dalwhinn Gaylord, LLC  
Joost Gragtman, Rob Trdina, Jim Cheetham,  
and Vince Cardella  
1301 W. Main Street  
Gaylord, MI 49735  
989-448-2222

GDM Food Service Inc.  
Michael Grail, Paul Dhaen, and Tomo Matesic  
1506 S Beacon Blvd  
Rt 31-Robbins  
Grand Haven, MI 49417  
616-935-7501

DMB Holdings, LLC  
David Michael Behnke and Deborah Cleminson  
860 E Saginaw Hwy  
Grand Ledge, MI 48837  
517-622-0039

GDM Food Service Inc.  
Mike Grail, Tomo Matesic  
Paul Dhaen & Jean-Marie Laprise  
2450 28<sup>th</sup> Street SE  
Grand Rapids, MI 49503  
616-940-1515

GDM Food Service Inc.  
Mike Grail, Tomo Matesic  
Paul Dhaen & Jean-Marie Laprise  
5015 E. Beltline  
Grand Rapids, MI 49525  
616-447-8918

GDM Food Service Inc.  
Mike & Paula Grail, Paul Dhaen &  
Tomo Matesic  
2001 W. Washington Street  
Greenville, MI 48838  
616-754-5090

Stew-Hort II, Inc.  
Bob and Maureen Stewart  
10833 Highland Road  
Hartland, MI 48353  
810-632-9902

Proactive Resolutions, LLC  
Tom Schlitts and Michele Hirschfield  
2350 Cedar Street  
Holt, MI 48842  
517-694-0129

Fresh Brew, LLC  
Majid Koza, Karam Bahnam, Alaa George  
and Bachar El-Sayegh  
1900 Latson Rd (USA To Go)  
Howell, MI 48842  
517-552-8780

CCD Enterprises, LLC  
Vivian Sayah  
1715 W. Michigan Avenue  
Jackson, MI 49201  
(517) 795-1648

Bridan Food Services, Inc.  
Brian and Dana Reicker  
1448 N. Telegraph Road  
Monroe, MI 48162  
734-457-2181

Van Dam Holdings, LLC  
Bonita Dam & Kristen Van Dam  
1723 S. Mission  
Mt. Pleasant, MI 48858  
989-708-1861

GDM Food Service Inc.  
Michael Grail, Paul Dhaen, and Tomo Matesic  
3334 Henry Street  
Norton Shores, MI 49441  
231-733-6482

BGJ Enterprises, LLC  
Gazmend Dervishaj and Bujar Dervishaj  
3464 Okemos Rd  
Okemos, MI 48864  
517-347-9680

GJ Enterprises LLC  
Geoff Bullen & JoAnn Shannon  
590 N. Lapeer Road  
Oxford, MI 48371  
(248) 572-4069

Cyndon Enterprises LLC  
Donald and Cynthia Andrews  
617 E. Walton  
Pontiac, MI 48342  
248-276-7588

Port Huron 3, Inc.  
Elie Damouni and George Damouni  
755 24<sup>th</sup> Street  
Port Huron, MI 48040  
810-730-8959

BOOM-HORT INCORPORATED  
Ken Boomer  
4870 State Street  
Saginaw, MI 48602  
(989) 793-5288

B Jays L.L.C.  
Elias Bouary, Clemence Bouary  
25203 Evergreen Rd.  
Southfield, MI 48076  
(248) 355-2116

Blue Collar Brew, Inc.  
Jacob Millner  
19014 Eureka  
Southgate, MI 48195  
734-284-3000

Kelemen Café Division, LLC  
Brian & Lynn Kelemen, Ken Rice  
8460 Telegraph Rd.  
Taylor, MI 48180  
586-354-7641

R & S Management Group, Inc.  
Wissam Abbo and Rasha Jwaida  
28877 Schoenherr  
Warren, MI 48088  
586-751-1821

LLJBT Construction, L.L.C.  
1123 129th Street  
Wayland, MI 49348  
269-792-7620

Boom-Hort North, Inc.  
Ken Boomer  
2960 Cook Rd.  
West Branch, MI 48661  
989-343-6844

Crisel Enterprises, LLC  
Edwin and Loreta Crisolo  
21930 Allen Road  
Woodhaven, MI 48183  
(734) 968-6793

Crisel II, Inc.  
Edwin and Loreta Crisolo  
2704 Biddle  
Wyandotte, MI 48192  
734-720-0729

GDM Food Service Inc.  
Michael Grail, Paul Dhaen, and Tomo Matesic  
1550 28th St  
Wyoming, MI 49509  
616-249-9450

**New York**

Compass Group USA, Inc.  
Albany College of Pharmacy & Health Science  
106 New Scotland Avenue  
Albany, NY 12208  
518-694-7218

FHL of New York, LLC  
Joseph and Shirley Filippelli  
161 S. Main Street  
Albion, NY 14411  
(585) 589-6592

160 Café & Bake Inc.  
Kerrim Jivani and Shehzad Sayani  
160 Grant Avenue  
Auburn, NY 13021  
315-258-0430

MCMC Enterprises, LLC  
Anthony McEachern and Jeff Cercone  
3610 St Rt 31  
Baldwinsville, NY 13027  
315-622-4278

Clark-Lumberg Associates, LLC.  
Bryan Clark, Wendy Clark, and David Lumberg  
20 Main Street  
Batavia, NY 14020  
(585) 344-1430

Chadwick Bay Coffee Company, Inc.  
Gina and David Kron  
92 Lake Shore Drive E.  
Dunkirk, NY 14048  
(716) 363-6450

FMR Fairport, LLC  
Don Reninger, Jenine Skowron, Shawn  
Falgiano and Lydia Meachem  
908 Fairport Road  
East Rochester, NY 14450  
(585) 586-8350

141 CLINTON ASSOCIATES, LLC  
Bakhtiar Ahmed and Arif Muhammad  
4753 Onondaga Blvd  
Geddes, NY 13219  
315-422-4507

Samoel Enterprises, LLC  
Edward Samoel and Nicole Broussard  
451 Hamilton Road  
Geneva, NY 14456  
315-781-9120

Ridge Road Café, Inc.  
George and Nidhi Pino  
2037 West Ridge Road  
Greece, NY 14626  
585-227-8851

Andlaur, LLC  
Robert and Dawn Mencer  
342 Buffalo Street  
Hamburg, NY 14075  
(716) 648-4838

Panagg Cafe Incorporated  
Gurvinder Singh, Adarsh Walia, and Ashna  
Walia  
1517 E. Ridge Rd.  
Irondequoit, NY 14621  
(585) 266-6270



141 Clinton Associates, LLC  
Bakhtiar Ahmed  
Arif Muhammad  
407 Elmira Rd.  
Ithaca, NY 14850  
607-272-2240

Tar Enterprises, LLC  
Victor and Brenda Tarana  
277 E. Fairmount Ave.  
Lakewood, NY 14750  
(716) 763-0655

Kelton Enterprises, LLC  
David and Allanna Beaton  
5816 South Transit Road  
Lockport, NY 14094  
(716) 873-1415

Seneca Niagara Falls Gaming Corporation  
315 Fourth Street  
Niagara Falls, NY 14303  
(716) 299-1100 Ext 2003

Two Flags, Inc.  
Robin and Laurie Greaves  
3012 NY SR 417  
Olean, NY 14760  
(716) 373-3280

Mirabito Holdings, Inc.  
200 East First Street  
Oswego, NY 13126  
315-207-0250

FMR Webster, LLC  
Don Reninger, Jenine Skowron, Shawn  
Falgiano and Lydia Meachem  
1786 Empire Blvd.  
Penfield, NY 14580  
(585) 671-7485

Joshua Tree Enterprises  
Bob and Judy DeGolier  
607 Jefferson Road  
Rochester, NY 14623  
(585) 427-0670

Joshua Tree Enterprises, Inc  
Bob and Judy DeGolier  
1286 Mt Hope Ave  
Rochester, NY 14620  
585-271-1260

Crossing Borders, LLC  
Armen and Jodi Vahramian  
802 Paul Road  
Rochester, NY 14624  
(585) 247-2410

Samoel Enterprises, LLC  
Edward and Nicole Samoel  
1959 East Main Street  
Seneca Falls, NY 13165  
315-539-4600

Miranda Holdings, Inc.  
Ray Miranda and Sally Miranda  
371 South Cascade Dr.  
Springville, NY 14141  
(716) 592-0436

MCMC Enterprises, LLC  
Anthony McEachern and Jeff Cercone  
750 East Adams Street  
Syracuse, NY 13210  
315-474-1019

Varma Enterprises Inc.  
Ajay & Shashi Varma, Manan Varma and  
Taruna Varma  
71 Niagara Street  
Tonawanda, NY 14150  
(716) 695-7778

Kelton Enterprises, LLC  
David and Allanna Beaton,  
Corey Craig (U.S.) LTD., and  
Gary O'Neill  
1777 Sheridan Drive  
Tonawanda, NY 14223  
(506) 856-8050

Clark Holdings, Inc.  
Bryan and Wendy Clark  
Walker Center  
5140 Main Street  
Williamsville, NY 14221

**Ohio**

CALPAM Food Services, LLC  
Phillip and Catherine Beaupre  
514 S. Main Street  
Bellefontaine, OH 43311  
(937) 292-7318

JJR Luna Enterprises, LLC  
Roberto and Jenny Luna  
1508 Wooster Road  
Bowling Green, OH 43402  
(419) 373-9859

Partners In Dough, Ltd.  
Craig & Kathy Zahniser  
1305 South Main Street  
Bryan, OH 43506  
419-630-0263

ANTCO Enterprises, LLC  
Andrew Cooney  
1721 Southgate Parkway  
Cambridge, OH 43725  
740-439-3249

Scioto River Restaurant, Inc.  
Tim Sublett and Brian Chinn  
1020 North Bridge St.  
Chillicothe, OH 45601  
(740) 779-2163

PE 5678, LLC  
Mike and Trina Forbes  
23923 U.S. Rt. 23  
Circleville, OH 43113  
(740) 474-9499

J Kline and Sons, Ltd.  
John Kline  
1815 Hilliard-Rome Rd.  
Columbus, OH 43026  
(614) 527-8485

M E Donuts LLC  
Matthew Egan  
5470 N. High Street  
Columbus, OH 43214  
(614) 436-6591

TNJ 3476, LLC  
Daniel and Julietta Hardiman  
Mount Carmel East Hospital  
5975 E. Broad Street  
Columbus, OH 43213  
614-577-9614

Touchstone Hospitality, LLC  
Robert E. Lee III  
4600 International Gateway  
Columbus, OH 43219  
614-237-2158

PE 4563, LLC  
Mike and Trina Forbes  
Ice Haus  
200 W Nationwide Blvd  
Columbus, OH 43215  
614-754-1905

Hepta Foods, LLC  
John Uvira  
3737 S. Hamilton Road  
Columbus, OH 43125  
614-836-2169

Rensko Delaware, LLC  
Donald Reninger and Jenine Skowron  
89 W. Williams  
Delaware, OH 43015  
(740) 362-3203

D&R MacDonald Enterprises LLC  
Robert & Dawn McDonald  
1621 E. Main Street  
Lancaster, Ohio 43130  
(740) 654-8396

Two Timothy Two LLC  
Roger Rhodes and Steve Rhodes  
2387 Elida Road  
Lima, OH 45807  
567-712-6349

Rensko Marion, LLC  
Don Reninger and Jenine Skowron  
1325 Mt. Vernon  
Marion, OH 43302  
(740) 386-6000

Rensko Marysville LLC  
Don Reninger & Jenine Skowron  
977 Delaware Ave.  
Marysville, OH 43040  
937-642-2010

HILL TH-MV, LLC  
Steven Hill  
941 Coshocton Avenue  
Mt. Vernon, OH 43050  
740-397-2913

Angel Business Corporation  
Joseph and Luciana Saade  
2621 Navarre Ave.  
Oregon, OH 43616  
(419) 698-3530

VASAR Enterprises, LLC  
Ryan Holland  
1310 Michigan Street  
Sidney, OH 45365  
937-492-8336

The Reyes Group LLC  
Benito and Shiloh Reyes  
1525 N. Limestone Drive  
Springfield, OH 45503  
(937) 390-1502

ANTCO Enterprises LLC  
Andy Cooney  
4234 Sunset Boulevard  
Steubenville, OH 43952  
(740) 266-9877

CALPAM Food Services, LLC  
Phillip and Catherine Beaupre  
759 Scioto Street  
Urbana, OH 43078  
937-484-5577

Dual Control Investments, LLC  
David Cropper and Jennifer Elliott  
38 North Orange Street  
Xenia, OH 45385  
(937) 372-1341

**Pennsylvania**

Scotian Enterprises, LLC  
Brian and Jennifer Schibler  
201 West Plum Street  
Edinboro, PA 16412  
814-734-0636

Scotian Enterprises, LLC  
Brian and Jennifer Schibler  
209 E. 12<sup>th</sup> Street  
Erie, PA 16503  
(814) 874-3000

Scotian Enterprises, LLC  
Brian and Jennifer Schibler  
1193 Park Avenue  
Meadville, PA 16335

JMLB Enterprises, LLC  
John MacDonald  
36 Pennsylvania Ave E  
Warren, PA 16365  
814-726-3600

**Virginia**

C3 Management, Inc.  
Chris Settelen  
9230 7th Avenue, Bld SP-28  
Norfolk, VA 23511  
757-423-0981

TCS Oceana, LLC  
Chris Settelen  
NASO - Jet Mart  
970 E Ave  
Building 542  
Virginia Beach, VA 23460  
757-321-6960

**West Virginia**

L & S Coffee, Inc.  
Tim Sublett and Beverly Lasater  
3903 Teays Valley Road  
Hurricane, WV 25526  
(304) 757-8173

GTND Enterprises, LLC  
Gerald and Theresa Dionne  
223 MacCorkle Avenue  
St. Albans, WV 25177  
304-722-6515

**ADDITIONAL CURRENT CO-BRANDED FRANCHISEES**

The name, restaurant address, and telephone number of all current restaurant owners who have joined the system from December 30, 2013 to March 26, 2014. The \* indicates that the franchisee signed a franchise agreement prior to December 29, 2013, but the restaurant was not operational as of December 29, 2013; this restaurant is now operational.

**New York**

Varma Enterprises Inc.  
Ajay & Shashi Varma  
Manan & Taruna Varma  
537 Delaware Ave.  
Buffalo, NY 14202  
716-884-8404

\* North America Eatery Inc.  
Raymond Wong and Mary  
Tchou-Wong  
64 E. 34st  
New York, NY 10016  
646-259-5669

**Pennsylvania**

NEO Restaurant Group, Inc.  
Hadi A. Hadi and Adnan Qutail  
135 N. Hermitage Rd.  
Hermitage, PA 16148  
724-347-7400

### LIST OF RECENT FORMER FRANCHISEES

The name and last known home address and telephone number of every restaurant owner who has had a Co-Brand agreement terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under our Franchise Agreement during the most recently completed fiscal year, or who has not communicated with us within 10 weeks of the date of this offering circular are listed below. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the system.

Mirabito Holdings, Inc.  
Joseph Mirabito  
Binghamton, NY  
607-352-2911  
(Remained as a current owner of other restaurants)

SRF Breakaway Enterprises, LLC  
Steve Foxcroft  
Auburn, NY  
315-224-9111

Houston Street Café, LLC  
Manjinder Singh, Daniel LeBlanc and Jay Guijar  
New York, NY  
914-602-3102

Startpoint, LLC  
Dermot & Royale Fogarty and Nicole Taylor  
Penfield, NY  
585-269-8246

Startpoint, LLC  
Dermot & Royale Fogarty and Nicole Taylor  
Penfield, NY  
585-269-8246

CPJ Whaling Enterprises, LLC  
Paul & Janette Whaling and Chris Whaling  
Rochester, NY  
860-951-2056

Pate Ventures, Inc.  
Mike & Paula Pate  
Saco, ME  
207-281-2566

DCS Limited, LLC  
Dan & Carol Robitaille and Shawn Robitaille  
Auburn, ME  
207-774-7100

JAMA Coffee, Inc.  
Marc & Andrea Nicknair  
Glenburn, ME  
207-944-7944  
(Remained as a current owner of other restaurants)

JAMA Coffee, Inc.  
Marc & Andrea Nicknair  
Glenburn, ME  
207-944-7944  
(Remained as a current owner of other restaurants)

True North Compass, LLC  
Karl and Jillian Carter  
Auburn, ME  
207-333-7539  
(Remained as a current owner of other restaurants)

Bluenose Enterprises, LLC  
Michael Vissers and Stacey MacKenzie  
West Jefferson, OH  
207-751-8751  
(Remained as a current owner of other restaurants)

**EXHIBIT S**  
**SBA ADDENDUM**

**ADDENDUM TO  
TIM HORTONS USA INC.  
FRANCHISE AGREEMENT**

This ADDENDUM TO TIM HORTONS USA INC. FRANCHISE AGREEMENT (the “Addendum”) is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by and between Tim Hortons USA Inc., a Delaware corporation located at 4150 Tuller Road, Suite 236, Dublin, Ohio 43017 (“Franchisor”), and \_\_\_\_\_, a \_\_\_\_\_ located at \_\_\_\_\_ (“Franchisee”).

RECITALS: Franchisor and Franchisee entered into a Franchise Agreement on \_\_\_\_\_, 20\_\_ (the “Franchise Agreement”). Franchisee agreed among other things to operate and maintain a franchise located at \_\_\_\_\_ designated by Franchisor as Restaurant #\_\_\_\_\_ (the “Restaurant”). Franchisee has obtained from a lender a loan (the “Loan”) in which funding is provided with the assistance of the United States Small Business Administration (the “SBA”). The SBA requires the execution of this Addendum as a condition for obtaining SBA-assisted financing.

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

- A. The Franchise Agreement is in full force and effect, and Franchisor has sent no official notice of default to Franchisee under the Franchise Agreement that remains uncured as of the date hereof.
- B. Notwithstanding anything to the contrary in the Option to Lease Agreement, the Franchisor may lease the real estate only for the remainder of the Franchisee’s term.
- C. Under Section 5.16 of the Franchise Agreement, any SBA-financed franchise will be granted a lien on the business assets of Franchisee as may be required by Franchisee’s loan authorization.
- D. Under Section 11.01 and Section 11.02 of the Franchise Agreement, Franchisor will not unreasonably withhold, delay or condition its consent to any proposed transfer or assignment by Franchisee that requires Franchisor’s consent.
- E. Notwithstanding anything in the contrary in Section 11.03 of the Franchise Agreement, Franchisor will not unreasonably withhold its consent if Franchisee pledges an interest in any SBA-financed loan.
- F. Section 11.04 of the Franchise Agreement provides that Franchisor (or any third party assignee of the Franchisor) may elect pursuant to its right of first refusal to exercise said option when Franchisee decides to sell partial interest(s) in the business. The following is

added at the end of Section 11.04 of the Franchise Agreement:

However, the Franchisor may not exercise a right of first refusal:

- (a) If a proposed Transfer is between or among individuals (including members of their immediate families and their respective spouses) who, at the time of the proposed Transfer, have an ownership interest in the Franchisee or the Franchise, and who have guaranteed the Franchisee's obligations under a then outstanding indebtedness which is guaranteed by the United States Small Business Administration (SBA) (Owner/Guarantor); or
- (b) If a proposed Transfer involves a Person other than an Owner/Guarantor and the proposed Transfer involves a noncontrolling ownership interest in the Franchisee or the Franchise, unless such noncontrolling interest: (1) represents less than a 20% ownership interest in the Franchisee or in the Franchise, or (2) the Franchisor (in combination with all of Franchisor's franchisees) qualifies as a small business and the exercise of the right does not affect the eligibility of the borrower to qualify for the SBA loan guarantee program.

The Franchisor's right to approve or to disapprove a proposed Transfer or transferee, or to exercise its right of first refusal with respect to a Transfer of a controlling interest in Franchisee or the Franchise, shall not be affected by any of the foregoing provisions. If the Franchisor does not qualify as a small business under SBA regulations, the parties acknowledge and understand that the Franchisor's exercise of its right of first refusal may result in an SBA guaranteed loan becoming immediately due and payable.

G. Section 11.10 of the Franchise Agreement is deleted and will not pertain to any SBA-financed franchises.

H. If the Franchise Agreement is terminated and the Restaurant or its contents are to be sold under Section 12.03.i of the Franchise Agreement and the parties are unable to agree as to a purchase price and terms, the fair market value of such premises and property shall be determined by three appraisers chosen in the following manner. Franchisee shall select one and Franchisor shall select one, and the two appraisers so chosen shall select a third appraiser. The decision of the majority of the appraisers so chosen shall be conclusive. The cost of the third appraiser shall be shared equally by the parties.



- I. This Addendum automatically terminates on the earliest to occur of the following: (i) a termination occurs under the Franchise Agreement; (ii) the Loan is paid; or (iii) the SBA no longer has any interest in the Loan.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Addendum to Tim Hortons USA Inc. Franchise Agreement as of the day and year first above written.

**FRANCHISOR:**

**FRANCHISEE:**

TIM HORTONS USA INC.

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

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

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

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

**EXHIBIT T**  
**VETFRAN ADDENDUM TO THE FRANCHISE AGREEMENT**

**VETFRAN ADDENDUM TO  
TIM HORTONS USA INC.  
FRANCHISE AGREEMENT**

This ADDENDUM (the "Addendum") is made and entered into by and between Tim Hortons USA Inc., a Delaware corporation located at 4150 Tuller Road, Suite 236, Dublin, Ohio 43017 ("Franchisor"), and \_\_\_\_\_, a \_\_\_\_\_ located at \_\_\_\_\_ ("Franchisee") as of the date signed by us and set forth opposite our signature on this Addendum.

WHEREAS, Franchisor and Franchisee have entered into a Tim Hortons USA Inc. Franchise Agreement (the "Franchise Agreement") simultaneously herewith;

WHEREAS, Franchisor is a member of the International Franchise Association (the "IFA") and participates in the IFA's VetFran Program, a voluntary effort of IFA member-companies designed to encourage franchise ownership by offering financial incentives to honorably discharged veterans;

WHEREAS, Franchisor has determined to offer its VetFran Program to honorably discharged veterans of the United States Armed Forces who are new to the Tim Hortons System, have DD Form 214 documents, have majority interests in their franchised businesses, and who otherwise meet the requirements of its VetFran Program (each a "VetFran Participant");

WHEREAS, Franchisor currently provides certain financial incentives with respect to the first Restaurant operated by a VetFran Participant;

WHEREAS, Franchisee qualifies to become a VetFran Participant and Franchisee and Franchisor wish to modify and amend certain terms of the Franchise Agreement in order to provide Franchisee with the financial incentives Franchisor provides to VetFran Participants.

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. The recitals set forth above are incorporated herein by reference. Unless otherwise specified, all terms shall have those meanings ascribed to them in the Franchise Agreement.
2. Notwithstanding anything to the contrary contained in Section 4.00 of the Franchise Agreement, Franchisee shall not be required to pay any initial franchise fee.
3. Notwithstanding anything to the contrary contained in Section 4.01 of the Franchise Agreement, Franchisee shall pay Franchisor a royalty fee of two percent (2%) of weekly

Gross Sales for the first twelve (12) months and a royalty fee of four and one-half percent (4.5%) of weekly Gross Sales thereafter.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Addendum to Tim Hortons USA Inc. Franchise Agreement as of the day and year first above written.

**THUSA:**

**FRANCHISEE:**

TIM HORTONS USA INC.

\_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT U**  
**LEASE OPTION AGREEMENT**

## LEASE OPTION AGREEMENT

This Lease Option Agreement (“**Agreement**”) is made effective this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_, a(n) \_\_\_\_\_ (“**Owner/Franchisee**”), [\_\_\_\_\_, a(n) \_\_\_\_\_ (“**Franchisee**”),] and TIM DONUT U.S. LIMITED, INC., a Florida corporation (“**Grantee**”).

### Background:

A. [Owner/Franchisee] is the owner in fee simple of certain land and improvements more particularly described on Exhibit A (the “**Real Property**”), being commonly known as \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_. [Franchisee has entered into a lease agreement (“**Franchisee Lease**”) with Owner to lease a [portion of a building/building] constructed on the Real Property containing approximately \_\_\_\_\_ rentable square feet (“**Leased Premises**”), as depicted on Exhibit B.]

B. Concurrent with the execution of this Agreement, Grantee’s affiliate, Tim Hortons USA Inc. (“**THUSA**”), is granting to Franchisee a franchise to operate a Tim Hortons restaurant on the Leased Premises per the terms of a franchise agreement dated \_\_\_\_\_, 20\_\_ (the “**Franchise Agreement**”).

C. Grantee desires to acquire an option to lease the Leased Premises in order to ensure the continued use of the Leased Premises as a Tim Hortons restaurant.

D. THUSA would not have granted to Franchisee a franchise to operate a Tim Hortons restaurant unless [Owner/Franchisee] [and Franchisee] agreed to enter into this Agreement.

E. [Owner will realize a significant benefit from having Franchisee obtain a Tim Hortons restaurant franchise.]

### Agreement:

For good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties to this Agreement covenant and agree as follows:

1. [Owner Covenants]. During the term of the Franchisee Lease, Owner covenants that it shall:

(a) send to Grantee copies of all letters or notices sent to Franchisee with respect to the Franchise Lease at the same time the letters or notices are sent to Franchisee and (ii) promptly notify Grantee if Franchisee does not exercise a renewal option granted under the Franchise Lease.

(b) provide to Grantee and its agents the right to enter the Leased Premises to make reasonable alterations and modifications to de-identify the Leased Premises as a Tim Hortons restaurant, including, without limitation, changing the color scheme and other distinctive design features, (ii) remove personal property from the Leased Premises that Grantee or its affiliates owns or has a security interest in, and (iii) take any other steps reasonably necessary to protect Grantee's rights to its trademarks, proprietary marks, trade secrets, confidential information, and distinctive forms, slogans, signs, symbols, or devices associated with the Tim Hortons system, provided, however, that Grantee shall repair any damage to the Leased Premises resulting therefrom at its sole cost.

(c) not amend, modify or extend the Franchisee Lease without the prior written consent of Grantee, such consent not to be unreasonably withheld by Grantee; and

Owner acknowledges that all information obtained by Owner or Owner's agents, officers, employees or directors (collectively, "**Owner Parties**") relating to the unique and distinctive features of Franchisee's or Grantee's plans and specifications, business and operating methods, and any financial data relating to Grantee (collectively, "**Confidential Information**") are of a confidential nature. Owner shall ensure that no Confidential Information is used or disclosed by any of the Owner Parties except as may be required by a court of law. Owner shall not issue any press release or other public disclosure using the name, logo, or otherwise referring to Grantee or any of its affiliates, and shall not permit any of the Owner Parties or Owner's broker, press agent or other party to do so, without the prior written consent of Grantee, to be given or withheld in Grantee's sole and absolute discretion. Owner acknowledges that any unauthorized use or disclosure of Confidential Information or the issuance of any such press release or other public disclosure will cause immediate and irreparable injury to Grantee, and that Grantee shall be entitled to an immediate court injunction to enjoin and to restrain any unauthorized use of Grantee's name or logo or disclosure of Confidential Information in addition to any other remedies to which Grantee may be entitled to at law or in equity.]

2. Grant of Lease Option. Pursuant to the Franchise Agreement THUSA has the right to terminate the Franchise Agreement upon default by Franchisee at any time during the term of the Franchise Agreement or upon Franchisee's failure to satisfy a renewal condition (any such termination by THUSA being referred to in this Agreement as a "**Termination**"). In addition, pursuant to the Franchise Agreement Franchisee has a limited right to transfer its

interest in the Franchise Agreement, subject to the consent of THUSA (“**Transfer**”). If a Termination or Transfer occurs [or if Franchisee or Owner otherwise seeks to terminate the Franchisee Lease], Grantee shall have the option (“**Option**”), exercisable in its sole discretion within thirty (30) days following the date of Termination or Transfer [or receipt by Grantee of written notice of Franchisee’s or Owner’s intent to terminate the Franchisee Lease], to lease the Leased Premises from [Owner/Franchisee] pursuant to the terms of this Agreement. [If Grantee exercises the Option, then the Franchisee Lease shall terminate concurrently with such exercise, notwithstanding any provision of the Franchisee Lease to the contrary.]

3. Replacement Lease Terms. If Grantee exercises the Option, Grantee (or its affiliate or assignee) will prepare a lease (the “**Lease**”) having a term of [ten (10) years and four (4) renewal options of five (5) years each] in the then-current standard form of lease Grantee uses when leasing from entities unaffiliated with Grantee for the type of property the Leased Premises comprises (i.e. in-line lease, building lease, etc.), except that the monthly rent payable under the Lease shall be equal to five percent (5%) of monthly gross sales at the Leased Premises. Notwithstanding the foregoing, if, as part of the Franchise Agreement, Franchisee executed an Addendum to Tim Hortons USA Inc. Franchise Agreement in connection with financing through the Small Business Administration and the Addendum remains in full force and effect at the time Grantee exercises the Option, the term of the Lease shall equal the remainder of the unexpired term of the Franchise Agreement (including renewal options).

Upon preparation of the Lease, Grantee (or its affiliate or assignee) and [Owner/Franchisee] shall execute the Lease and all ancillary documents contemplated by the Lease, such as a memorandum of lease.

4. Due Diligence Investigation. At any time during which Grantee has the right to exercise its Option under this Agreement, Grantee shall have the right to make such investigations of the Real Property and Leased Premises as it desires, including on-site physical inspections and testing. All such investigations shall be done at Grantee’s sole cost and expense.

5. Recording. This Agreement may be recorded in the official records in the county where the Real Property is located.

6. Assignment. Grantee may assign its rights and obligations under this Agreement without the consent of any other party to this Agreement. This Agreement may not be assigned by [Owner/Franchisee] [or Franchisee] without the prior written consent of Grantee.

7. Termination. This Agreement shall terminate upon the earliest to occur of the following:

(a) [Owner/Franchisee] and Grantee (or its assign) entering into the Lease; [or]

(b) The failure of Grantee to exercise the Option within the time period provided by this Agreement[; or



(c) The expiration of the term (and all renewal options) of the Franchisee Lease].

8. Notices. Notices delivered pursuant to this Agreement shall be in writing signed by the party serving the same and shall be sent to the following addresses:

If intended for [Owner/Franchisee]: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

[If intended for Franchisee: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_]

If intended for Grantee: Tim Donut U.S. Limited, Inc.  
Attention: Real Estate Legal Department  
4150 Tuller Rd., Suite 236  
Dublin, Ohio 43017

with a copy sent to: Tim Donut U.S. Limited, Inc.  
Attention: Legal Department  
874 Sinclair Road  
Oakville, Ontario L6K 2Y1

All notices, demands and requests by a party pursuant to this Agreement shall be deemed effective (a) upon personal delivery, (b) three (3) days after deposit in United States registered or certified mail, service prepaid, return receipt requested, or (c) one (1) day after deposit with a nationally-recognized overnight courier service for next day delivery, with postage prepaid, all addressed to each party at its address set forth above, or at such other place as each party may from time to time designate in a written notice to the other parties. Notices given by a party's legal counsel shall be deemed given by such party.

9. Miscellaneous Provisions.

(a) Modification; Waiver. Any amendment, change or modification of this Agreement shall be void unless in writing and signed by all parties to this Agreement. No failure or delay by any party to this Agreement in exercising any right, power or privilege under this Agreement, and no course of dealing between or among any of the parties, shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise of such right, power or privilege.

(b) Relationship of Parties. Nothing contained in this Agreement shall be deemed or

construed, either by the parties to this Agreement or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between the parties to this Agreement.

(c) Severability. If any provision of this Agreement is deemed or held to be illegal, invalid or unenforceable, this Agreement shall be considered divisible and inoperative as to such provision to the extent it is deemed to be illegal, invalid or unenforceable, and in all other respects this Agreement shall remain in full force and effect.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, personal representatives, successors and permitted assigns.

(e) Headings. The headings in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement.

(f) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement and supersedes all prior agreements, representations, warranties, statements and understandings, whether oral or written, express or implied, with respect to the subject matter contained in this Agreement.

(g) Costs and Attorneys' Fees. If a party brings an action to recover any sum due pursuant to this Agreement or for any breach of this Agreement and obtains a judgment or decree in its favor, the court may award to the prevailing party its reasonable costs and reasonable attorneys' fees, specifically including reasonable attorneys' fees incurred in connection with any appeals (whether or not taxable as such by law).

(h) Time Frames. If any date set forth in this Agreement falls on a Saturday, Sunday or legal holiday, such date automatically shall be extended until the next following business day. For purpose of this Agreement, Saturday is not a "business day".

(i) Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state in which the Real Property is located without regard to conflict of laws principles.

(j) Counterparts; Drafting. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. This Agreement has been drafted jointly by counsel for each of the parties and accordingly, no presumptions shall attach in the interpretation of this Agreement more strictly or favorably to any particular party.

(k) Exhibits. Each exhibit and schedule (if any) attached to and referred to in this Agreement is incorporated by reference as though set forth in full where referred to (by letter or description) in this Agreement.

(l) Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ACCEPT AND ENTER INTO THIS AGREEMENT.

(m) Joint and Several Obligations. If any party to this Agreement is comprised of more than one person or entity, the obligations of such persons or entities shall be joint and several.

(n) Run with Land. It is intended that the provisions of this Agreement shall run with the land and be binding upon every person having any fee, leasehold or other interest in the Real Property.

*[No further text on this page; signature pages follow.]*

**[OWNER/FRANCHISEE]:**

\_\_\_\_\_,  
a(n) \_\_\_\_\_

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

STATE OF \_\_\_\_\_ }  
  }  
COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a(n) \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**[NOTE: Notary block to be revised, as necessary, to reflect state requirements.]**

*[Signatures continue on following pages.]*

**[FRANCHISEE:**

\_\_\_\_\_,  
a(n) \_\_\_\_\_

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

STATE OF \_\_\_\_\_ }  
  }  
COUNTY OF \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a(n) \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**[NOTE: Notary block to be revised, as necessary, to reflect state requirements.]**

*[Signatures continue on following page.]*



**EXHIBIT A**

Legal Description of Real Property

**EXHIBIT B**

Depiction of Leased Premises



**EXHIBIT V**  
**AREA DEVELOPMENT AGREEMENT**



**TIM HORTONS USA INC.  
AREA DEVELOPMENT AGREEMENT**

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April 2014

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### EXHIBITS

- A DEVELOPMENT TERRITORY
- B FRANCHISE AGREEMENT
- C GUARANTEE

## TIM HORTONS USA INC.

### AREA DEVELOPMENT AGREEMENT

THIS AREA DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into on \_\_\_\_\_, 2014 (the "**Effective Date**") between TIM HORTONS USA INC., a Delaware corporation with its principal office at 4150 Tuller Road, Suite 236, Dublin, Ohio U.S.A. 43017 ("**we**", "**us**", "**our**" or "**Franchisor**") and \_\_\_\_\_, a \_\_\_\_\_, whose \_\_\_\_\_ principal \_\_\_\_\_ address \_\_\_\_\_ is \_\_\_\_\_

Attn.: \_\_\_\_\_ ("**you**", "**your**" or "**Area Developer**").

## 1. INTRODUCTION

### 1.01 The Tim Hortons System and Proprietary Marks

As a result of the expenditure of time, skill, effort and money, we have developed a proprietary system for opening and operating restaurants (each, a "**Restaurant**" and collectively, "**Restaurants**") specializing in the production, merchandising and sale of selected foods and beverages (which may vary among retail outlets), such as coffee and other non-alcoholic beverages, baked goods, soups, sandwiches, and other related products, utilizing a specially designed exterior and interior appearance with specified equipment, equipment layouts, interior and exterior accessories, identification schemes, products, management programs, standards, specifications, and procedures, all of which may be improved, further developed or otherwise modified from time to time (the "**Tim Hortons System**" or the "**System**"). The System makes use of the marks "TIM HORTONS", "TIM HORTONS CAFÉ & BAKE SHOP" and "TIMBITS" and certain other trademarks, service marks, trade names, related emblems, designs, labels, trade dress, signs and symbols, copyrighted materials and other intellectual property (together, the "**Proprietary Marks**").

### 1.02 The Area Franchise

You wish to obtain the right to yourself acquire franchises to operate Tim Hortons Restaurants in those geographical territories (the "**Development Territory**") defined below and set forth in Exhibit A to this Agreement and pursuant to a development schedule (the "**Development Schedule**") defined and set forth in Section 7.01 of this Agreement. We wish to grant you the right to yourself acquire franchises to operate Tim Hortons Restaurants in the Development Territory and pursuant to the Development Schedule upon the terms and subject to the conditions set forth in this Agreement.

## 2. GRANT OF RIGHTS

### 2.01 Area Development Rights

We grant you, and you accept, the right and obligation to acquire and operate franchised Tim Hortons Restaurants in the Development Territory and pursuant to the Development Schedule upon the terms and subject to the provisions of this Agreement and the terms of each Franchise Agreement (referred to individually as a "**Franchise Agreement**" and collectively as the "**Franchise Agreements**") entered into between you and us, and all agreements related to the Franchise Agreements.

## 3. TERRITORY

### 3.01 Territorial Grant

You undertake to own and operate the number of Restaurants required by the Development Schedule set forth in Section 7.01 of this Agreement within the Development Territory set forth in Exhibit A of this Agreement.

### 3.02 Our Restrictions

#### A. In General

You acknowledge that this Agreement confers no marketing exclusivity in the Development Territory on you, and that all Tim Hortons Restaurants (whether Company-owned, Company joint-ventured, franchised or otherwise) may solicit, service, advertise and offer their products and services to any individual or entity, regardless of your or its geographic location, including within your Development Territory.

#### B. Standard and Non-Standard Restaurants

Within the Development Territory, we, our parent, and our or our parent's affiliates, subsidiaries and designees (together, the "**Affiliates**") will not operate, grant a franchise for or enter into any other agreement granting rights to own, develop, or operate a standard or non-standard Restaurant or a similar or competitive business, all so long as you are not in default under this Agreement and all other related agreements, and except as provided in Section 3.03 (Rights We Reserve). These restrictions will terminate immediately upon the expiration or termination of this Agreement for any reason. Unless otherwise provided and agreed upon by us, a "**standard**" Restaurant contains a full product offering, including without limitation, hot and cold coffee and other beverages, baked goods, hot breakfast and soup and sandwich as sold in the majority of other Tim Hortons locations of like kind in the U.S.; is freestanding or located in a mall or food court location with counter service; has dedicated interior seating; dedicated staff and typically includes drive through service. Unless otherwise provided and agreed upon by us, a "**non-standard**" Restaurant contains a full or limited product offering as sold in the majority of other Tim Hortons locations of like kind in the U.S.; is a cart or kiosk installed within another facility or institution such as gas stations and convenience stores, has no dedicated seating or only limited shared or common seating for customers and no drive through service.

### 3.03 Rights We Reserve

You acknowledge that we and our Affiliates may have, and may later acquire or develop, rights and property that are not granted to you or may not be designated as part of the Tim Hortons System. You further acknowledge that this Agreement does not create any form of franchise or license with respect to those rights, all of which remain our property. We reserve those rights and all rights not expressly granted in this Agreement. These rights will not be qualified or diminished in any way by implication. For example, and without limitation, we or our Affiliates may own, operate or authorize others to own or operate any other similar or competitive business anywhere, including within your Development Territory and engage in or authorize others to conduct at any location any form of business including any type of product or service not offered under the Proprietary Marks. Without limiting the generality of this paragraph, we and our Affiliates reserve the following specific rights:

We and our Affiliates may sell within and outside your Development Territory through any methods of retail or wholesale distribution channels other than a dedicated Tim Hortons Restaurant, including, without limitation, sales through retail outlets such as supermarkets, grocery stores, mass merchandisers and club or warehouse stores, through the World Wide Web and other forms of electronic commerce; "800" or similar toll-free telephone numbers; mail order; catalogues; direct marketing campaigns, including mail and phone solicitations; and television sales, including "infomercials" (together, "**Alternative Distribution Channels**"). We and our Affiliates will market the sale of Tim Hortons franchises on a national, regional, and local basis and advertisements and offerings regarding the sale of Tim Hortons franchises may occur within the Development Territory through Alternative Distribution Channels and in person meetings.

Within the Development Territory, we and our Affiliates shall have the right to operate, grant franchises for, or enter into any other agreements granting rights to own, develop, or operate

Restaurants at captive sites, including at or within an airport, university, hospital, military base, sporting arena, conference center or corporate office building (each, a **“Captive Site”**).

## 4. FRANCHISED BUSINESS PREMISES

### 4.01 Franchised Business Premises

Prior to entering into a Franchise Agreement for a particular Restaurant, you shall propose a location (**“Franchised Business Premises”**) within the Development Territory for such Restaurant and submit to us a real estate package (including site plan, population density, traffic counts, closest competitors, character of neighborhood, estimated construction costs, etc.) (**“Real Estate Package”**), which shall be prepared in a format approved by us in our reasonable judgment and at your sole expense. Within sixty (60) days of our receipt of the Real Estate Package, we will deliver notice to you either approving or rejecting the proposed Franchised Business Premises, with our approval not to be unreasonably withheld. Our failure to deliver notice of approval or rejection within sixty (60) days will be deemed a rejection. You agree that it shall be reasonable for us to reject a proposed Franchised Business Premises that is in close proximity to another Tim Hortons Restaurant. To the extent you and we agree, we shall provide you with site selection assistance at a cost to be mutually agreed upon between the parties.

### 4.02 Construction of Restaurants

After your receipt of our approval of a Franchised Business Premises but before commencing construction for a Restaurant thereon, you must sign a Franchise Agreement for such Restaurant and obtain our written approval prior to your commencement of construction of the Restaurant on the Franchised Business Premises. As part of the approval process, you must have obtained from us, at your expense, all requisite architectural, mechanical, electrical and other plans (collectively, the **“Plans”**) for the Restaurant and you must provide us with evidence that all necessary permits and authorizations have been obtained to construct the Restaurant. As an exception to the foregoing, civil engineering plans must be obtained by you and your final site plan and floor plan must be submitted to us for review and approval within a reasonable amount of time in advance of your site development. You agree that the Restaurant will be constructed in accordance with the Plans. You agree to buy fixtures and building components from suppliers that we designate or that may be approved by us in writing.

You shall commence construction of the Restaurant within sixty (60) days from your receipt of our written approval. Your failure to commence construction within the timeframe set forth in this Section 4.02 will, unless you cure within thirty (30) days of your receipt of written notice from us, result in the withdrawal of our approval to construct and operate a Restaurant at the Franchised Business Premises.

## 5. TERM

### 5.01 Term

The term (**“Term”**) of this Agreement will be, unless sooner terminated in accordance with the provisions of this Agreement, for a period beginning on Effective Date and extending until the earlier of either: (a) the fulfillment of your development obligations as set forth in Section 7.01 of this Agreement; or (b) the \_\_\_\_\_ (\_\_\_\_) anniversary of the date which is Effective Date of this Agreement, which date is hereinafter referred to as the **“Commencement Date”**.

### 5.02 Notice of Expiration

If applicable law requires us to give notice of expiration to you at a specified time before the expiration of the Term of this Agreement, and we have not done so, then the Term of this Agreement will be extended on a month-to-month basis until we have given you the required notice

of expiration and the required period before the expiration of the Agreement becomes effective has expired.

## 6. AREA DEVELOPMENT FEE

### 6.01 Area Development Fee

Upon your execution of this Agreement you will pay us the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) U.S. (the “**Development Fee**”). The Development Fee is fully earned by us and non-refundable to you when paid to us.

## 7. DEVELOPMENT SCHEDULE

### 7.01 Development Schedule

For so long as this Agreement is in effect and you are not in default under the terms of this Agreement or any Franchise Agreement, you will have the right and obligation, in each Development Year (as defined below), to open in the Development Territory set forth in Exhibit A of this Agreement the number of franchised Tim Hortons Restaurants listed in the development schedule (the “**Development Schedule**”) below.

Your obligations under the Development Schedule may be satisfied by your opening Tim Hortons Restaurants pursuant to separate Franchise Agreements you sign with us and the number and type of such Restaurants required pursuant to the Development Schedule are operating at the end of the development year as more particularly set forth below..

Development Year	Number and Type of Restaurants to be Operating at the end of the Development Year

You may not open more than the number of Restaurants set forth above without first obtaining our written consent. Of the total number of Restaurants you have the right and obligation to open pursuant to the Development Schedule, no less than \_\_\_\_\_ (\_\_) of those Restaurants must be standard Restaurants.

As used herein, the term “**Development Year**” means the period commencing on the Commencement Date and ending on the date that is the last day of the calendar month in which the first anniversary of the Commencement Date falls, and each consecutive period of twelve (12) months thereafter. A Restaurant will be considered “operating at the end of the Development Year” if: (a) the Franchise Fee has been paid by you; and (b) the Franchise Agreement for the Restaurant has been signed by you and us; and (c) the Restaurant has commenced operations in accordance with the Franchise Agreement governing the Restaurant and is open for business at the end of the Development Year.

### 7.02 Failure to Fulfill Development Obligations

Except as provided in Section 18.01 below (Unavoidable Delay or Failure to Perform [Force Majeure]), if you fail to adhere to the Development Schedule in Section 7.01 by failing to open or

cause to be opened the number of Restaurant and continue to operate the required number of Restaurants in each of the Development Years specified above, then this will constitute a material breach of this Agreement, which, unless you cure it as provided in Section 16.03 of this Agreement, will result in this Agreement being terminated effective fifteen (15) days after your receipt of notice (which, whether sent by certified mail, registered mail, overnight courier or personal physical delivery, will be deemed to have been received by you upon delivery or first attempted delivery of the notice to you).

Termination of this Agreement for this reason will not be a termination (constructive or otherwise) of any Franchise Agreement(s) entered into by you and us under which you have already commenced the operation of the Restaurants covered by the Franchise Agreement(s) if you have fully performed and otherwise been in compliance with all of your obligations under the Franchise Agreement(s) in question. The undeveloped balance of your Development Schedule will revert to us, and we may operate or franchise Tim Hortons Restaurants within the Development Territory without in any way being in violation of this Agreement. This remedy of ours will be in addition to whatever other remedies we may have at law or in equity.

### **7.03 Time is of the Essence**

**Subject to the provision of Section 18.01 below (Unavoidable Delay or Failure to Perform [Force Majeure]), your timely performance of your obligations under Article 7 of this Agreement is of material importance and is of the essence to this Agreement.**

## **8. FRANCHISE AGREEMENTS**

### **8.01 Execution of Franchise Agreements**

You and we will execute a Franchise Agreement for each Restaurant you open pursuant to the Development Schedule. Each Franchise Agreement will contain the financial terms set forth in Section 8.02, below, and otherwise shall be in the Franchisor's then current form. The Franchisor's current form of Franchise Agreement is attached to this Agreement as Exhibit B. Each Franchise Agreement will be executed according to the following procedure:

(A) Before the scheduled date of execution of the Franchise Agreement for the franchise to be conveyed, we will deliver to you a copy of our then-current applicable Tim Hortons Franchise Disclosure Document, including our then-current applicable Tim Hortons Franchise Agreement (collectively, the "**Franchise Disclosure Document**").

(B) Promptly upon receipt of the Franchise Disclosure Document, you must acknowledge receipt by executing the Receipt form prescribed in the Franchise Disclosure Document and promptly returning the Receipt to us.

(C) No sooner than ten (10) business days but no later than twenty (20) business days after you receive our Franchise Disclosure Document, you must, by written notice, notify us as to whether or not you elect to execute our then-current form of Franchise Agreement for the Restaurant.

(D) Promptly upon our receipt of your notice that you elect to execute our then-current form of Franchise Agreement, we will deliver to you two (2) execution copies of the Franchise Agreement. Promptly upon receipt of these execution copies, subject to compliance with applicable required holding periods, you must pay the Franchise Fee set forth in Section 8.02 to us and execute the two (2) copies of the Franchise Agreement and return them to us.

If you fail to perform any of the acts or fail to deliver any of the notices required pursuant to the provisions of subsections (A), (B), (C) or (D) above in a timely fashion, this will be a material and incurable breach of this Agreement which, unless we waive the breach, will entitle us to terminate this Agreement immediately on notice to you, with no opportunity to cure.



## 8.02 Financial Terms for Franchise Agreements

(A) **Initial Franchise Fee.** The initial franchise fee for each Restaurant you open pursuant to the Development Schedule shall be \$35,000.00 U.S. for each standard Restaurant and \$\_\_\_\_\_.00 U.S. for each non-standard Restaurant (each, a “**Franchise Fee**”). Notwithstanding the foregoing, we will credit to you one-half of the Franchise Fee for each Restaurant you open pursuant to the Development Schedule, but the total of all such credits to you shall not exceed the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00).

(B) **Royalty Fee:** \_\_\_\_ percent (\_%) of weekly Gross Sales (as defined in the Franchise Agreement) from the Restaurant.

(C) **Advertising Contribution.** Four percent (4%) of monthly Gross Sales from the Restaurant.

## 9. OUR DUTIES

### 9.01 Duties of Franchisor

So long as you are not in default of this Agreement or the Franchise Agreements, we will grant you the right and obligation to acquire and operate Tim Hortons Restaurants in the Development Territory pursuant to the Development Schedule, upon the terms and subject to the provisions of this Agreement and the terms of each Franchise Agreement entered into between you and us and of all documents related to this Agreement and the Franchise Agreements, and to use solely and in connection with the Franchise Agreements the Tim Hortons System as it may be changed, improved, modified or further developed from time to time.

Pursuant to the Franchise Agreements and under their terms, we will offer and perform the training, instruction, assistance and other activities for which the Franchise Agreements provide.

## 10. YOUR DUTIES

### 10.01 Payments to Us

In addition to all other payments under this Agreement, you agree to pay us (or our Affiliates) immediately upon demand:

1. All sales taxes, trademark license taxes and any other taxes, imposed on, required to be collected, or paid by us or our Affiliates (excluding any corporate income taxes imposed on us or our Affiliates) because we or our Affiliates have furnished services or products to you or collected any fee from you.
2. All amounts we advanced, or which we have paid, or for which we have become obligated to pay, on your behalf for any reason.
3. All amounts due to us (or our Affiliates) for any other reason.

All payments due to us from you under this Agreement must be paid by certified check or bank draft transmitted to our headquarters address, except that we reserve the right to require payment by wire transfer or other form of electronic funds transfer.

### 10.02 Compliance with Franchise Agreement and Laws, Rules and Regulations

You agree to abide by and faithfully adhere to the terms of each Franchise Agreement signed pursuant to this Agreement. You further agree to develop and operate the franchised Tim Hortons Restaurants in strict compliance with all applicable present and future laws, rules, regulations and requirements of all governmental authorities, including without limitation, the United States Department of Treasury Office of Foreign Assets Control, Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part

595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA Patriot Act and all others pertaining to immigration and anti-terrorism; to comply with all applicable wage, hour and other laws and regulations of the federal, state and local governments; to prepare and file all necessary tax returns; to pay all taxes imposed upon you related to the Restaurants and this Agreement; and, to obtain and keep in good standing all necessary licenses, permits and other required forms of governmental approval required of you.

### **10.03 Indemnification**

You hereby agree that you will, at your sole cost, at all times defend us, our Affiliates, and the corporate affiliates, subsidiaries, successors, assigns and designees of each, and the respective directors, officers, employees, agents, attorneys, shareholders, designees, contractors and representatives of each (we and all others referenced above, the "**Indemnitees**"), and indemnify and hold harmless us and the other Indemnitees to the fullest extent permitted by law, from all claims, loss, liability and costs (including court costs, attorneys' fees and experts' fees) incurred in connection with any action, suit, proceeding, claim, demand, investigation, or formal or informal inquiry (regardless of whether reduced to judgment) or any settlement which actually or allegedly, directly or indirectly arises out of, is based, upon, is a result of or is related to any of the following:

1. Claims of any type or nature advanced by or against you or any of your officers, directors, shareholders, partners, proprietors, management, agents, employees, affiliates, representatives and contractors (or any third party acting on your behalf or at your direction) by a third party (or, as applicable, against a third party) or between or among themselves;
2. Your alleged or actual infringement or violation of any patent, mark or copyright or other proprietary right owned or controlled by third parties;
3. Your alleged or actual violation or breach of any contract, federal, state, local, foreign or other law, rule or regulation;
4. Libel, slander or any other form of defamation by you;
5. Your alleged or actual violation or breach of any warranty, representation, agreement or obligation set forth in this Agreement;
6. Any acts, errors, neglects or omissions by you and/or your officers, directors, shareholders, management, employees, agents, servants, contractors, partners, proprietors, affiliates or representatives (or any third party acting on your behalf or at your direction);
7. Any damage to the property of you, us, any of our Affiliates, or their, our or your officers, directors, management, agents, employees and contractors.

You agree to give us written notice of any such action, suit, proceeding, claim, demand, inquiry or investigation that could be the basis for a claim for indemnification by any Indemnitee within three (3) days of your actual or constructive knowledge of it. At your expense and risk, we may elect to assume (but under no circumstance will we be obligated to undertake) the defense and/or settlement of the action, suit, proceeding, claim, demand, inquiry or investigation. However, we will seek your advice and counsel and keep you informed with regard to the defense or contemplated settlements. Our undertaking of defense and/or settlement will in no way diminish your obligation to indemnify us and the other Indemnitees and to hold us and them harmless.

We will have the right, at any time we consider appropriate, to offer, order, consent or agree to settlements or take any other remedial or corrective actions we consider expedient with respect

to the action, suit, proceeding, claim, demand, inquiry or investigation if, in our sole judgment, there are reasonable grounds to do so. Under no circumstances will we or the other Indemnitees be required to seek recovery from third parties or otherwise mitigate their losses to maintain a claim against you. You agree that any failure to pursue recovery from third parties or mitigate loss will in no way reduce the amounts recoverable by us or the other Indemnitees from you. The indemnification obligations of this Section 10.03 will survive the expiration or sooner termination of this Agreement.

#### **10.04 Business Entity Franchisee Requirements**

If you are a corporation, partnership, limited partnership, limited liability company or other form of business entity (a "**Business Entity**"), or during the Term you become a Business Entity subject to the terms and provisions of Section 13.03, you must comply with the following requirements (which will also apply to any Business Entity assignee of yours):

1. Furnish us with your articles of incorporation, bylaws, partnership agreement, limited partnership agreement, limited liability company operating agreement and other governing documents; list of officers, directors, shareholders, partners (limited and general), proprietors or members (including type, number and percentage of interests held); the Confidentiality/Non-Competition Agreements required under Section 12.01; and any other documents we may reasonably request, and any amendments to them.

2. Confine your activities to the acquisition and operation of your franchised Restaurants, and your governing documents must provide that your activities are confined exclusively to the acquisition and operation of your franchised Restaurants.

3. Maintain stop transfer instructions against the transfer on the records of any of your equity securities, and not issue or have outstanding any securities on the face of which the following printed legend does not legibly and conspicuously appear:

"The transfer of this security is subject to the terms and conditions of a Franchise Agreement with Tim Hortons USA Inc., dated \_\_\_\_\_. Reference is made to the provisions of this Franchise Agreement and to the governing documents of this issuer. This certificate is not transferable and is not subject to sale, assignment, pledge, mortgage, encumbrance, or transfer, by operation of law or otherwise, without the prior written consent of Tim Hortons USA Inc."

5. Maintain a current list of all owners of record and all beneficial owners of any class of your capital stock, general or limited partnership interests, membership interests or similar interests, and furnish this list to us on request.

6. Ensure that your organizational documents expressly restrict the assignment of any direct or indirect ownership interest in you, including your equity interests, and provide that such documents may not be modified without our prior written consent.

#### **10.05 Best Efforts; Cooperation with Us**

You agree to act in good faith and use your best efforts to comply with your obligations under this Agreement, and to cooperate with us in accomplishing the purposes of this Agreement.

#### **10.06 Your Participation in Operations**

You agree to devote your full time and efforts to the performance of your duties under this Agreement, and a failure to do so will constitute a material breach of this Agreement, which, unless cured as provided in Section 16.03 of this Agreement, will result in this Agreement being terminated in accordance therewith.

## **10.07 Anti-Terrorism**

You represent and warrant that neither you, nor any entity or individual having an ownership interest in you; nor any affiliate of either you or any entity or individual having an ownership interest in you; nor any officer, director, employee, contractor or servant of any of the foregoing, has in the past, currently does or will in the future support terrorism; provide money or financial services to terrorists; is engaged in terrorism; is on the current United States government list of organizations that support terrorism; has been engaged in or been convicted of fraud, corruption, bribery, money laundering, narcotics trafficking or other crimes; and, that all of the foregoing individuals are eligible under applicable United States Immigration laws to travel to the United States for training or any other purpose.

You also represent and warrant that, as of the date of this Agreement and at all times during the Term hereof, and to your actual or constructive knowledge, neither you, any of your affiliates, any individual or entity having a direct or indirect ownership interest in you or any such affiliate (including any shareholder, general partner, limited partner, member or any type of owner), any officer, director or management employee of any of the foregoing, nor any funding source you utilize is or will be identified on the list of the U.S. Treasury's Office of Foreign Assets Control ("**OFAC**"); is directly or indirectly owned or controlled by the government of any country that is subject to an embargo imposed by the United States government or by any individual that is subject to an embargo imposed by the United States government; is acting on behalf of any country or individual that is subject to such an embargo; or, is involved in business arrangements or other transactions with any country or individual that is subject to an embargo. You agree that you will immediately notify us in writing immediately upon the occurrence of any event which would render the foregoing representation and warranty incorrect. Notwithstanding anything to the contrary in this Agreement, you may not allow, effect or sustain any transfer, assignment or other disposition of this Agreement to a "Specially Designated National or Blocked Person" (as defined below) or to an entity in which a Specially Designated National or Blocked Person has an interest. For the purposes of this Agreement, "**Specially Designated National or Blocked Person**" means: (i) a person or entity designated by OFAC (or any successor officer agency of the U.S. government) from time to time as a "specially designated national or blocked person" or similar status; (ii) a person or entity described in Section 1 of U.S. Executive Order 13224, issued on September 23, 2001; or, (iii) a person or entity otherwise identified by any government or legal authority as a person with whom you (or any of your owners or affiliates) or we (or any of our owners or affiliates) are prohibited from transacting business. You specifically acknowledge and agree that your indemnification obligations set forth in this Agreement pertain to your obligations under this Section and that any misrepresentation under this Section or violation of this Section constitutes grounds for immediate termination of this Agreement and any other Agreement you or your affiliates enter into with us or our Affiliates.

## **11. CONFIDENTIAL INFORMATION**

### **11.01 Restriction on Use of Confidential Information**

You agree that you will not, during the Term of this Agreement or thereafter, divulge to or use for the benefit of any other person(s), partnership, proprietorship, association, corporation or entity, any confidential information, knowledge or know-how concerning your or our systems of operation, programs, services, products, customers or practices and/or pertaining to the Tim Hortons System which may be communicated to you. Any and all information, knowledge, know-how, techniques and information which we, our Affiliates, or their respective officers, designate as confidential will be deemed confidential for the purposes of this Agreement, except information which you can demonstrate came to your attention before our disclosure or which, at or after the time of our disclosure to you, has become a part of the public domain through publication or communication by others.

## 12. COVENANTS NOT TO COMPETE

### 12.01 Non-Competition During the Term of the Agreement

You covenant that during the Term of this Agreement, except as otherwise approved in writing by us, neither you, nor any of you or your principals' immediate family members (i.e., spouse and children), shall, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person or legal entity;

1. within the Development Territory, own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, aid, serve or participate in, or have any interest in (as owner or otherwise) or relationship or association with, any enterprise (other than another Restaurant) that is the same or similar to the types of restaurants utilizing the Tim Hortons System or which offers products or services which are the same as or similar to the products or services being offered by the types of restaurants utilizing the Tim Hortons System (“**Competitor**”), it being understood that, without limiting the foregoing, each of McDonalds, Wendy’s, Dunkin Donuts, Mr. Donut, Starbucks, M’uffins, Coffee Time Donuts, Biggby Coffee, Krispy Kreme, Caribou Coffee, Seattle’s Best Coffee, Manhattan Bagels, Bruegger’s Bagels, Einstein’s Bagels, Panera Bread, Atlanta Bread, Subway, Quiznos and Penn Station shall be deemed a Competitor;
2. divert or attempt to divert any present or prospective business or customer of any Restaurant developed pursuant to this Agreement to any Competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the Tim Hortons System; or
3. employ or seek to employ any person who is at that time employed by us or by any other franchisee of ours, or otherwise directly or indirectly induce such person to leave his or her employment without our prior written consent.

### 12.02 Non-Competition After the Term of the Agreement

You covenant that, except as otherwise approved in writing by us, you shall not, for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement (regardless of the cause for termination) and continuing for two (2) years thereafter (and in the case of any violation of this covenant, for two (2) years after the violation ceases) either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person, or legal entity;

1. own, maintain, advise, operate, engage in, make loans to, be employed by, provide assistance to, aid, serve or participate in, or have any interest in (as owner or otherwise) or relationship or association with any business that: (a) is a Competitor, and (b) is, or is intended to be, located at or within (i) the Development Territory, (ii) a two (2) mile radius of the Development Territory or (iii) a two (2) mile radius of any other Restaurant operated by us or any other franchisee of ours on the date this Agreement is executed by you; or
2. employ or seek to employ any person who is at that time employed by us or by any other franchisee of ours, or otherwise directly or indirectly induce such person to leave his or her employment without our prior written consent.

### 12.03 Exception to Non-Competition Covenants

Sections 12.01 and 12.02 shall not apply to ownership by you of a less-than-five-percent (5%) beneficial interest in the outstanding equity securities of any company with securities registered under the Securities Exchange Act of 1934.

#### **12.04 Reduction of Scope of Non-Competition Covenants**

You understand and acknowledge that we shall have the right, in our sole discretion, to reduce the scope of any covenant set forth in Sections 12.01 or 12.02, or any portion thereof, without your consent, effective immediately upon receipt by you of written notice thereof; and you agree that you shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 19.08 hereof.

#### **12.05 Other Claims**

You expressly agree that the existence of any claims you may have against us, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by us of the covenants in this Article 12. You agree to pay all costs and expenses (including reasonable attorneys' fees) incurred by us in connection with the enforcement of this Article 12.

#### **12.06 Covenants From Additional Persons**

You shall obtain and furnish to us executed covenants similar in substance to those set forth in Sections 12.01 and 12.02 (including covenants applicable upon the termination of a person's relationship with you) from any or all of the following persons: (a) all your employees who have attended any training program; (b) all officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of Area Developer, and of any corporation directly or indirectly controlling Area Developer, if Area Developer is a corporation; (c) the general partners and any limited partners (including any corporation, and the officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of any corporation which controls directly or indirectly, any general or limited partner), if Area Developer is a partnership; and (d) the members of any limited liability company, if Area Developer is a limited liability company. Every covenant required by this Section 12.06 shall be in a form approved by us, including, without limitation, specific identification of Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

#### **12.07 Independent Covenants**

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

#### **12.08 Breach of Covenants Causing Irreparable Injury**

You acknowledge that your violation of any covenant of this Article 12 would result in irreparable injury to us for which no adequate remedy at law may be available, and you consent to the issuance of, and agree to pay all court costs and reasonable attorneys' fees incurred by us in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

### **13. ASSIGNMENT**

#### **13.01 Assignment By Us**

We will have the right to assign this Agreement, and all of our rights and privileges under this Agreement, to any person, firm, corporation or other entity, provided that, if the assignment results in the performance by the assignee of our functions under this Agreement: the assignee

must, at the time of the assignment, be financially responsible and economically capable of performing our obligations under this Agreement, and the assignee must expressly assume and agree to perform these obligations.

You acknowledge that we will have the right to sell our company, our assets, our Proprietary Marks and/or our System to a third party; sell privately or publicly some or all of our securities; and/or undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring, and that we and our Affiliates have the right to purchase, merge, acquire, be acquired by or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that network's, chain's or business's facilities, and to operate, franchise or license those businesses and/or facilities as Tim Hortons restaurants operating under the Proprietary Marks or any other marks following the purchase, merger, acquisition or affiliation, regardless of the location of these facilities, which may be within the Development Territory and near your Restaurants. You waive all claims, demands or damages arising from or related to the foregoing assignment, sale, purchase, merger, acquisition, affiliation and other business combination activities including, without limitation, any claim of divided loyalty, breach of fiduciary duty, breach of contract or breach of the implied covenant of good faith and fair dealing.

### **13.02 Assignment By You – General**

Your rights and obligations under this Agreement are personal because we have entered into this Agreement in reliance on and in consideration of your singular personal trust, confidentiality, skill and qualifications (or, if you are a Business Entity, the personal trust, confidentiality, skill and qualifications of your owners and employees). Therefore, except as provided below, neither your interest in this Agreement, your rights, privileges or obligations under this Agreement, the franchised Restaurants, nor any interest in the franchised Restaurants or a Business Entity Franchisee (including any capital stock, membership, partnership or proprietary interest of you or anyone who controls you), may be assigned, sold, transferred, shared, reconsidered, sublicensed or divided, voluntarily or involuntarily, directly or indirectly, in one or a series of related transactions, by operation of law or otherwise (each, an "**assignment**"), without first obtaining our written consent and, where applicable, complying with our right of first refusal, each as provided in this Article 13. Any assignment in violation of this Article 13 will be null, void and of no effect.

### **13.03 Assignment By You – To A Business Entity You Form**

We will not unreasonably withhold or delay our consent to your assignment to a Business Entity that you form solely for the convenience of entity ownership if all the following conditions are met:

1. The Business Entity is newly formed and validly formed or organized in a United States jurisdiction, authorized to do business in the Development Territory and each requirement in Sections 10.04 and 19.17 has been satisfied.
2. You and any other individual involved in the new entity has the same proportionate ownership interest in the new entity as you or they had in this Agreement before the assignment.
3. You and the new Business Entity sign an agreement with us under which you and the new Business Entity are jointly and severally liable for all the obligations under this Agreement and bound by all the terms, conditions and covenants of this Agreement.

### **13.04 Assignment By You – Transfer Upon Death or Disability**

Upon your death or long-term disability (if you are an individual) or the death or disability of any "Key Equityholder" as defined below (if you are a Business Entity), that person's rights will

pass to his or her estate, heirs, legatees, guardians or representatives, as appropriate (collectively, the "**Estate**"). "**Key Equityholder**" means a 25% shareholder, member, partner or proprietor of the Area Developer as of the Effective Date.

The Estate may continue to perform the duties of Area Developer and to manage the operation of the franchised Restaurants if: (i) the Estate provides a competent and qualified individual acceptable to us to serve as Area Developer and to manage the operation of your Tim Hortons Restaurants on a full-time basis, and (ii) this individual assumes the duties of Area Developer and the full-time management of the operation of the Restaurants within one month of the date the person dies or becomes disabled. If the Estate does not designate such competent and qualified individual acceptable to us or the Estate's designated individual does not assume the duties of Area Developer and the full-time management of the operation of the Restaurants within one month, this will be a material breach of this Agreement which, unless cured by the Estate as provided in Section 16.03, will result in this Agreement being terminated immediately.

### **13.05 No Encumbrance**

You will have no right to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement, the Franchise Agreements or the Restaurants or any part thereof in any manner without our prior written permission, which we may withhold for any reason.

## **14. PROPRIETARY MARKS**

### **14.01 Not a License of the Proprietary Marks**

You acknowledge and agree that nothing contained in this Agreement will be deemed to constitute a license to you to use or display any of the Proprietary Marks in any manner. You will acquire a limited, non-exclusive license to use the Proprietary Marks only pursuant to, and to the extent that these rights are granted by, Franchise Agreements executed by you and us pursuant to this Agreement.

### **14.02 Non-Use of Trade Name**

If you are a Business Entity, you may not use our Proprietary Marks or any confusingly similar words or symbols, in your entity name. In particular, you may not use the words "Tim Hortons", "Tim Hortons USA Inc.", "Tim Hortons Café & Bake Shop" or any variant as part of your Business Entity name.

### **14.03 Injunction**

You explicitly affirm and recognize the unique value and secondary meaning attached to the Tim Hortons System and the Proprietary Marks. Accordingly, you agree that any non-compliance by you with the terms of this Agreement, or any unauthorized or improper use of the Tim Hortons System or the Proprietary Marks by you, will cause irreparable damage to us and other Tim Hortons franchisees. You therefore agree that if you engage in this non-compliance, or unauthorized and/or improper use of the Tim Hortons System or Proprietary Marks, during or after the period of this Agreement, we will be entitled to both temporary and permanent injunctive relief against you from any court of competent jurisdiction, in addition to all other remedies which we may have at law. You consent to the entry of these temporary and permanent injunctions.

## **15. RELATIONSHIP OF THE PARTIES**

### **15.01 Independent Contractor; No Third Party Beneficiaries**

You are and will be our independent contractor under this Agreement. Nothing in this Agreement may be construed to create a partnership, joint venture, agency, employment or fiduciary relationship of any kind. Neither you nor any of your employees whose compensation you pay may in any way, directly or indirectly, expressly or by implication, be construed to be our employee for any purpose. You will be solely responsible for your employees and all employment



related decisions, including, without limitation, decisions concerning wages and benefits, hiring and discharging, training and supervision and work schedules of employees. You are not empowered to, and may not, make any express or implied agreements, warranties, guarantees or representations or incur any debt or other obligations in our name or for our account (or for those of any of our Affiliates). Except as expressly provided in this Agreement or in the Franchise Agreements, we will have no control or access to your funds or their expenditure or in any other way exercise control over your area development business or franchised Restaurants.

You agree to conspicuously identify yourself, your area development business, your franchised Restaurants, and any other facilities of your franchised Restaurants in all dealings with third parties as an independent Tim Hortons franchised business and to place notice of independent ownership on all forms, business cards, stationery, advertising, signs and other materials in the manner that we specify and require from time to time, in our Confidential Operations Manual or otherwise.

All of our obligations under this Agreement are to you alone and no other party is entitled to rely on, enforce or obtain relief for breach of any of our obligations hereunder, either directly or by subrogation.

#### **15.02 Your Required Means of Identification**

You agree that you will do business and be identified as an area developer or independent Tim Hortons franchisee, but not an agent of, Tim Hortons USA Inc.

### **16. DEFAULT AND TERMINATION**

#### **16.01 Termination – Automatic Termination Without Notice**

You will be in default of this Agreement, and all rights granted in this Agreement will immediately and automatically terminate and revert to us without notice to you, if: you, your area developer business or any of the Restaurants is adjudicated as bankrupt or insolvent; all or a substantial part of the assets thereof are assigned to or for the benefit of any creditor; a petition in bankruptcy is filed by or against you or any of the Restaurants and is not immediately contested and/or dismissed within sixty days from filing; a bill in equity or other proceeding for the appointment of a receiver or other custodian of you, your area developer business or any of the Restaurants or assets of any is filed and consented to by you; a receiver or other custodian (permanent or temporary) of all or part of your assets or property is appointed by any court of competent jurisdiction; proceedings for a composition with creditors under any state or federal law are instituted by or against you, your area developer business or any of the Restaurants; you are dissolved; execution is levied against you, your area developer business or any of the Restaurants or your property; or, the real or personal property of you, your area developer business or any of the Restaurants is sold after levy thereon by any governmental body or agency, sheriff, marshal or constable.

#### **16.02 Termination Upon Notice – No Opportunity To Cure**

You will have materially breached this Agreement and we will have the right to terminate this Agreement and all rights granted under this Agreement, without giving you any opportunity to cure the breach, effective immediately upon your receipt of notice (which, whether sent by certified mail, registered mail, overnight courier or personal physical delivery, will be deemed to have been received by you upon delivery or first attempted delivery of the notice to you) upon the occurrence of any of the following events:

1. You omitted or misrepresented any material fact in the information that you furnished to us in connection with our decision to enter into this Agreement.
2. We and you agree in writing to terminate this Agreement.

3. You (or any principal of a corporate, partnership, proprietorship or other entity franchisee) are convicted of a felony, fraud, crime involving moral turpitude, or any other crime or offense which we reasonably believe is related to your duties under this Agreement and/or your operation of any of the Restaurants, or is likely to have an adverse effect on the Tim Hortons System, the Proprietary Marks, the goodwill associated with the Proprietary Marks or our interest in the System or Proprietary Marks.
4. You (or any principal of a corporate, partnership, proprietorship or other entity franchisee) purport to transfer any rights or obligations under this Agreement, any interest in you or any of the Restaurants to any third party in violation of the terms of this Agreement.
5. You do not comply with the covenant not to compete during the term of this Agreement; violate the restrictions pertaining to the use of Confidential Information contained in this Agreement; or, do not obtain the execution of the additional covenants required in Article 12 of this Agreement.
6. You make a willful misrepresentation or do not make a material disclosure required by any governmental authority regarding any matter involving or affecting your obligations under this Agreement or the operations of the Restaurants.
7. You use or duplicate any aspect of our System, services, programs or products in an unauthorized fashion.
8. You engage in any business or market any service or product under a name or mark which, in our opinion, is confusingly similar to our Proprietary Marks.
9. You engage in conduct which reflects materially and unfavorably upon the operation and reputation of the Restaurants, us or the Tim Hortons System.

### **16.03 Termination – Fifteen Days to Cure**

Except as specifically provided elsewhere in this Agreement, you will have 15 calendar days following our delivery of written notice to you to cure any default under this Agreement and provide us with evidence that you have done so. If you have not cured any default within that time, this Agreement will terminate immediately upon expiration of the 15 day period, unless we otherwise agree in writing. You will be in default of this Agreement for any failure to comply with any of your obligations under this Agreement.

### **16.04 Cross Default**

Any default or breach by you (or any of your affiliates) of any other agreement between us or our Affiliates and you (or any of your affiliates) will be considered a default under this Agreement, and any default or breach of this Agreement by you will be considered a default or breach under any and all other agreements between us (or any of our Affiliates) and you (or any of your affiliates) unless otherwise specifically set forth in this Agreement, including without limitation, in Sections 7.02 and 17.01. If the nature of the default under any other agreement would have permitted us to terminate this Agreement if the default had occurred under this Agreement, then we (or our Affiliate) will have the right to terminate all the other agreements between us (or any of our Affiliates) and you (or any of your affiliates) in the same manner provided for in this Agreement for termination of this Agreement. Your affiliates include any persons or entities controlling, controlled by, or under common control with you.

### **16.05 Notice Required By Law**

If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement or the parties to this Agreement limits our rights of termination under this Agreement or requires longer notice or cure periods than those set forth above, then this

Agreement will be considered modified to conform to the minimum notice, cure periods or restrictions upon termination required by the laws and regulations. We will not, however, be precluded from contesting the validity, enforceability or application of the laws or regulations in any action, proceeding, hearing or dispute relating to this Agreement or the termination of this Agreement.

## **17. OTHER OBLIGATIONS AND RIGHTS ON TERMINATION OR EXPIRATION**

### **17.01 Other Obligations and Rights on Termination or Expiration**

The termination of this Agreement upon breach of your development obligations, as set forth in Section 7.01 above, will not terminate any of the Franchise Agreements executed by you before the effective date of termination of this Agreement and for which you have already commenced the operation of the Tim Hortons Restaurants covered by the Franchise Agreement(s), but after the effective date of the termination, you will have no right to develop or operate any additional Tim Hortons Restaurants without first obtaining our express written consent, which we may withhold without cause.

Upon expiration or earlier termination of this Agreement for whatever reason, you agree to:

1. Immediately pay all sums due and owing to us or our Affiliates, plus interest, and all sums due and owing to any landlord, employees, taxing authorities, advertising agencies and all other third parties.
2. If we terminate because of your default, pay us all losses and expenses we incur as a result of the default or termination, including all damages, costs, and expenses, and reasonable attorneys' and experts' fees directly or indirectly related thereto, such as (without limitation) lost profits, lost opportunities, damage inuring to our Proprietary Marks and reputation, travel and personnel costs and the cost of securing a new area developer for the Development Territory. This obligation will give rise to and remain, until paid in full, a lien in our favor against any and all of assets, property, furnishings, equipment, signs, fixtures and inventory owned by you or located at any of the Restaurants at the time of termination and against any of your money which we are holding or which is otherwise in our possession.
3. Immediately execute all agreements necessary to effectuate the termination in a prompt and timely manner.
4. Strictly comply with the post-termination/post-expiration covenants not to compete set forth in Article 12 of this Agreement.
5. Continue to abide by those restrictions pertaining to the use of our Confidential Information, trade secrets and know-how set forth in Article 11 of this Agreement.

### **17.02 No Prejudice**

The expiration or termination of this Agreement will be without prejudice to our rights against you, and will not relieve you of any of your obligations to us at the time of expiration or termination, or terminate your obligations which by their nature survive the expiration or termination of this Agreement.

## **18. UNAVOIDABLE DELAY OR FAILURE TO PERFORM (FORCE MAJEURE)**

### **18.01 Unavoidable Delay or Failure to Perform (Force Majeure)**

Any delay in our or your performance of any duties under this Agreement, or any non-performance of such duties, that is not your or our fault (as applicable) or within your or our reasonable control – including, but not limited to, fire; floods, natural disasters; Acts of God; war; civil commotion; any governmental act or regulation; any delays or defaults in deliveries by

common carriers and/or postal services and/or overnight couriers; computer network outages; late deliveries or non-deliveries of goods or non-furnishing of services by third party vendors; strikes; and any other similar event beyond such party's control) will not constitute a breach or cause a default under this Agreement, provided, however, that we or you (as applicable) will take all steps reasonably possible to mitigate damages caused by such failure or delay.

Notwithstanding the foregoing, if any such failure or delay continues for more than 180 days, we will have the right at any time thereafter during the continuance of such failure or delay to terminate this Agreement upon 30 days advance written notice to you.

## **19. ADDITIONAL PROVISIONS**

### **19.01 Publicity**

Any press release, public statements, announcement or other publicity of any type with respect to the matters referred to in this Agreement (a "**Public Statement**") shall be made only with our prior written consent and approval unless the Public Statement is required to be made by you by law, in which case you will use all reasonable efforts to obtain our approval of the form, nature and extent of the disclosure prior to issuance of such Public Statement.

### **19.02 Intentionally Deleted**

### **19.03 Waiver and Delay**

No waiver or delay in either party's enforcement of any breach of any term, covenant or condition of this Agreement will be construed as a waiver by that party of any preceding or succeeding breach, or any other term, covenant or condition of this Agreement. Without limiting any of the foregoing, the acceptance of any payment specified to be paid by you under this Agreement will not be, nor be construed to be, a waiver of any breach of any term, covenant or condition of this Agreement.

### **19.04 Notice of Our Alleged Breach**

You agree to give us immediate written notice of any alleged breach or violation of this Agreement after you have constructive or actual knowledge of, believe, determine or are of the opinion that there has been an alleged breach of this Agreement by us, including any acts of misfeasance or nonfeasance. If you do not give written notice to us of any alleged breach of this Agreement within one year from the date that you have knowledge of, believe, determine or are of the opinion that there has been an alleged breach by us, then our alleged breach will be considered to be condoned, approved and waived by you and will not be considered to be a breach of this Agreement by us, and you will be permanently barred from commencing any action against us for the alleged breach or violation.

### **19.05 Our Right To Cure Defaults**

In addition to all other remedies granted pursuant to this Agreement, if you default in the performance of any of your obligations, or breach any term or condition of this Agreement or any related agreement, then we may, at our election, immediately or at any time thereafter, without waiving any claim for breach under this Agreement and without notice to you, cure the default on your behalf. Our cost of curing the default and all related expenses will be due and payable by you on demand.

### **19.06 Our Withholding of Consent – Your Exclusive Remedy**

If you make any claim or assertion that we have unreasonably withheld or delayed any consent or approval to a proposed act by you under the terms of this Agreement, you agree that your sole remedy for the claim will be an action or proceeding to enforce the Agreement provisions, for specific performance or for declaratory judgment.

### **19.07 Integration of Agreement; No Oral Agreements or Representations**

Neither you nor we wish to enter into a business relationship with the other in which any terms or obligations are the subject of alleged oral statements or in which oral statements serve as the basis for creating rights or obligations different than or supplementary to the rights and obligations set forth herein. Accordingly, you and we agree that this Agreement, all Exhibits to this Agreement and all related agreements signed at the same time as this Agreement: (a) constitute the entire agreement between the parties with reference to the subject matter of this Agreement and supersede any and all prior negotiations, understandings, representations and agreements, and (b) supersede and cancel any prior and/or contemporaneous oral or written communications (whether described as representations, inducements, promises, agreements or any other term) between you or anyone acting on your behalf and us or anyone acting on our behalf, which might be taken to constitute agreements, representations, inducements, promises or understandings (or any equivalent to such terms) with respect to the relationship between the parties with respect to the subject matter hereof and that no reliance is being or will be placed on any such written or oral communications; provided, however, that nothing in this Section 19.07 is intended to disclaim the representations we made in the Franchise Disclosure Document that we provided to you.

No change, modification, amendment or waiver of any of the provisions of this Agreement will be effective and binding upon either party unless it is in writing, specifically identified as an amendment to this Agreement or waiver of any of the provisions of this Agreement, and signed by the party against whom enforcement of such writing is sought.

### **19.08 Notices**

Any notice required or permitted to be given under this Agreement must be in writing; must be delivered to the other party either personally, by certified mail (return receipt requested, postage prepaid), or by documented overnight delivery with a reputable carrier; and will be effective on the date that delivery is documented to have been first attempted. Any notice to us will be addressed to us at:

Tim Hortons USA, Inc.  
4150 Tuller Road, Suite 236  
Dublin, Ohio U.S.A. 43017  
Attention: Executive Vice President

With a copy to:  
Tim Hortons USA, Inc.  
4150 Tuller Road, Suite 236  
Dublin, Ohio U.S.A. 43017  
Attention: Legal Department

Any notice to you will be addressed to your address as set forth on the first page of this Agreement. Either party to this Agreement may, in writing, on ten (10) days' notice, inform the other of a new or changed address or addressee(s) to which notices under this Agreement should be sent. We may provide any notice under this Agreement (including, without limitation, any notice of termination) sufficiently in advance of any event to permit compliance with any notice requirements under state or other laws.

### **19.09 Execution, Construction and Interpretation; Further Acts**

A. This Agreement may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument. Facsimile execution signatures will be considered as binding and conclusive as if original, provided, however, that any party so executing must use all commercially reasonable efforts to furnish to the other party(ies) the originally executed document(s) at the earliest opportunity.

B. The titles and subtitles of the various articles and sections of this Agreement are inserted for convenience and will not affect the meaning or construction of any of the terms, provisions, covenants and conditions of this Agreement. The language of this Agreement will in all cases be construed simply according to its fair and plain meaning and not strictly for or against us or you.

C. It is agreed that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision will have the meaning which renders it valid.

D. The parties agree to execute all other documents and perform all further acts necessary or desirable to carry out the purposes of this Agreement.

E. Each reference in this Agreement to a corporation or partnership will also refer to a limited liability company, general or limited partnership, and any other entity or similar organization. Each reference to the organizational documents, shareholders, directors, officers and stock of a corporation in this Agreement will also refer to the functional equivalents of the organizational documents, shareholders, directors, officers and voting and/or equity rights, as applicable, in the case of a limited liability company, general partnership, limited partnership or any other entity or similar organization (this specifically includes members and managers, general and limited partners, membership interests and general and limited partnership interests).

#### **19.10 Business Judgment**

You and we recognize, and any mediator or judge is affirmatively advised, that certain provisions of this Agreement describe our right to take (or refrain from taking) certain actions in the exercise of our business judgment based on our assessment of the overall best interests of the Tim Hortons System. Where such discretion has been exercised, and is supported by our business judgment, neither a mediator nor a judge may substitute his or her judgment for the judgment we have so exercised. “**Business judgment**” is a defined term for the purposes of this Agreement and is not intended to incorporate principles related to the application of any business judgment rule in a corporate law context.

#### **19.11 Exercise of Rights**

You understand and agree that whenever we have reserved a right in this Agreement, we have the uncontrolled and unfettered right to do what we have reserved.

#### **19.12 Severability**

Nothing contained in this Agreement may be construed as requiring the commission of any act contrary to law. Whenever there is any conflict between any provision of this Agreement and any present or future statute, law, ordinance or regulation required to be made applicable to this Agreement, the latter will prevail, but the affected provision of this Agreement will be curtailed and limited only to the extent necessary to bring it within the requirement of the law. If any article, section, sentence or clause of this Agreement is held to be indefinite, invalid or otherwise unenforceable, the entire Agreement will not fail for this reason, and the balance of the Agreement will continue in full force and effect. If any court of competent jurisdiction deems any provision of this Agreement (other than for the payment of money) so unreasonable as to be unenforceable as a matter of law, the court may declare a reasonable modification of this Agreement and this Agreement will be valid and enforceable, and the parties agree to be bound by and perform this Agreement as so modified.

#### **19.13 Attorneys’ Fees and Costs of Enforcement**

The prevailing party will be entitled to recover from the other party reasonable attorneys’ fees, experts’ fees, court costs and all other expenses of litigation in any action instituted against the other party to secure or protect the prevailing party’s rights under this Agreement, to enforce

the terms of this Agreement, or in any action commenced or joined in by the other party against the prevailing party.

#### **19.14 Governing Law**

This Agreement takes effect upon its acceptance and execution by us in Ohio, and Ohio law shall apply to any claim or controversy regarding the making, entering into, performance, interpretation, breach or termination of this Agreement. In the event of any conflict of law, the laws of Ohio shall prevail, without regard to the application of Ohio conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of Ohio, and if the Restaurants to which the claim or controversy relate(s) is/are located outside of Ohio and such provision would be enforceable under the laws of the state in which the Restaurants are located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Section 19.14 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Ohio to which it would not otherwise be subject.

#### **19.15 Venue**

Any litigation brought by you against us shall be brought exclusively, and any action brought by us against you may be brought, in the federal district court covering the location at which we have our principal place of business at the time the action is commenced; provided, however, that if the federal court would not have subject matter jurisdiction had the action been commenced in such court, then, in such event, the action shall (with respect to actions commenced by you) and may (with respect to actions commenced by us) be brought in the state court within the judicial district in which we have our principal place of business at the time the action is commenced. The parties waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

#### **19.16 Punitive Damages**

In no event will we be liable to you for punitive damages in any action or proceeding arising out of or relating to this Agreement; any breach, termination, cancellation or non-renewal of this Agreement; or, in any other action or proceeding whatsoever between the parties to this Agreement and/or any of their affiliates. You hereby waive and covenant never to advance any such claim for punitive damages.

#### **19.17 Guarantee**

If you are an individual, your spouse must sign our standard form Guarantee (Exhibit C) at the same time as the execution of this Agreement or at such later time as they assume such status. If you are, or become a Business Entity during the Term, the following persons must sign our standard form Guarantee (Exhibit C) at the same time as the execution of this Agreement or at such later time as they assume such status: (a) if you are a corporation or limited liability company, all shareholders or members (as applicable) of your issued and outstanding stock or membership interests, as applicable; (b) if you are a partnership, all general partners; (c) if you are a limited partnership, the general partner and all shareholders in the general partner.

If you are in breach or default under this Agreement, we may proceed directly against each such individual and/or entity (each, a guarantor) without first proceeding against you and without proceeding against or naming in the suit any other guarantors. Your obligations and those of each guarantor will be joint and several. Notice to or demand upon guarantor will be considered notice to or demand upon you and all guarantors, and no notice or demand need be made to or upon all guarantor. The cessation of or release from liability of you or any guarantor will not relieve any other guarantor from liability under this Agreement, except to the extent that the breach or default has been remedied or money owed has been paid.

### **19.18 Survival**

Any provision of this Agreement which imposes an obligation following the termination or expiration of this Agreement will survive the termination or expiration and will continue to be binding upon the parties to this Agreement.

This Agreement will be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

### **19.19 Your Additional Acknowledgments**

You acknowledge, warrant and represent to us that:

1. You have all requisite power and authority to execute, deliver, consummate and perform this Agreement, and that your performance of this Agreement will not put you in breach of any other agreement with a third party, and will not put you in breach of any non-competition or confidentiality obligations you owe to a third party.
2. No representation has been made, and neither you nor any of your affiliates has relied on any statement made by us or our Affiliates (or any of our or their employees, directors, officers, agents or salespersons) other than those set forth in our Franchise Disclosure Document, as to (a) the future or past income, expenses, sales volume or potential profitability, earnings or income of your franchised Restaurants or any other franchised or company-owned Tim Hortons restaurants; (b) our anticipated income, earnings and growth or that of the Tim Hortons System; or, (c) your ability to procure any required license or permit that may be necessary to operate your franchised Restaurants.
3. Before executing this Agreement, you have had the opportunity to contact all of our existing area developers and franchisees.
4. You have had the opportunity to independently investigate, analyze and construe both the business opportunity being offered under this Agreement, and the terms and provisions of this Agreement, using the services of legal counsel, accountants or other advisers (if you so elect) of your own choosing. You have been advised to consult with your own advisers with respect to the legal, financial and other aspects of this Agreement, the franchised Restaurants, and the prospects for those Restaurants. You have either consulted with these advisers or have deliberately declined to do so.
5. You have received from us a copy of our Franchise Disclosure Document at least fourteen (14) calendar days before the execution of this Agreement or at least fourteen (14) calendar days before the payment by you to us of any consideration in connection with the sale or proposed sale of the area franchise granted by this Agreement.
6. You have carefully considered the nature and extent of the restrictions upon you and the rights and remedies conferred upon you under this Agreement. Such restrictions, rights and remedies: (a) are reasonable, including, but not limited to, their term and geographic scope; (b) are designed to preclude competition which would be unfair to us; (c) are fully required to protect our legitimate business interests; and, do not confer benefits upon us that are disproportionate to your detriment.
7. You affirm that all information set forth in all applications, financial statements and submissions to us are true, complete and accurate in all respects, and you expressly acknowledge that we are relying on the truthfulness, completeness and accuracy of this information.



**20. SUBMISSION OF AGREEMENT**

**20.01 Submission of Agreement**

The submission of this Agreement to you does not constitute an offer. This Agreement will become effective only upon the execution of this Agreement by both us and you. Our date of execution will be considered the date of execution of this Agreement.

THIS AGREEMENT WILL NOT BE BINDING ON US UNLESS AND UNTIL IT HAS BEEN ACCEPTED AND SIGNED BY AN AUTHORIZED OFFICER OF OURS.

YOU ACKNOWLEDGE THAT NO REPRESENTATIONS OR PROMISES WERE MADE TO YOU OTHER THAN THOSE SET FORTH IN OUR FRANCHISE DISCLOSURE DOCUMENT, OR THAT IF ANY OTHER REPRESENTATIONS OR PROMISES WERE MADE TO YOU, YOU ARE NOT RELYING ON THEM.

YOU HAVE READ ALL OF THE FOREGOING AGREEMENT AND ACCEPT AND AGREE TO EACH AND ALL OF THE PROVISIONS, COVENANTS AND CONDITIONS OF THE FOREGOING AGREEMENT.

Dated: \_\_\_\_\_, 2014

AREA DEVELOPER:

Attest:

\_\_\_\_\_  
Witness/Date

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

Its:

I/We have authority to bind the \_\_\_\_\_

Dated: \_\_\_\_\_, 2014

FRANCHISOR:

TIM HORTONS USA INC.

Attest (as to both):

\_\_\_\_\_  
Witness/Date

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

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

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

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

EXHIBIT A  
DEVELOPMENT TERRITORY

EXHIBIT B  
FRANCHISE AGREEMENT

EXHIBIT C  
GUARANTEE

EXHIBIT C  
GUARANTEE

GUARANTEE, INDEMNIFICATION AND ACKNOWLEDGEMENT

As an inducement to TIM HORTONS USA INC. (“**Franchisor**”) to execute the Area Development Agreement dated \_\_\_\_\_, 2013 (the “**Agreement**”) with \_\_\_\_\_, a \_\_\_\_\_ (“**Area Developer**”), and in consideration of Franchisor executing the Agreement and of the sum of One Dollar (\$1.00) now paid by Franchisor to \_\_\_\_\_, a \_\_\_\_\_, \_\_\_\_\_, individually and \_\_\_\_\_, individually (collectively, the “**Guarantors**”), the receipt and sufficiency of which is hereby acknowledged, the Guarantors jointly and severally agree as follows:

1. Guarantors shall pay or cause to be paid to Franchisor all monies payable by Area Developer under the Agreement on the days and times and in the manner therein appointed for payment thereof.
2. Guarantors shall unconditionally guarantee full performance and discharge by Area Developer of all the obligations of Area Developer under the Agreement at the times and in the manner therein provided, and agree that Section 12 of the Agreement shall be binding on the Guarantors personally, as if the Guarantors were the Area Developer under the Agreement.
3. Guarantors shall indemnify and save harmless Franchisor and its affiliates against and from all losses, damages, costs, and expenses which Franchisor and/or its affiliates may sustain, incur, or become liable for by reason of:
  - a. the failure for any reason whatsoever of Area Developer to pay the monies payable pursuant to the Agreement or to do and perform any other act, matter or thing pursuant to the provisions of the Agreement; or
  - b. any act, action, or proceeding of or by Franchisor for or in connection with the recovery of monies or the obtaining of performance by Area Developer of any other act, matter or thing pursuant to the provisions of the Agreement.
4. Franchisor shall not be obligated to proceed against Area Developer or exhaust any security from Area Developer or pursue or exhaust any remedy, including any legal or equitable relief against Area Developer, before proceeding to enforce the obligations of the Guarantors herein set out, and the enforcement of such obligations may take place before, after, or contemporaneously with, enforcement of any debt or obligation of Area Developer under the Agreement.

5. Guarantors shall faithfully, honestly, and diligently perform their duties and devote their skill and attention to the development of Tim Hortons Restaurants in the Development Territory and pursuant to the Development Schedule and will abide by all of the provisions of the Agreement. *Notwithstanding the provisions of this Paragraph 5, Franchisor acknowledges that \_\_\_\_\_ has advised that he/she has other business interests and, as such, will not be devoting his/her skill and attention to the development of Tim Hortons Restaurants under the Agreement.*
6. Without affecting the Guarantors' obligations under this Guarantee, Franchisor, without notice to the Guarantors, may extend, modify, or release any indebtedness or obligation of Area Developer, or settle, adjust, or compromise any claims against Area Developer. Guarantors waive notice of amendment of the Agreement and notice of demand for payment or performance by Area Developer.
7. Guarantors' obligations hereunder shall remain in full force and effect, and shall be unaffected by (i) the unenforceability of the Agreement against Area Developer; (ii) the termination of any obligations of Area Developer under the Agreement by operation of law or otherwise; (iii) the bankruptcy, insolvency, dissolution, or other liquidation of Area Developer, including, without limitation, any surrender or disclaimer of the Agreement by the trustee in bankruptcy of Area Developer; (iv) Franchisor's consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor's proceedings of or against Area Developer, or by the winding-up or dissolution of Area Developer, or any other event or occurrence which would have the effect at law of terminating the existence of Area Developer's obligations prior to the termination of the Agreement; or (v) by any other agreements or other dealings between Franchisor and Area Developer having the effect of amending or altering the Agreement or Area Developer's obligations thereunder, or by any want of notice by Franchisor to Area Developer of any default of Area Developer or by any other matter, thing, act, or omission of Franchisor whatsoever.
8. This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the Guarantors which arose from events which occurred on or before the effective date of such termination or expiration shall remain in full force and effect until satisfied or discharged by the Guarantors, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual Guarantor, the estate of such Guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death; and the obligations of any other Guarantor will continue in full force and effect.
9. The provisions of Section 19 of the Agreement shall apply as to any interpretation or enforcement of this Guarantee, and the provisions of Section 19.08 of the

Agreement shall apply to any notice to either party, except that notices to Guarantors shall be sent as follows:

Notices to Guarantors:

_____	_____
	_____
	_____
_____	_____
	_____
	_____
_____	_____
	_____
	_____

10. Without limiting the general provisions of the Agreement in any way, Guarantors \_\_\_\_\_ and \_\_\_\_\_ hereby warrant that they own 100% of the Area Developer's *[stock/membership interests]* and agree that they shall not sell or transfer any interest in the Area Developer during the term of the Agreement (or any extension or renewal thereof) without having first obtained the prior written consent of Franchisor as described in the Agreement.

IN WITNESS WHEREOF, the undersigned have signed this Guarantee, Indemnification and Acknowledgement as of the date of the Agreement.

GUARANTORS

\_\_\_\_\_  
Witness

\_\_\_\_\_  
\_\_\_\_\_, individually

\_\_\_\_\_  
Witness

\_\_\_\_\_  
\_\_\_\_\_, individually

\_\_\_\_\_  
Witness

\_\_\_\_\_  
\_\_\_\_\_, individually

***Signatures continued on next page***

Countersigned by Franchisor

TIM HORTONS USA INC.  
FRANCHISOR

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

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

Legal Department \_\_\_\_\_



**EXHIBIT W**  
**WEF LOAN DOCUMENTS**

<b>CREDITOR:</b> Western Equipment Finance, Inc. PO Box 640, 503 Highway 2 West Devils Lake, ND 58301	<b>DEBTOR:</b>
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**Collateral Description:**

Qty	Serial No.	Collateral Manufacturer, Model No, Description and Collateral Location
		See Collateral Schedule "A"

**TERMS:**

Initial Term	Payment Due	Base Periodic Payment	Amount Paid in Advance	# of Payments in Advance	# of Payments Remaining	Total # of Payments
		(includes applicable taxes)	(includes applicable taxes)	>		

The words "you" and "your" refer to the "Debtor." The words "we", "us" and "our" refer to the "Creditor."

**1. SECURITY AGREEMENT:** Subject to the terms of this Equipment Financing Agreement ("Agreement"), we agree to provide financing to you, secured by the items of collateral described above ("Collateral") and you hereby grant us a security interest under the Uniform Commercial Code ("UCC") in the Collateral to secure all of your obligations to us now existing or hereafter arising under this Agreement and any present and future agreements with us or any of our affiliates (collectively, the "Obligations"). You shall insure that such security interest is and shall remain a sole first security interest and free of any other security interest, lien or encumbrance other than a subordinate lien filed by Tim Hortons USA Inc. or its affiliate ("Liens").


**2. TERM:** The term of this Agreement shall commence upon earlier of the following dates (the "Commencement Date"): (a) the date we first make payment to the supplier of the Collateral ("Supplier"); (b) the date reflected on the attached Collateral Acceptance or (c) upon our written acceptance of this Agreement and shall terminate on last day of the term stated above unless such term is extended or otherwise modified. Your obligations shall end upon full performance and observance by you of each and every term, condition and covenant set forth in this Agreement. Payments under this Agreement commence on either the 5<sup>th</sup>, 15<sup>th</sup>, or 25<sup>th</sup> day of the month following the Commencement Date. A prorated payment will be due from the Commencement Date until the first payment date. Scheduled payments will be due on the same day of each period as referenced above. You promise to pay us scheduled payments without the need of an invoice.

**3. TAX AND INDEMNITY:** You agree to pay when due a lien filing fee in the amount of \$200.00, sale and use taxes, and personal property taxes and all other taxes, fees and charges relating to the ownership, leasing, rental, sale, purchase, possession or use of the Collateral.

**4. LOCATION, USE AND RETURN:** You agree that (a) you shall, and we are under no obligation to, ensure that the Collateral (i) is located as indicated above, and will not be removed therefrom without our prior written consent; (ii) remains separate, identifiable personal property; (iii) is delivered, installed, tested, adjusted, maintained, serviced, and kept in good condition, except for ordinary wear and tear; (iv) is free and clear of Liens other than a subordinate lien filed by Tim Hortons USA Inc. or its affiliate; and (v) is used by qualified personnel in compliance with all manufacturer's instructions or requirements, and all laws, regulations and/or insurance policies; (b) ANY CHANGE IN LOCATION OF COLLATERAL REQUIRES ADVANCE WRITTEN CONSENT FROM US; (c) you will not alter or add to the Collateral without our prior written consent; (d) we or our agent have the right to inspect and/or test the Collateral wherever located, and you shall make the Collateral available at any time for the same; (e) upon your default of this Agreement for any reason, we may enter and remove the Collateral wherever located without notice or liability to you; (f) at your own cost and expense, you will keep the Collateral eligible for any manufacturer's certification in compliance with all applicable laws and in good condition, except for ordinary wear and tear.

**5. ASSIGNMENT:** Without our prior written consent, you shall not assign, transfer, pledge, hypothecate, sublet or lend the Collateral (other than the granting of a subordinate lien to Tim Hortons USA Inc. or its affiliate) and any such assignment, transfer, or use shall be deemed a default hereunder. For purposes of this Agreement, a change of control of the ownership of Debtor for any reason shall be considered an assignment of this Agreement. You acknowledge that we may sell and/or assign, in whole or part, our interest in this Agreement without notice to you. Upon the assignment of this Agreement, our assignee shall be entitled to exercise any and all rights and remedies available to us hereunder. You agree that you will not assert against our assignee any defense (other than the defense of payment) or counterclaim or setoff on account of claims you might have against us in any action for payments or possession brought by our assignee. You also agree to settle all claims with respect to the Collateral directly with the Supplier, and you acknowledge that we and our assignee(s) shall not be liable for such service or other claims.

**6. INSURANCE, LOSS AND DAMAGE:** You are responsible for and bear the risk of loss, theft, destruction or damage to the Collateral (collectively "Loss") from any cause whatsoever, whether or not insured. No such Loss will relieve you of any obligation under this Agreement. During the term of this Agreement, you agree to obtain and maintain, at your expense, property insurance protecting the Collateral against loss, theft, destruction or damage in an amount not less than its full replacement value, naming us as loss payee on a "Lenders Loss Payable" endorsement (collectively "Required Insurance"). You must provide us satisfactory written evidence of Required Insurance within thirty (30) days of the commencement of this Agreement or any subsequent written request by us. If you do not do so, we may obtain insurance from an insurer of our choosing in such forms and amounts as we deem reasonable to protect our interests (collectively "Equipment Insurance"). Equipment Insurance will cover the Collateral and us; it will not name you as an insured and may not cover all of your interest in the Collateral. You agree to pay us periodic charges for Equipment Insurance (collectively "Insurance Charges") that include: a premium that may be higher than if you maintained the Required Insurance separately; a finance charge of up to 1.5% per month on any advances made by us or our agents; and, commissions, billing and processing fees; any or all of which may generate a profit to us or our agents. If you fail to provide satisfactory evidence of Required Insurance by the due date, we also may pay Insurance Charges by debiting your account under any previously authorized automatic payment. We shall discontinue billing or debiting Insurance Charges for Equipment Insurance upon receipt of satisfactory evidence of Required Insurance. You must promptly notify us of any loss or damage to Collateral which makes any item of Collateral unfit for continued or repairable use. You hereby irrevocably appoint us as your attorney-in-fact to execute and endorse all checks or drafts in your name to collect under any Required Insurance. We may apply proceeds from Required Insurance to the Obligations as we deem appropriate.

**Agent Name & Phone Number:** \_\_\_\_\_ 

**Insurance Company / Policy Number:** \_\_\_\_\_

INITIAL HERE \_\_\_\_\_ 

**7. LATE CHARGES.** In the event you shall fail to pay any amount required to be paid to us within ten (10) days of the demand or due date, you shall also pay to us a late payment charge of five percent (5%) of any amount owing hereunder and not paid when due. You shall also pay to us a payment processing charge of \$25.00 for any payments made by a method other than by check or pre authorized payment. If, for any reason, your check is returned to us, or a request for payment pursuant to a pre authorized payment agreement is not honored due to insufficient funds in the subject account, a \$25 fee will be charged to you.

**8. DEFAULTS AND REMEDIES:** If any of the following events should occur (an "Event of Default"), this Agreement can be declared in default at our sole discretion: (i) you fail to pay any amount owing hereunder when due, or to perform any obligations related to this Agreement, or any other agreement with us or our affiliates; (ii) you default under any material third party agreement; (iii) any representation made by you shall be determined to be false; (iv) the Collateral is seized or levied upon under any legal or governmental process; or (v) you (or any guarantor of your obligations hereunder) make an assignment for the benefit of its creditors, or become subject to any proceedings under the U.S. Bankruptcy Code or any state reorganization, receivership, insolvency or dissolution proceedings. Upon an Event of Default, we may, at our sole discretion, exercise one or more of the following remedies, without any further notice to you: (a) demand that you, at your expense, return the Collateral to a location designated by us, in good condition and repair; (b) without liability or cost to us, enter into your premises and remove the Collateral, and store and/or dispose of the Collateral at its then existing location(s); (c) demand that you pay to us the outstanding principal balance and other amounts then due and past due under this Agreement, together with interest thereon from the date of default at the default interest rate of 1.5% per month; and/or (d) any other rights or remedies permitted by law. Notwithstanding any return, reletting, sale and/or repossession of any unit of the Collateral, you shall remain fully liable for the performance of your obligations herein, and none of our rights or remedies shall be impaired. You release us from any requirement to post a bond or surety regarding any repossession or disposition of the Collateral. You grant us a security interest and right of setoff against all deposits, account balances and credits with or due from us or any property in which we have or acquire a separate security interest (and/or our affiliates) now existing or hereafter arising, and all proceeds thereof. We shall have the right to seek a deficiency from you following our disposition of the Collateral after crediting against your obligations hereunder the net proceeds of any sale of the Collateral.

**9. NOTICES, FINANCIALS, AND DOCUMENTATION:** Service of all notices under this Agreement shall be sufficient if given personally or mailed to us at the address set forth below, or to you at your address set forth above or at such other address as a party may provide in writing from time to time. Any notices required by this Agreement shall be deemed to be delivered when a record properly directed to the intended recipient has been (a) deposited with the US Postal Service, (b) transmitted by facsimile, (c) transmitted through the Internet, or (d) has been personally delivered. During the term of this Agreement, you shall promptly furnish to us, in a form satisfactory to us, current financial and income statements, securities filings, and all other documents that we deem necessary to evidence and protect our rights or interest hereunder. You will promptly take such further action as we reasonably may request in order to more effectively carry out the intent and purpose of this Agreement.

**10. REPRESENTATIONS, WARRANTIES AND COVENANTS:** You acknowledge, agree, certify, represent and warrant that (a) **THIS AGREEMENT CANNOT BE TERMINATED OR CANCELED;** (b) **YOUR PAYMENT OBLIGATIONS HEREUNDER ARE ABSOLUTE AND UNCONDITIONAL AND PAYMENTS CANNOT BE WITHHELD, SETOFF OR REDUCED FOR ANY REASON;** (c) prepayment of any obligations hereunder shall be made in accordance with the attached prepayment addendum; (d) you bear all risks regarding the Collateral; (e) this Agreement and the Collateral is solely for business or commercial use, and the Collateral may not be used for consumer or household purposes; (f) you will give us prior notice of any changes in your name, state of organization; (g) the liability of multiple Debtors shall be joint and several; (h) our delayed or partial exercise of any right or remedy shall not preclude any further exercise thereof; (i) there are no pending or threatened claims, undisclosed matters, or changes of any kind against you or your guarantors which could materially or adversely affect your ability to meet your obligations herein; (j) no salesman or agent of the Supplier is authorized to waive or alter any term or condition of this Agreement and no representation as to the Collateral or any matter by the Supplier shall in any way effect your duty to make the payments and perform other obligations as set forth in this Agreement; (k) you shall not suspend your business, sell or dispose of a substantial part of your assets, enter into a reorganization unless you are the surviving entity, or transfer your assets outside the United States of America; (l) as required by Section 4107(d)(2) of the Small Business Jobs Act of 2010, the principals<sup>1</sup> of Debtor and its affiliates have not been convicted of, or pleaded *nolo contendere* to, a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). <sup>1</sup>The term "principals" is defined as follows: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock equivalent of the entity.

**11. INDEMNITY:** We are not responsible for any injuries, damages, penalties, claims or losses, including legal expenses incurred by you, or any other person caused by the installation, manufacture, selection, purchase, lease, ownership, possession, maintenance, condition, use, return or disposition of the Collateral. You agree to reimburse us for any liabilities, costs or expenses incurred by us in connection with this Agreement, and to defend us against any claims for such injuries, damages, penalties, claims or losses.

**12. ATTORNEYS' FEES AND EXPENSES:** In the event either party to this Agreement commences an action with respect to this Agreement, the non-prevailing party shall pay the reasonable attorneys' fees and expenses incurred by the prevailing party in such action.

**13. MISCELLANEOUS:** Subject to the limitations herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns. This Agreement may be executed in any number of counterparts, which together shall constitute a single instrument. Either party's facsimile signature will be effective to bind such party to the document so executed. You agree that a copy of this Agreement may be introduced in lieu of the original thereof and without further foundation. The terms of this Agreement shall be severable and if any term thereof is declared invalid, in whole or in part, this Agreement shall continue in full force and effect as if such invalid term were not originally included herein. All of your indemnity and reimbursement obligations hereunder and all rights, benefits and protections provided to us by warranty disclaimers shall survive the cancellation, expiration or termination of this Agreement.

**14. DISCLAIMER OF WARRANTY. WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE COLLATERAL, OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER. You unconditionally and irrevocably waive all rights and remedies against us, and we shall not be liable to you for any matter relating to the order, purchase, selection, manufacture, delivery, installation, operation, or service of the Collateral or the Supplier. We are not a manufacturer or supplier of, nor do we endorse, any item of the Collateral, and we are not bound by any promises made by any manufacturer, supplier, or distributor of the Collateral.**

INITIAL HERE \_\_\_\_\_ 

15. APPLICABLE LAW AND VENUE: ALL MATTERS INVOLVING THE CONSTRUCTION, VALIDITY, PERFORMANCE, OR ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF OHIO. YOU AND WE CONSENT TO THE PERSONAL JURISDICTION OF THE COURTS OF THE STATE OF OHIO AND AGREE THAT ALL LAWSUITS COMMENCED BY EITHER PARTY AGAINST THE OTHER PARTY MUST BE FILED IN SUCH COURTS. JURISDICTION AND VENUE (LOCATION) FOR ANY DISPUTE, SUIT OR ACTION ARISING UNDER OR RELATING TO THIS AGREEMENT, SHALL BE IN FRANKLIN COUNTY, STATE OF OHIO. THE PARTIES EACH WAIVE THEIR RIGHT OF JURY TRIAL.

16. LIMITED PREARRANGED AMENDMENTS; AUTHORIZATION: In the event it is necessary to amend this Agreement to correct an obvious error or to reflect a change in one or more of the following: (a) our actual cost of procuring the Equipment, or (b) our actual cost of providing the Equipment to you, or (c) a change in rental payments as a result of (a) or (b) above or (d) description of the Equipment, you agree that any such amendment may be described in a letter from us to you, whereupon this Agreement shall be deemed amended and such amendments shall be incorporated in this Agreement herein as if originally set forth.

17. PRE AUTHORIZED PAYMENTS: You hereby authorize us to initiate debit entries to your ( ) checking or ( ) savings account (select one), indicated below for payment of sums due in connection with the Agreement. You authorize the debit of regular monthly payments as well as debit entries for charges where the amount and time frame varies, including, but not limited to, insurance, and late fee payments. You further authorize the depository named below to charge the indicated account(s). You represent that the person signing this Agreement is an authorized signer on the Debtor's checking account.

[Complete the following and provide a voided check for this account:]

DEPOSITORY NAME:	_____
TRANSIT/ROUTING NO:	_____
ACCOUNT NO:	_____

In the event funds are not available in the bank account(s) noted above on the day payment is due, it is your responsibility to remit payment to us immediately, in order to avoid the assessment of a late payment charge. This authorization is to remain in full force and effect until we shall have received written notification of its termination in such time and in such manner as to afford us and depository a reasonable opportunity to act on it.

18. DEBTOR RESOLUTION: The undersigned does hereby certify that: The complete and correct name of the legal entity is listed under the Agreement Acceptance section and the person(s) whose signatures appears as the Authorized Signature ("Authorized Signatory") may enter into any agreements of any nature with us, and those agreements will bind the legal entity. Specifically, but without limitation, the Authorized Signatory is authorized, empowered, and directed on behalf of the legal entity to execute and deliver to us the equipment finance agreement, promissory note or notes, lease documents, or other evidence of the legal entity's credit accommodations, on our forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the legal entity's indebtedness to us and also to execute and deliver to us one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations. The Authorized Signatory is duly elected, appointed, or employed by or for the legal entity, as the case may be, and occupies the position set opposite his or her respective name. This Resolution now stands of record on the books of the legal entity, is in full force and effect, and has not been modified or revoked in any manner whatsoever. IN TESTIMONY WHEREOF, we have hereunto set our hand and attest that the signature set opposite the name listed is his or her genuine signature.

CERTIFIED TO AND ATTESTED BY Authorized Signer for Debtor (other than Authorized Signature under Agreement Acceptance):

By: \_\_\_\_\_  
Signature Printed Name Title

19. GUARANTEE: In consideration of us financing the Collateral for Debtor and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned (each a "Guarantor") personally, absolutely and unconditionally guarantees payment and performance by the Debtor of all the terms and conditions of this Agreement. The undersigned waives notice of any amendment or extension of this Agreement (and this Agreement as amended or extended shall be so guaranteed by the undersigned), waives any requirement that we enforce our rights against Debtor or the Collateral before enforcing this guarantee, and waives diligence, notice of acceptance, promptness and any other defenses available to a guarantor or surety. Payment of costs and expenses of enforcement of this guarantee shall be governed by Section 12 above. This guarantee will not be discharged or affected by the death, dissolution, termination, bankruptcy or insolvency of the Debtor or another Guarantor and will bind Guarantor's heirs, personal representatives, successors and assigns. If more than one Guarantor has signed this Guaranty, each Guarantor agrees that his/her liability is joint and several. Guarantor authorizes us and any of our designees to obtain and share with others credit bureau reports regarding Guarantor's personal credit, and make other credit inquiries that we determine are necessary. ALL MATTERS INVOLVING THE CONSTRUCTION, VALIDITY, PERFORMANCE, OR ENFORCEMENT OF THIS GUARANTY SHALL BE GOVERNED BY THE LAWS OF THE STATE OF OHIO. GUARANTOR AND CREDITOR CONSENT TO THE PERSONAL JURISDICTION OF THE COURTS OF THE STATE OF OHIO AND AGREE THAT ALL LAWSUITS COMMENCED BY GUARANTOR OR CREDITOR AGAINST THE OTHER PARTY MUST BE FILED IN SUCH COURTS. JURISDICTION AND VENUE (LOCATION) FOR ANY DISPUTE, SUIT OR ACTION ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE IN FRANKLIN COUNTY, STATE OF OHIO. GUARANTOR AND CREDITOR EACH WAIVE THEIR RIGHT OF JURY TRIAL.

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_ Signature: \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_ Address: \_\_\_\_\_

INITIAL HERE \_\_\_\_\_

**20. AGREEMENT ACCEPTANCE:** Your signature below will bind you to the terms of this Agreement. However, we will not be bound until we accept manually by signing below or by funding the Agreement, whichever occurs first.

**DEBTOR:**

Complete Legal Name of Debtor

\_\_\_\_\_  
Authorized Signature of Debtor                      Title                      Date

\_\_\_\_\_  
Printed Name

Fax: \_\_\_\_\_ Email: \_\_\_\_\_



\_\_\_\_\_  
Authorized Signature of Debtor                      Title                      Date

\_\_\_\_\_  
Printed Name

Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**U. S. PATRIOT ACT DISCLOSURE NOTICE: IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**  
To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you is that: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**CREDITOR:** Western Equipment Finance, Inc.  
By: \_\_\_\_\_  
\_\_\_\_\_  
Authorized                      Signature                      of                      Creditor



**COLLATERAL SCHEDULE "A"**

**Agreement #**

This Collateral Schedule "A" is attached to and made part of that certain Equipment Financing Agreement between Western Equipment Finance, Inc., (the "Creditor") and the undersigned (the "Debtor"), dated by the Debtor \_\_\_\_\_.

Quantity	Serial No.	Collateral Manufacturer, Model No, Description

Together with all accessions, additions and attachments thereto and located at:

This Collateral Schedule "A" is hereby verified as correct by the undersigned Debtor, who acknowledges receipt of a copy.

**DEBTOR:**

Complete Legal Name of Debtor

\_\_\_\_\_  
Authorized Signature of Debtor                      Title

\_\_\_\_\_  
Authorized Signature of Debtor                      Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

**A FASCIMILE OF THIS SIGNED DELIVERY ACKNOWLEDGEMENT AND ACCEPTANCE**

**MAY BE DEEMED THE ORIGINAL COPY BY CREDITOR**



**PREPAYMENT ADDENDUM**

Contract #

This Prepayment Addendum is attached to and made part of that certain Equipment Financing Agreement (“Agreement”) between Western Equipment Finance, Inc. and the undersigned. The obligations under the Agreement may be paid in full, but not less than full, prior to the original maturity, by paying an amount equal to the then balance remaining plus the applicable prepayment amount, if any. The prepayment amount means an amount equal to as follows:

- 5% of the balance remaining if prepayment occurs during months 1 through 12 of the term
- 4% of the balance remaining if prepayment occurs during months 13 through 24 of the term
- 3% of the balance remaining if prepayment occurs during months 25 through 36 of the term
- 2% of the balance remaining if prepayment occurs during months 37 through 48 of the term
- 1% of the balance remaining if prepayment occurs during months 49 through 60 of the term

If the term is greater than 60 months then there is no prepayment amount for prepayments occurring after month 60 of the term.

The term “balance remaining” means, at any given time, an amount equal to the sum of (a) all accrued and unpaid interest, fees and charges then due and past due under the Agreement, if any, and (b) the principal balance outstanding under the Agreement.

Western Equipment Finance, Inc.

Debtor:

\_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_

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

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

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

**ITEM 23**  
**RECEIPT**

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Tim Hortons USA Inc. offers you a franchise, it must provide this Disclosure Document to you:

(a) 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale, or

(b) Under Rhode Island law, if applicable, at the earlier of (i) your first personal meeting to discuss the franchise, or (ii) 10 business days before you sign a binding agreement with, or make payment to us or an affiliate in connection with the proposed franchise sale, or

(c) Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Tim Hortons USA Inc. does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and to the appropriate state agency listed in Exhibit A.

The franchisor is Tim Hortons USA Inc., located at 4150 Tuller Road, Suite 236, Dublin, Ohio 43017. Its telephone number is (614) 791-4200.

Issuance date: April 1, 2014, as amended December 19, 2014

The franchise seller is John Golaszewski. His address is 4150 Tuller Road, Suite 236, Dublin, Ohio 43017 and his telephone number is (614) 791-4200. A list of any additional franchise sellers, if any, will be attached to this Receipt at the time of the sale.

Tim Hortons USA Inc. authorizes the respective state agencies identified on Exhibit B to receive service of process for it in the particular state.

I have received a Franchise Disclosure Document dated April 1, 2014, as amended December 19, 2014 (the effective date of this disclosure document in states with franchise registration laws is listed on the State Cover Page). This Disclosure Document included the following Exhibits:

- A. List of Administrators
- B. Agents for Service of Process
- C. Table of Contents to Manual
- D. Financial Statements
- E. Standard Restaurant Franchise Agreement
- F. Addendum for Non Institutional Kiosk
- G. Addendum for Institutional Kiosk
- H. Standard Form Lease
- I. Standard Form SubLease
- J. Tim Card Addenda and Participation Agreement
- K. Security Agreement
- L. Deposit Account Control Agreement
- M. Letter of Intent
- N. Compliance Certification
- O. List of Current Franchisees
- P. List of Recent Former Franchisees
- Q. State Specific Disclosures and Agreement Amendments
- R. Cold Stone Creamery Addendum
- S. SBA Addendum



- T. VetFran Addendum to the Franchise Agreement
- U. Lease Option Agreement
- V. Area Development Agreement
- W. WEF Loan Documents

**FRANCHISEE(S)**

**Date of Receipt:** \_\_\_\_\_

\_\_\_\_\_  
**(Official Given Name[s] & Surname[s]), Individually**

**Date of Receipt:** \_\_\_\_\_

\_\_\_\_\_  
**(Official Given Name[s] & Surname[s]), Individually**

**PLEASE DATE THIS COPY THE DAY YOU RECEIVE THIS DISCLOSURE DOCUMENT  
This copy of the Receipt must be returned to Tim Hortons**

**ITEM 23**  
**RECEIPT**

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Tim Hortons USA Inc. offers you a franchise, it must provide this Disclosure Document to you:

(a) 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale, or

(b) Under Rhode Island law, if applicable, at the earlier of (i) your first personal meeting to discuss the franchise, or (ii) 10 business days before you sign a binding agreement with, or make payment to us or an affiliate in connection with the proposed franchise sale, or

(c) Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Tim Hortons USA Inc. does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and to the appropriate state agency listed in Exhibit A.

The franchisor is Tim Hortons USA Inc., located at 4150 Tuller Road, Suite 236, Dublin, Ohio 43017. Its telephone number is (614) 791-4200.

Issuance date: April 1, 2014, as amended December 19, 2014

The franchise seller is John Golaszewski. His address is 4150 Tuller Road, Suite 236, Dublin, Ohio 43017 and his telephone number is (614) 791-4200. A list of any additional franchise sellers, if any, will be attached to this Receipt at the time of the sale.

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I have received a Franchise Disclosure Document dated April 1, 2014, as amended December 19, 2014 (the effective date of this disclosure document in states with franchise registration laws is listed on the State Cover Page). This Disclosure Document included the following Exhibits:

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- U. Lease Option Agreement
- V. Area Development Agreement
- W. WEF Loan Documents

**FRANCHISEE(S)**

**Date of Receipt:** \_\_\_\_\_

\_\_\_\_\_  
**(Official Given Name[s] & Surname[s]), Individually**

**Date of Receipt:** \_\_\_\_\_

\_\_\_\_\_  
**(Official Given Name[s] & Surname[s]), Individually**

**PLEASE DATE THIS COPY THE DAY YOU RECEIVE THIS DISCLOSURE DOCUMENT  
Prospective Franchisee's copy of Receipt**