Exhibit 10.45  
  
 FRANCHISE AGREEMENT  
  
 THIS AGREEMENT made this day of Month, \_\_\_\_\_, by and between Maui Tacos  
International, Inc., a Georgia corporation, located at 000 Xxxxxxxx, 00xx Xxxxx,  
Xxx Xxxx, Xxx Xxxx 00000 (the "Franchisor"), and Franchisee located Address (the  
"Operator," as also defined in Article 10):  
  
 DEFINITIONS  
  
 In this Agreement the following capitalized terms shall have the meanings  
set forth below, unless the context otherwise requires:  
  
 (i) A Maui Tacos Branded Product is any product now existing or developed  
in the future that bears Franchisor's Marks and is sold by some or all Maui  
Tacos Franchisees or Franchisor or other entities such as supermarkets, grocery  
stores or convenience stores.  
  
 (ii) A Maui Tacos Distribution Point or Distribution Point is any system  
other than a Maui Tacos Restaurant, where Authorized Maui Tacos Products using  
Franchisor's Marks are sold, such as carts, kiosks, vending machines or other  
product distribution systems developed now or in the future and authorized by  
Franchisor.  
  
 (iii) A Maui Tacos Restaurant is a restaurant or other outlet, whether a  
Traditional Restaurant or a Nontraditional Restaurant, that specializes in the  
sale of Authorized Maui Tacos Products, as defined below, is operated under  
Franchisor's Marks, as defined below, and is authorized by a Franchise or  
License Agreement made or approved by Franchisor.  
  
 (iv) A Nontraditional Restaurant is a Maui Tacos Restaurant located within  
another primary business or in conjunction with other businesses, some of which  
may be other fast-food type operations. A Nontraditional Maui Tacos Restaurant  
will likely be installed within other primary businesses or within a  
multi-branded facility where other branded or nonbranded restaurants share  
common space.  
  
 (v) A Traditional Restaurant is a business premises that exists primarily  
as a Maui Tacos Restaurant. However, such Traditional Restaurant may also have  
other types of businesses located in it, but in such case the Maui Tacos  
Restaurant is the primary business.  
  
 (vi) A System Restaurant is a Maui Tacos Restaurant from which Maui Tacos  
Authorized Products are sold for on-premises and off-premises consumption and  
from which Authorized Maui Tacos Products may be delivered for off-premises  
consumption.  
  
 (vii) Authorized Products or Maui Tacos Authorized Products are products  
approved or authorized by Franchisor in accordance with Article 5 or 8 of this  
Agreement.  
  
 WHEREAS, Franchisor is the owner of the trademark "Maui Tacos", which has  
been filed and/or registered with the United States Patent and Trademark Office  
of the United States of America, and may, in the future become the owner,  
licensee and/or authorized distributor for other  
  
  
trademarks, including logos and designs, related or unrelated to Franchisor's  
Marks (referred to in this Agreement as "Franchisor's Marks"); and  
  
 WHEREAS, Franchisor has developed and continues to develop a system for  
merchandising Maui Tacos authorized products, which system includes distinctive  
signs, food recipes, uniforms, and various trade secrets and other confidential  
information, and in some cases also includes architectural designs, equipment  
specifications, layout plans, inventory, record-keeping and marketing techniques  
(the "System") which are materially reflected in Franchisor's Operations Manual  
and Construction Manual (collectively, the "Manuals"). Franchisor identifies the  
System by Franchisor's Marks, and such other Trademarks, service marks, trade  
names, logos and designs as may be designated by Franchisor in writing as being  
authorized for use in the System. Franchisor's Marks identify for the public the  
source of the services rendered in accordance with the standards and  
specifications established by Franchisor; and  
  
 WHEREAS, the System as used in existing Traditional and Nontraditional  
Maui Tacos Restaurants and Maui Tacos Distribution Points have established or  
will establish a reputation for quality, cleanliness, appearance and service,  
and through such operations and continued marketing and advertising efforts,  
have created demand and goodwill for the authorized Maui Tacos food products  
sold as a result of which the System has acquired valuable goodwill and a  
favorable reputation; and  
  
 WHEREAS, Operator desires to enjoy the benefits of (i) operating under the  
System and using Franchisor's Marks, and (ii) being authorized and licensed to  
operate one System Restaurant as set forth below within the System in strict  
accordance with the standards and specifications established by Franchisor; and  
  
 WHEREAS, Franchisor is willing to grant Operator a license under  
Franchisor's Marks and the System, subject to Operator's strict compliance with  
the terms and conditions of this Agreement.  
  
 NOW, THEREFORE, the parties agree as follows:  
  
 ARTICLE 1. FRANCHISE RIGHT GRANTED, LOCATION.  
  
1.1 GRANT.  
  
 In consideration of the issuance of the franchise granted herein, Operator  
shall pay to Franchisor the non-refundable sum of $Price (the "Initial Fee"). In  
exchange, Franchisor hereby awards Operator the exclusive right to open and  
operate, under the terms of this Agreement, one System Restaurant specializing  
in selling high quality limited and specific food items as specified by  
Franchisor in Franchisor's Operations Manual, or subsequently added in  
accordance with Operations Manual amendments, under the name "Maui Tacos" at a  
location to be mutually agreed upon by both parties. No exclusive or protected  
market is intended to be granted by this Article. The Initial Fee shall be  
deemed fully earned by Franchisor upon the execution of this Agreement by  
Franchisor and Operator and shall not be refunded, in whole or in part, upon any  
termination of this Agreement, or at any other time or under any other  
circumstances.  
  
  
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1.2 LICENSE.  
  
 Franchisor hereby grants and awards to Operator, for the term set forth in  
this Agreement, and any renewal term, beginning on the date of this Agreement,  
the right and license, and Operator hereby undertakes the obligation, to operate  
the business described in this Agreement under Franchisor's Marks and such other  
of Franchisor's Marks as may be designated by Franchisor, to operate such  
business solely in accordance with the System, and only at the specific location  
to be agreed upon by Franchisor and Operator (the "Location").  
  
1.3 LOCATION.  
  
 No Location has been agreed upon at the time of the execution of this  
Agreement. Upon the leasing of the Location, Operator agrees to sublet the  
Location from an independent corporation designated by Franchisor, on the  
approved sublease form annexed to Franchisor's Uniform Franchise Offering  
Circular (the "UFOC", as further defined in Article 18). Any material violation  
of the sublease that is not cured after notice is given and within the  
applicable grace periods, as required by the terms of the sublease for the  
Location, is a violation of this Agreement. The signing of the sublease for the  
Location, or Operator's or any of its principle stockholder's or officer's  
written approval of the master lease for the Location, shall constitute  
Operator's approval of the Location. Operator shall engage only in the business  
of operating a System Restaurant at the Location and no other, except with  
Franchisor's prior written consent. Operator acknowledges its sole  
responsibility for finding the Location and that Franchisor is not obligated to  
directly or indirectly obtain an approved location for Operator. Franchisor's  
area subfranchisor, if any, as identified herein, however, may voluntarily  
(without obligation) assist Operator in obtaining an approved location, as well  
as other approved locations for other System Restaurant operators who have  
executed existing franchise agreements.  
  
 ARTICLE 2. INSTALLATION AND COMMENCEMENT OF BUSINESS.  
  
 Operator, at its own expense, shall (i) renovate the Location into a  
System Restaurant; (ii) obtain all necessary governmental permits and licenses  
prior to beginning the renovation of its Location into a System Restaurant and  
Operator shall fully complete the renovation, construction and equipping within  
a reasonable time thereafter. Operator shall commence operation of each System  
Restaurant no later than 30 days following substantial completion of the  
renovation and equipment installation at the Location, and shall give Franchisor  
10 days written notice prior to commencing operations. In no event shall  
Operator construct or remodel the interior or exterior of any System Restaurant  
or make any improvements which vary from the then-current standards, plans, and  
specifications approved by Franchisor, without first obtaining Franchisor's  
prior written approval. Operator, at its own expense, shall obtain all municipal  
and state licenses necessary to operate Operator's System Restaurant prior to  
commencing business at its System Restaurant and shall maintain all licenses in  
full force and effect during the term of this Agreement.  
  
 ARTICLE 3. TRAINING.  
  
 3.1 Operator will designate individuals (up to 4 persons) as trainee(s) to  
attend Franchisor's training school in Atlanta, Georgia (the "Maui Tacos  
Training School") or at another  
  
  
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training location selected by Franchisor. Franchisor will offer initial training  
programs for Operator and its management employees at times selected by  
Franchisor. Franchisor will bear the costs of providing training programs,  
including the overhead costs of training, staff salaries, materials, and all  
technical training tools. Operator shall pay all traveling, living,  
compensation, and other expenses incurred by Operator and/or Operator's  
employees in connection with attendance at training programs. The training  
program and manner of conducting such program shall be at Franchisor's sole  
discretion and control. The training course will be structured to provide  
practical training in the implementation and operation of a System Restaurant as  
described in the UFOC.  
  
 3.2 Operator will not allow any System Restaurant to be opened or managed  
by any person who has not attended and successfully completed the management  
training course designated by Franchisor. If Operator is an individual, and does  
not manage its System Restaurant on a day-to- day basis, and in the event its  
designated System Restaurant manager resigns or is terminated, Operator must  
arrange to have the successor restaurant manager (i) begin the required training  
course within 45 days of first assuming the duties of a restaurant manager and  
(ii) successfully complete the course. Provided Operator successfully completes  
the training program, the required training course conducted at Franchisor's  
facilities will not extend beyond one (1) week. However, the course conducted at  
Franchisor's facilities requires an additional 120 hours of operational training  
in a Franchisor-approved System Restaurant.  
  
 3.3 If at any time the trainee voluntarily withdraws from, or is unable to  
complete its training, or fails to demonstrate an aptitude, spirit or ability to  
comprehend and carry out the course of study to the reasonable satisfaction of  
Franchisor, then Franchisor shall have the right to require Operator's trainee  
to attend other training class(es) or to perform additional operational training  
until Franchisor is reasonably satisfied that Operator's trainee has  
satisfactorily completed the training course. Operator may not open its System  
Restaurant until training is completed to Franchisor's reasonable satisfaction.  
  
 3.4 In the event of a sale to a third party of Operator's System  
Restaurant after opening, the transferee must be trained in the Maui Tacos  
Training School as a condition of Franchisor's consent to such transfer. All  
tuition costs for such training shall be deemed paid upon receipt by Franchisor  
of 5% of the sales price of operator's System Restaurant due in accordance with  
Article 14 herein. In the event of an approved non-sale management transfer to a  
third party of Operator's System Restaurant, the transferee shall attend the  
Maui Tacos Training School and pay to Franchisor the training fee, which fee  
shall not exceed $1,500. No System Restaurant shall open or re-open until the  
Maui Tacos Training School certifies that the transferee is approved to operate  
the respective System Restaurant.  
  
 3.5 Additional training sessions are available at Operator's request and  
expense, and at Franchisor's request, at Operator's expense, except for the  
initial training course itself. Operator's attendance at additional training  
sessions is mandatory if they are scheduled in Operator's state. For this  
additional training, Franchisor will provide the instructors and instructional  
materials, but Operator must arrange for transportation, lodging and food for  
itself and/or its manager. The cost will depend on the distance Operator must  
travel and the type of accommodations Operator chooses. Additionally, Operator  
must attend regional meetings when and if established by Franchisor, must attend  
annual national conventions when and if scheduled and must pay the registration  
fee.  
  
  
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 ARTICLE 4. MANUALS AND STANDARDS OF OPERATOR  
 QUALITY, CLEANLINESS AND SERVICE.  
  
4.1 STANDARDS.  
  
 In order to promote the value and goodwill of Franchisor's Marks and the  
System and to protect Franchisor's Marks and the other Maui Tacos operators who  
comprise the Maui Tacos franchise system, Operator agrees to conduct its  
business in accordance with the standards promulgated by Franchisor as follows:  
  
4.2 MANUALS.  
  
 4.2.1 In the Manuals and other publications, Franchisor will list  
authorized products to be sold by Operator, and promulgate standards of  
operation for System Restaurants, including standards of quality, cleanliness,  
and service for all food, beverages, furnishings, interior and exterior decor,  
supplies, fixtures, and equipment used in connection with each System  
Restaurant. Operator agrees to operate its System Restaurant in accordance with  
the standards, specifications and procedures set forth in the Manuals, this  
Agreement and the sublease for the Location. Operator further agrees that  
changes in the menu, or the standards, specifications and procedures may become  
necessary from time to time and agrees to accept as reasonable all  
modifications, revisions and additions to the Manuals as authorized by  
Franchisor. The sale of any product or service at the Operator's Location,  
without Franchisor's prior written approval shall constitute a material  
violation of this Agreement.  
  
 4.2.2 The Manuals and all amendments to the Manuals (and copies thereof)  
are copyrighted and remain Franchisor's property. They are loaned to Operator  
for the term of the Agreement, and must be returned to Franchisor upon the  
Agreement's termination, expiration or nonrenewal. The Manuals are highly  
confidential documents which contain certain trade secrets of Franchisor, and  
Operator shall never reveal, and shall take all reasonable precautions, both  
during and after the term of this Agreement, to assure that its employees or any  
other party under Operator's control, shall never reveal any of the contents of  
the Manuals or any other publication, recipe or secret provided by Franchisor,  
except as is necessary for the operation of Operator's System Restaurant.  
  
4.3 HOURS.  
  
 Franchisor and Operator agree that the hours of operation of Operator's  
System Restaurant are at a minimum, 10:00 am. to 12:00 p.m. (midnight), seven  
days per week, and Operator agrees to operate its System Restaurant during such  
hours. If the Location is in a mall or shopping center, the hours of the mall or  
shopping center shall control. Operator shall diligently and efficiently  
exercise its best efforts to achieve the maximum gross sales possible from its  
location, and will be open for business not less than 14 hours per day, seven  
days per week, unless additional opening hours are reasonably required to  
maximize operations and sales. If such hours are incorrect in relation to the  
sales potential of Operator's System Restaurant, then Franchisor and Operator  
shall reasonably adjust such hours by jointly establishing new hours of  
operation. It is acknowledged that the hours  
  
  
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of other operators will vary in relation to each respective location, and local  
legal restrictions, if any.  
  
4.4 APPEARANCE.  
  
 From time to time, Operator's System Restaurant may need a cosmetic  
improvement or equipment change or addition in order to comply with the Manuals  
and/or to maintain proper operations and an aesthetic appearance and  
professional image. Accordingly, Franchisor may require remodeling and  
renovation, and modifications to existing equipment and improvements as is  
reasonably necessary. Franchisor shall not require any such work at a particular  
System Restaurant less than 3 years after the opening of the System Restaurant  
except: (i) for additional equipment if new food preparation methods or products  
are developed and authorized by Franchisor; (ii) if repairs or repainting are  
necessary to maintain the appearance of the interior and exterior of the  
Location in a clean and orderly condition satisfactory to Franchisor; or (iii)  
upon the sale of the Operator's System Restaurant. Within 90 days after receipt  
of written notice, Operator shall fully implement and complete such changes to  
its System Restaurant operating under this Agreement.  
  
4.5 PRODUCT LINE AND SERVICE.  
  
 Operator agrees to only serve the approved limited product line items  
specified by Franchisor in this Agreement or in the Manuals and to follow all  
specifications and formulas of Franchisor as to specifications, contents, weight  
and quality of products served to its customers from Operator's System  
Restaurant.  
  
4.6 CONTAINERS, FIXTURES AND OTHER GOODS.  
  
 4.6.1 Operator agrees that all food and drink items will be served in  
containers bearing accurate reproductions of Franchisor's Marks. All containers,  
napkins, bags, cups, matches, menus and other packaging and like articles used  
in connection with Operator's System Restaurant shall conform to Franchisor's  
specifications, shall be imprinted with Franchisor's Marks and shall be  
purchased by Operator from a distributor or manufacturer approved in writing by  
Franchisor, as provided in Article 8, which approval will not be unreasonably  
withheld.  
  
 4.6.2 No item of merchandise, furnishings, interior and exterior decor  
items, supplies, fixtures, equipment or utensils bearing any of Franchisor's  
Marks shall be used in or upon any System Restaurant unless the same shall have  
been first submitted to and approved in writing by Franchisor.  
  
 ARTICLE 5. MENUS, UNIFORMS, INSPECTIONS, SIGNS.  
  
5.1 MENUS.  
  
 5.1.1 Operator shall not manufacture, advertise for sale, sell or give  
away any product unless such product has been approved in the Manuals as an  
authorized product for sale in Operator's System Restaurant and not thereafter  
disapproved in writing by Franchisor. All approved products shall be distributed  
under the specific name designated by Franchisor. Operator shall establish all  
menu prices in its sole discretion. Operator shall offer for sale in its System  
Restaurant  
  
  
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only those food products which Franchisor designates as "approved and  
authorized" or which Franchisor has made available as a "regionalized" menu or  
has otherwise specifically approved in writing (each, "Authorized Product"). No  
standard product will be removed from the menu unless Operator is so instructed  
by Franchisor.  
  
 5.1.2 Such "Authorized Products" shall be marketed by approved menu  
formats to be utilized in Operator's System Restaurant. The approved and  
authorized menu and menu format(s) may include, in Franchisor's discretion,  
requirements concerning organization, graphics, product descriptions,  
illustrations, and any other matters (except prices) related to the menu,  
whether or not similar to those listed. In Franchisor's discretion, the menu  
and/or menu format(s) may vary depending upon region, market size, and other  
factors. Franchisor may change the menu and/or menu format(s) from time to time  
or region to region or authorize tests from region to region or authorize  
non-uniform regions or non-uniform System Restaurant(s) within regions, in which  
case Operator will be given a reasonable time (not longer than 30 days) to  
discontinue use of any old menu format(s) and implement use of the new menu  
format(s).  
  
 5.1.3 Operator shall, upon receipt of notice from Franchisor, add any  
Authorized Product to its menu according to the instructions contained in the  
notice. Operator shall have a minimum of 30 days after receipt of written notice  
in which to fully implement any such change. Operator shall cease selling any  
previously approved product within 30 days after receipt of notice that the  
product is no longer approved.  
  
 5.1.4 The Authorized Products sold by Operator shall be of the highest  
quality, and the ingredients, composition, specifications, and preparation of  
such food products shall comply with the instructions and recipes provided by  
Franchisor or contained in Franchisor's Operations Manual, and with the further  
requirements of Franchisor as they are communicated to Operator from time to  
time.  
  
5.2 COMPLIANCE.  
  
 Operator shall operate each of its System Restaurants as a clean, orderly,  
legal and respectable place of business in accordance with Franchisor's business  
standards and merchandising policies, and shall comply with all applicable  
ordinances, laws, statutes and regulations governing the operation of such  
premises, including all disability, food and drug laws and regulations. Operator  
shall not allow any Location or part of a Location to be used for any immoral or  
illegal purpose.  
  
5.3 SIGNS, DESIGNS AND FORMS OF PUBLICITY.  
  
 5.3.1 Operator shall maintain a suitable sign or awning at, on, or near  
the front of the Location, identifying the Location as a "Maui Tacos  
Restaurant". Such sign shall conform in all respects to Franchisor's  
requirements and in accordance with the layout and design plan approved for the  
Location, except to the extent prohibited by local legal restrictions.  
  
 5.3.2 No exterior or interior sign or any design, advertisement, internet  
address, "web page" or world wide web home page, sign, or form of publicity,  
including form, color, number,  
  
  
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location, and size, shall be used by Operator or any Association (as defined  
below) unless first submitted to Franchisor and approved in writing (except with  
respect to prices). Any request by Operator for such approval shall be properly  
submitted in duplicate to: (i) Franchisor's Legal Department, Attention: General  
Counsel, 000 Xxxxxxxx, Xxx Xxxx, Xxx Xxxx 00000; and (ii) Franchisor's  
President, 0000 Xxx Xxxxxxxx, Xxxxx 000, Xxxxxxx, Xxxxxxx, 00000. Franchisor  
shall respond to such request within 30 days of its receipt. Whenever Operator  
elects to utilize, in the form supplied, advertising supplied by Franchisor or  
any promotional item specifically approved by Franchisor, no further approval  
for use of such material is required. Upon written notice from Franchisor,  
Operator shall discontinue and/or remove any objectionable advertising materials  
or any other materials not suitable for display, in Franchisor's sole  
discretion.  
  
5.4 UNIFORMS AND EMPLOYEE APPEARANCE.  
  
 Operator shall cause all employees, while working in System Restaurants,  
to: (i) wear uniforms of such color, design, and other specifications as  
Franchisor may designate from time to time, and (ii) present a neat and clean  
appearance. If the type of uniform utilized by Operator is removed from the list  
of approved uniforms, Operator shall have 60 days from receipt of written notice  
of such removal to discontinue use of its existing inventory of uniforms and  
implement the approved type of uniform.  
  
5.5 VENDING OR OTHER MACHINES.  
  
 Operator shall not permit vending or game machines or any other mechanical  
device to be installed or maintained in its Location without Franchisor's prior  
written approval. Operator agrees to purchase, install and maintain a continuous  
music system, approved by Franchisor, in its Location. The music selections will  
be controlled by Franchisor.  
  
5.6 INSPECTION.  
  
 5.6.1 Franchisor's authorized representatives shall have the right to  
enter upon the entire main floor and basement of Operator's System Restaurant  
during business hours, without disrupting Operator's business operations, for  
the purposes of examining same, conferring with Operator's employees, inspecting  
and checking operations, food, beverages, furnishings, interior and exterior  
decor, supplies, fixtures, and equipment, and determining whether the business  
is being conducted in accordance with this Agreement, the System and the  
Manuals.  
  
 5.6.2 In the event any such inspection indicates any deficiency or  
unsatisfactory condition with respect to any matter required under this  
Agreement or the Manuals, including but not limited to quality, cleanliness,  
service, health and authorized product line, Franchisor will notify Operator in  
writing of Operator's non-compliance with the Manuals, the System, or this  
Agreement. Operator shall have 24 hours after receipt of such notice, or such  
other greater time period as Franchisor in its sole discretion may provide, to  
correct or repair such deficiency or unsatisfactory condition, if it can be  
corrected or repaired within such period of time. If not, Operator shall within  
such time period commence such correction or repair and thereafter diligently  
pursue it to completion.  
  
  
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 ARTICLE 6. ADVERTISING AND FRANCHISEE CO-OPERATIVES.  
  
 6.1 Operator and Franchisor acknowledge the value of advertising and  
accordingly Operator agrees to pay 4% of its gross sales for each and every week  
of its operations to Franchisor (the "Advertising Fee"). These funds will be  
deposited, at Franchisor's sole discretion, into a segregated advertising  
account (with other advertising collections) controlled by Franchisor or to a  
regional advertising cooperative covering Operator's System Restaurant.  
Advertising payments will then be spent for advertising to benefit Operator  
and/or all or regional operators of System Restaurants. The Advertising Fee  
shall be paid in accordance with the procedure described in Article 9.  
  
 6.2 Franchisor, at its sole discretion, may spend the collected fees  
directly, or may authorize payment of the advertising collections for media  
time, production of media materials, whether for radio, television, newspapers  
or store level materials such as flyers, or posters, or for any other type of  
advertising or marketing use. Franchisor is not, under any circumstances,  
obligated to contribute to any national or local advertising fund, program,  
Association, or other organization any advertising fees or contributions.  
  
 6.3 Franchisor encourages the formation and operation of voluntary  
Operator Cooperative Advertising Associations (each an "Association"). Each  
Association shall function for the purpose of creating a cohesive team to  
coordinate advertising, marketing efforts and programs and maximizing the  
efficient use of local advertising media. If an Association is formed for  
Operator's region, each Operator must participate in the Association or lose its  
right to vote as to decisions regarding advertising and marketing efforts and  
programs. Each Association establishes the fees payable by its members, which  
fees are collected by Franchisor and distributed to the Association, subject to  
a $10 per restaurant per month collection/service fee.  
  
 6.4 If requested, Franchisor will assist in establishing an Association or  
otherwise assist in deciding how to allocate all or part of the advertising  
funds paid by Franchisor to the Association (such funds will be paid to each  
Association at the Franchisor's sole discretion, who is entitled to expend the  
funds at its sole discretion in accordance with the provisions of this  
Agreement). If Franchisor elects to pay all or a portion of the advertising  
collections to an Association and if one of the following events occurs and is  
not resolved by the Association, then Franchisor reserves the right to exercise  
sole decision-making power over the advertising funds: (i) if an Association  
ceases functioning; or (ii) an impasse arises because of the inability or  
failure of the Association members to resolve any issue affecting the  
establishment or effective functioning of an individual Association; or (iii) an  
Association fails to function in a productive or harmonious manner; or (iv) an  
Association is unable to approve any advertising program within a reasonable  
time not to exceed 30 days. Franchisor reserves the right to establish general  
standards concerning the operation of all Associations, advertising agencies  
retained by Associations, and advertising programs conducted by Associations. No  
decisions shall be made or advertising funds spent without Franchisor's prior  
written approval.  
  
 6.5 Operator acknowledges receipt of Franchisor's UFOC which refers to (a)  
Maui Tacos Brand Building Fund, Inc. ("MTBBFI"); (b) and the Council of Maui  
Tacos Suppliers; (c) a research and development fund; (d) the Grand Opening  
event, and (e) the Initial Program as  
  
  
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explained below.  
  
 6.5.1 MTBBFI is the non-profit entity authorized to receive marketing  
allowances and payments from Maui Tacos distributors, manufacturers and other  
entities that are associated in business, directly or indirectly, with  
Franchisor or the System or its operators or any part thereof. The activities of  
MTBBFI are controlled by Maui Tacos operators elected to the Maui Tacos Operator  
Advisory Board, subfranchisors elected to the Maui Tacos Subfranchisor Advisory  
Board and representatives of Franchisor. By this Agreement, Operator consents to  
the receipt of such funds by MTBBFI or its successors, as well as the  
expenditure thereof for advertising and marketing expenses. These expenses may  
include costs for personnel, management fees, advertising agencies, operating  
expenses, matching fund programs, research and development, administrative  
expenses, production of educational or training materials, production of  
commercials, focus groups or other studies, the purchase of television or radio  
or other media time, print advertising, restaurant design studies or  
modifications, consultants and such other marketing and advertising uses as may  
be authorized by the majority of elected members of the Maui Tacos Operator  
Advisory Board, subfranchisors elected to the Maui Tacos Subfranchisor Advisory  
Board and representatives of Franchisor (collectively the "Board"). If for some  
reason there is a refusal or inability to participate in such decisions by the  
Board or portions thereof, or if there are no elected representatives of  
franchisees or subfranchisors, Franchisor is hereby granted the power and  
authority to vote for the missing representatives.  
  
 6.5.2 By execution of this Agreement, Operator consents to the formation  
and existence of the Maui Tacos Brand Building Fund, Inc., its right and  
privilege to seek voluntary contributions of 1% to 3% of gross sales, or any  
higher fee or a flat fee if a sales percentage is not practical, from all MAUI  
TACOS manufacturers, distributors, vendors and purveyors who sell products or  
provide services to the MAUI TACOS System or Maui Tacos Brand Building Fund,  
Inc., and the system of authorizing utilization of these collections and any  
resulting expenditures thereafter.  
  
 6.5.3 The Council of Maui Tacos Suppliers is an association composed of  
approved manufacturers, distributors and the Franchisor, established for the  
purposes of improving communication between manufacturers and distributors, and  
improving distribution and development of improved Authorized Products. This  
Council reimburses Franchisor for employee and other expenses involved in the  
distribution and manufacturing of Raw Materials. Operator consents to the  
receipt of such funds by Franchisor;  
  
 6.5.4 Franchisor and certain manufacturers have agreed to establish a  
research and development fund for improvement of specific Authorized Products  
and Operator consents to Franchisor's receipt of reimbursement funds arising  
from expenses incurred in such research and development.  
  
 6.5.5 In addition to the Advertising Fee, Operator agrees to spend a  
minimum of $4,000 for its "Grand Opening" promotion as designated by Franchisor.  
The "Grand Opening" event is required for all operators and functions to  
introduce Operator's System Restaurant to the public. The application and use of  
the "Grand Opening" funds shall be controlled by Franchisor's marketing  
department.  
  
  
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 6.5.6 During the first twelve months after the opening of its System  
Restaurant, Operator agrees to implement an initial local restaurant marketing  
plan which includes coupon and monthly events (the "Initial Program"). To fund  
the Initial Program, commencing two weeks after the opening of its System  
Restaurant, Operator agrees to pay Franchisor the sum of $2,000 by paying $40  
per week for 50 consecutive weeks, in accordance with the procedures established  
in Article 8. The application and use of the Initial Program funds shall be  
controlled by Franchisor's marketing department or its designee.  
  
 ARTICLE 7. COMPANY MARKS AND ADDITIONAL MARKS.  
  
 7.1 The license and related rights to use the System, the Manuals,  
Franchisor's Marks and any other proprietary products granted by this Agreement  
are applicable only with respect to Operator's System Restaurant at the  
Location, and not elsewhere, except in the event of a relocation approved in  
writing by Franchisor. This Agreement does not authorize the use of mobile  
vending vehicles, carts, kiosks or any other non-traditional delivery systems.  
  
 7.2 Operator shall not interfere in any manner with, or attempt to  
prohibit, the use of Franchisor's Marks by any other Operator of Franchisor or  
in connection with Nontraditional Maui Tacos Restaurants, distribution points or  
any other system used to distribute Maui Tacos authorized or branded products.  
  
 7.3 Franchisor may, from time to time, in Franchisor's sole discretion,  
obtain additional trademark and/or service xxxx rights in words and/or designs.  
In the event of any of these occurrences, Franchisor may license Operator to use  
those trademarks or service marks by giving written notification to Operator  
that such marks now form part of Franchisor's Marks. The term of such license  
will be coextensive with the term of this Agreement or as otherwise established  
by Franchisor, and will be subject to all restrictions with respect to the use  
of those rights as set forth in this Agreement and in the notice granting  
Operator the license.  
  
 ARTICLE 8. DISTRIBUTION AND PURCHASE OF EQUIPMENT,  
 SUPPLIES, AND OTHER PRODUCTS.  
  
 Operator agrees to use only Franchisor's approved products and portion  
control formulas in the preparation of Authorized Products. Operator further  
agrees to only buy Raw Materials, as defined below, manufactured in accordance  
with Franchisor's specifications from approved manufacturers, distributed by  
approved distributors, and sold to Operator as follows:  
  
8.1 DEFINITIONS.  
  
 For the purpose of this Agreement, "distributor" is defined as any entity,  
except a manufacturer, that directly or indirectly delivers raw materials to the  
Operator. A "manufacturer" is defined as the entity that manufactures and/or  
sells the Raw Materials to a distributor. Raw Materials means all of the  
products purchased from distributors, and/or manufactured or sold by  
manufacturers or production entities which are used in the creation of  
Authorized Products. Raw Materials include, but are not limited to printed paper  
goods, meats, cheeses, produce, seafood, bakery products, salsas, chips,  
clothing, rice, beans (collectively, the "Raw Materials").  
  
  
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"Authorized" means approved by Franchisor in accordance with the procedures  
established in this Agreement.  
  
8.2 DISTRIBUTORS.  
  
 8.2.1 Operator acknowledges that it is generally unrealistic from a cost  
and service basis to have more than one distributor in the market area of  
Operator's System Restaurant, and that to obtain the lowest distribution costs,  
all regional operators should only purchase from one authorized Maui Tacos  
distributor. Operator agrees to only purchase all equipment, supplies, Raw  
Materials and other products and materials necessary for the operation of its  
System Restaurant solely from Authorized distributors, and other authorized  
sources who demonstrate, to the continuing reasonable satisfaction of  
Franchisor, the ability to meet Franchisor's then-current standards and  
specifications for such items; who possess adequate quality controls and  
capacity to supply Operator and all other System operators needs promptly and  
reliably; who demonstrate the ability and willingness to work with Franchisor to  
provide the assistance needed by the those operators in the region and all other  
System Operators; who agree to distribute all authorized Maui Tacos products;  
who comply with Franchisor's reasonable requirements; and who have been approved  
in writing by Franchisor and not thereafter disapproved.  
  
 8.2.2 If Operator desires to purchase any items from an unapproved  
distributor, whom Operator desires to become an Authorized distributor, Operator  
shall first submit a written request, in duplicate, for such approval to  
Franchisor, addressed to (i) President: 0000 Xxx Xxxxxxxx, Xxxxx 000, Xxxxxxx,  
Xxxxxxx and (ii) General Counsel, 000 Xxxxxxxx, Xxx Xxxx, Xxx Xxxx 00000,  
accompanied by a similar written request for approval from the proposed  
distributor. Franchisor shall have the right to require that the proposed  
distributor provide reasonable financial, operational and economic information  
regarding its business and that Franchisor's representatives be permitted to  
inspect the proposed distributor's facilities and establish economic terms,  
delivery, service and other requirements consistent with other distribution  
relationships for other system restaurants. The proposed distributor shall pay  
to Franchisor in advance all of Franchisor's reasonable costs in review of the  
application of the distributor to service the Operator as well as all current  
and future reasonable costs related to inspecting and reinspecting the  
distributor's facilities, equipment, Raw Materials in the distributor's  
possession at any time. Franchisor may revoke its approval upon the  
distributor's failure to continue to meet any of Franchisor's criteria. Nothing  
in this article shall require Franchisor to approve any distributor. Upon the  
receipt by Franchisor of Operator and the proposed distributor's request for  
approval in full compliance of this article, Franchisor will notify Operator of  
its decision within 90 days after receipt thereof. In the event an alternate  
approved distributor to the recommended distributor is used by Operator, as a  
condition thereof Operator and all other operators shall authorize the alternate  
distributor to provide to Franchisor duplicate purchase invoices for  
Franchisor's records and inspection purposes and to otherwise comply with  
Franchisor's reasonable requests.  
  
8.3 MANUFACTURERS.  
  
 8.3.1 The parties agree that Franchisor's product specifications and  
portion control system are highly confidential information and are trade secrets  
of Franchisor. In order to (i) achieve appropriate pricing, (ii) obtain the  
specially formulated Maui Tacos authorized Raw Materials for  
  
  
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Operator and all of Franchisor's System Restaurants, and (iii) establish  
consistent uniformity of Maui Tacos products, Operator acknowledges that  
purchasing by all System or regional operators from approved manufacturers is a  
necessity. Because of the importance of quality and uniformity of product and  
the significance of product specifications and portion control in the  
preparation of Authorized Products to achieve and maintain such quality and  
uniformity, it is to the mutual benefit of the parties that Franchisor closely  
control the production and distribution of the Raw Materials used to produce  
authorized products sold by Operator. Similar considerations may also apply to  
other products which Franchisor may develop in the future. Operator therefore  
agrees to purchase only Raw Materials manufactured in accordance with  
Franchisor's specifications and quality standards by approved manufacturers who  
demonstrate, to the continuing reasonable satisfaction of Franchisor, the  
ability to meet Franchisor's then-current standards and specifications for such  
items; who possess adequate quality controls and capacity to meet the needs of  
Operator and all other System Operators in a given region or territory promptly  
and reliably; who demonstrate the ability and willingness to work with  
Franchisor and to provide the assistance needed by the Maui Tacos System and who  
have been approved in writing by Franchisor and not thereafter disapproved.  
  
 8.3.2 If Operator desires to purchase any items from an unapproved  
manufacturer, who Operator desires to become an Authorized manufacturer,  
Operator shall first submit a written request, in duplicate, for such approval  
to Franchisor, addressed to (i) President: 0000 Xxx Xxxxxxxx, Xxxxx 000,  
Xxxxxxx, Xxxxxxx 00000 and (ii) General Counsel, 000 Xxxxxxxx, Xxx Xxxx, Xxx  
Xxxx 00000 accompanied by a similar written request for approval from the  
proposed manufacturer. Franchisor shall have the right to require that the  
proposed manufacturer provide reasonable financial, operational and economic  
information regarding its business and that Franchisor's representatives be  
permitted to inspect the proposed distributor's facilities and establish  
economic terms, delivery, service and other requirements consistent with other  
with other manufacturing relationships for other system restaurants. The  
proposed manufacturer shall pay to Franchisor in advance all of Franchisor's  
reasonable costs in review of the application of the manufacturer to service the  
Operator as well as all current and future reasonable costs related to  
inspecting and reinspecting the manufacturer's facilities, equipment and Raw  
Materials at any time. Franchisor may revoke its approval upon the  
manufacturer's failure to continue to meet any of Franchisor's criteria. Nothing  
in this article shall require Franchisor to approve any manufacturer. Upon the  
receipt by Franchisor of Operator and the proposed manufacturer's request for  
approval in full compliance of this article and the completion of all of the  
inspections needed by Franchisor to evaluate the manufacturer, Franchisor will  
notify Operator of its decision within 90 days after completion of such  
application and inspections. If an alternate approved manufacturer to the  
recommended manufacturer is used by Operator, as a condition thereof Operator  
and all other operators shall authorize the alternate manufacturer to provide to  
Franchisor duplicate purchase invoices for Franchisor's records and inspection  
purposes and to otherwise comply with Franchisor's reasonable requests.  
  
8.4 PURCHASE OBLIGATIONS.  
  
Operator agrees to purchase the following items from the approved distributor  
and manufacturer designated by Franchisor:  
  
 8.4.1 all Branded Maui Tacos Products that bear Franchisor's Xxxx;  
Franchisor has a long  
  
  
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term strategic plan to create another profit center for Operator and itself by  
the sale of Maui Tacos branded products in System Restaurants, supermarkets,  
grocery stores, etc. To accomplish this goal, Franchisor intends to develop such  
products. To effectuate this long term strategy, Operator agrees to cooperate  
with Franchisor with respect to the purchase, display and sale of any Branded  
Products authorized for sale by Franchisor. Operator consents to the receipt by  
Franchisor of licensing fees from manufacturers who manufacture Branded Products  
which will compensate Franchisor for such use of Franchisor's Marks.  
  
 8.4.2 certain Maui Tacos standard exterior and interior signs; These signs  
require the prior fabrication of sign molds or advance production in quantity to  
be either affordable or promptly available. If Franchisor has entered into an  
agreement with approved sign manufacturer(s), granting rights to use  
Franchisor's Marks in connection with the signs and to sell such signs to Maui  
Tacos operators, Operator agrees to purchase its signs from the authorized sign  
manufacturer(s).  
  
 8.4.3 Coca-Cola fountain service products: Operator agrees to only use the  
fountain service Coca-Cola products authorized by Franchisor and no other  
beverages unless approved in writing by Franchisor.  
  
 8.4.4 Operator agrees that at such times that Franchisor establishes a  
regional or national purchasing program for any of the Raw Materials, which may  
benefit Operator by reduced price, lower labor costs, production of improved  
Authorized Product(s), increased reliability in supply, improved distribution,  
Raw Material cost control (establishment of consistent pricing for reasonable  
periods to avoid market fluctuations), improved operations by Operator or other  
tangible benefits to Operator, Operator will participate in such purchasing  
program in accordance with the terms of such program.  
  
 ARTICLE 9. CONTINUING FRANCHISE FEES, REPORTS,  
 BOOKS AND RECORDS.  
  
9.1 CONTINUING FRANCHISE FEES.  
  
 9.1.1 Operator shall pay to Franchisor weekly during the term of this  
Agreement and any renewals or extensions thereof, 6% of the weekly gross sales  
of Operator's System Restaurant. For the purposes of this Agreement, "gross  
sales," means gross revenues (excluding price discounts and allowances) received  
by Operator as payment, whether in cash or for credit (and, if for credit,  
whether or not payment is received therefor), for all beverages, food, and other  
goods, services, and supplies including all sales from approved co-brands as  
described in Article 23 sold in or from each of Operator's System Restaurants,  
and gross revenues received by Operator from any other business (including, but  
not limited to, all revenues from any mechanical or other device, such as  
vending or game machines installed at the Location) operated at the Location,  
excluding sales taxes.  
  
 9.1.2 At Franchisor's request, Operator shall promptly execute or  
re-execute within 5 days after Franchisor's request, and deliver to Franchisor  
appropriate pre-authorized check forms or such other instruments or drafts  
required by Franchisor's bank, payable against Operator's bank account, to  
enable Franchisor to electronically (draft on Operator's account by electronic  
withdrawal), collect the 6% and 4% (see Article 6) of gross sales payable under  
the terms of this Agreement. At  
  
  
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Franchisor's request, Operator shall, within 5 days from such request, promptly  
perform such acts as to enable Franchisor or its designee to connect its  
computers to Operator's computer(s) or Operator's POS System so that Franchisor  
or its designee may electronically obtain statistical information regarding  
Operator's business activities that Franchisor may in its sole discretion  
request. Operator agrees to not disconnect Franchisor or its designee from such  
connection or phone line at any time, for any reason, without Franchisor's prior  
written approval. Operator specifically authorizes Franchisor to either "upload"  
or "download" information in and from or to its computers, cash registers or  
other such devices as allowed by law, as it relates to the System Operation by  
internet, intranet, and other networks or other means as they become available.  
  
 9.1.3 Operator shall report its gross sales by telephone within 2 days  
after the end of each business week (currently Tuesday) or at such other times  
as are established by Franchisor in its sole discretion. Operator shall submit  
written weekly summaries showing results of its operations by the following  
Saturday. If Operator fails to report its sales on a timely basis, Franchisor  
may estimate the amount of Operator's sales. Franchisor will then deposit or  
transfer the reported, or in the absence of a report, the estimated, amounts due  
into its own account, using the System Operator's pre-authorized checks or other  
instruments. If any draft, electronic or otherwise, is unpaid because of  
insufficient funds or otherwise, then Operator shall pay Franchisor's expenses  
arising from such non-payment, including bank fees in the amount of at least  
$30.00, hourly staff charges arising from such default, and any other related  
expenses incurred by Franchisor. By the 5th day of each month Operator shall pay  
to Franchisor any sums unpaid for the prior month to adjust for sales owed for  
any partial week or sales that were unpaid, improperly recorded or not credited  
on Operators books and records. Operator hereby agrees to pay any sales, use or  
other tax now or hereinafter imposed on franchise fees, advertising fees or any  
additional rental collected under the sublease for the Location, imposed by any  
Federal, state or local governmental authorities. Franchisor, at its sole  
discretion, may collect the taxes in the same manner as franchise fees are  
collected herein and if Franchisor collects such taxes, Franchisor shall  
promptly pay the tax collections to the appropriate governmental authority.  
  
9.2 REPORTS AND INSPECTION OF RECORDS.  
  
 9.2.1 Operator shall submit to Franchisor a quarterly Profit and Loss  
Statement, signed and certified by Operator. The Profit and Loss Statement shall  
be prepared by a Certified or Public Accountant, in accordance with generally  
accepted accounting principles, and shall provide Operator's sales, expenses and  
financial status with respect to Operator's System Restaurant. Operator shall  
submit to Franchisor a copy of the original signed 1120 or 1120S tax form each  
and every year or any other forms which take the place of the 1120 or 1120S  
forms. Operator shall also provide Franchisor with copies of signed original  
sales and use tax forms contemporaneously with their filing with the appropriate  
state or local authority. Franchisor reserves the right to require such further  
information concerning Operator's System Restaurant as Franchisor may from time  
to time reasonably request.  
  
 9.2.2 Upon 10 days prior written notice, Franchisor, its agents or  
representatives may audit Operator's books and records in accordance with  
generally accepted standards established by certified public accountants. In  
connection with such audit(s) or other operational visits, Operator agrees to  
keep its cash receipts records, weekly and monthly control forms, accounts  
payable  
  
  
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records including all payments to Operator's suppliers in its System Restaurant  
or at its business office for 3 years after their due date, which records shall  
be available for examination by Franchisor or its representative(s), at  
Franchisor's request. Without any prior written notice, Franchisor, its agents  
or representatives may inspect Operator's entire System Restaurant and  
Operator's daily, weekly and monthly statistical information ("Redbook  
Information") which is required under the Operational Manual. Operator shall  
make such Redbook Information available for such inspections in recognition that  
an operational inspection cannot succeed without review of essential statistical  
information.  
  
 9.2.3 If any audit or other investigation reveals an under-reporting or  
under-recording error of 5% or more, then in addition to any other sums due, the  
expenses of the audit/inspection shall be borne and paid by Operator upon  
billing by Franchisor, plus interest at the highest compound rate authorized by  
the state in which the System Restaurant is located, but not to exceed the rate  
of 15% per annum.  
  
 9.2.4 Operator acknowledges that Franchisor's Operations Department  
regularly reviews ongoing operations at System Restaurants to ensure consistency  
of products and service and compliance with the Manuals and this Agreement.  
Operator therefore agrees to promptly complete and submit all forms requested by  
Franchisor's Operations Department, whether on a daily, weekly or monthly basis.  
Non-compliance with this obligation constitutes a material violation of this  
Agreement.  
  
 ARTICLE 10. COVENANT REGARDING OTHER BUSINESS INTERESTS.  
  
 10.1 For purposes of this Article only, "Operator" shall mean and include  
the individual Operator; Operator's spouse and minor children; Operator's  
shareholders, officers, and directors, if Operator is a corporation; and any one  
or more partners or participants in Operator, if Operator is a partnership or  
joint venture, or members, if Operator is an LLC.  
  
 10.2 Operator acknowledges that the Maui Tacos System is unique and  
distinctive and has been developed by Franchisor at great effort, time, and  
expense, and that Operator has regular and continuing access to valuable and  
confidential information, training, and trade secrets regarding the Maui Tacos  
System. Operator recognizes its obligations to keep confidential such  
information as set forth herein. Operator therefore agrees as follows:  
  
 10.2.1 During the term of this Agreement, except with Franchisor's prior  
written consent, Operator shall not, in any capacity whatsoever, either directly  
or indirectly, individually or as a member of any business organization, engage  
in the production or sale at retail or wholesale of any Mexican food product or  
any other main course item authorized by Franchisor, now or in the future  
approved by Franchisor for use in Operator's System Restaurant, or have any  
employment or interest in any firm engaged in the production or sale of such  
products.  
  
 10.2.2 Upon the termination, expiration or nonrenewal of this Agreement,  
or if Operator assigns or transfers its interest herein to any person or  
business entity, or if any person identified in the first paragraph of this  
Article terminates its relationship with Operator, then for a period of 60  
months thereafter such Operator shall not, in any capacity whatsoever, either  
directly or indirectly,  
  
  
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individually or as a member of any business organization, engage in the  
production or sale at retail of any Mexican type food product, or have any  
employment or interest in any firm engaged in the production or sale at retail  
or wholesale of any such products, at a site within a radius of 5 miles of any  
of Operator's former System Restaurants or within 5 miles of any other System  
Restaurant or Distribution Point then existing, unless Franchisor gives its  
prior written consent. If Operator violates the terms of this paragraph,  
Operator shall pay to Franchisor, as liquidated damages, an amount equal to  
$5,000 per month for each month this covenant is violated, plus 6% of the gross  
sales achieved at the site during the continuation of such violation.  
  
 10.2.3 In the event any portion of the above covenants violates laws  
affecting Operator, or is held invalid or unenforceable in a final judgment to  
which Franchisor and Operator are parties, then the maximum legally allowable  
restriction permitted by law shall control and bind Operator. Franchisor may at  
any time unilaterally reduce the scope of any part of the above covenants, and  
Operator shall comply with any such reduced covenant upon receipt of written  
notice.  
  
 10.3 The provisions of this Article shall not limit, restrain or otherwise  
affect any right or cause of action which may accrue to Franchisor for any  
infringement of, violation of, or interference with, this Agreement, or  
Franchisor's Marks, System, trade secrets, or any other proprietary aspects of  
Franchisor's business.  
  
 ARTICLE 11. INTERFERENCE WITH EMPLOYMENT RELATIONS.  
  
 Without Franchisor's prior written consent, during the term of this  
Agreement, Operator shall not employ or seek to employ, directly or indirectly,  
any person serving in an executive, managerial or operational position who is at  
the time or was at any time during the prior 6 months employed by Franchisor or  
any of its subsidiaries. Request for Franchisor's consent shall be sent in  
duplicate and addressed in writing to Franchisor's Vice-President of Operations  
and to its General Counsel.  
  
 ARTICLE 12. SUBFRANCHISORS, SALESMEN.  
  
 Inasmuch as this Agreement has not been executed by the Operator at the  
office of Franchisor, Franchisor requires certain assurances that this Agreement  
has been sold in accordance with applicable laws, rules and regulations.  
Accordingly, in order to induce Franchisor to execute this Agreement, Operator  
agrees to execute a Rider/Questionnaire to this agreement that acknowledges that  
Franchisor is relying upon the acknowledgments, representations and commitments  
of Operator that no other salesman, staff member, entity, or associate of  
Franchisor has met Operator regarding this franchise sale or the offer and  
acceptance thereof other than those set forth therein. The rider shall identify  
all sales persons involved in the sales, negotiation and execution of this  
Agreement and shall identify the subfranchisor. Franchisor shall be entitled to  
rely on the Rider/Questionnaire, and Operator shall be bound by its contents.  
  
 ARTICLE 13. LOCAL RESTAURANT MARKETING MANUAL.  
  
 Operator acknowledges that Franchisor's local restaurant marketing ("LRM")  
manual and other marketing and advertising materials emphasize the  
implementation of marketing efforts within  
  
  
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a mile radius of Operator's System Restaurant. Such references, suggestions and  
emphasis do not directly or indirectly grant to Operator a protected market or  
other exclusive right within such 3 mile marketing area, but rather reflects the  
reality that Operator's local marketing activities should initially be commenced  
in the area immediately adjacent to its System Restaurant.  
  
 ARTICLE 14. NATURE OF INTEREST, AND TRANSFER.  
  
14.1 GENERAL PROVISIONS.  
  
 14.1.1 This Agreement shall inure to the benefit of the successors and  
assigns of Franchisor. Franchisor shall have the right to transfer or assign  
this Agreement to any person or legal entity who assumes its terms and agrees to  
comply with Franchisor's obligations contained herein. Franchisor shall have no  
liability for the performance of any obligations contained in this Agreement  
after the effective date of such transfer or assignment.  
  
 14.1.2 The rights and duties created by this Agreement are personal to  
Operator. Accordingly, except as otherwise permitted herein, neither Operator  
nor any person with an interest in Operator shall, without Franchisor's prior  
written consent, directly or indirectly sell, assign, transfer, convey, give  
away, pledge, mortgage, or otherwise encumber any direct or indirect interest in  
this Agreement or, if Operator is a partnership, joint venture, LLC or  
corporation, any direct or indirect interest in Operator. Any such purported  
assignment occurring by operation of law or otherwise without Franchisor's prior  
written consent shall constitute a default of this Agreement by Operator, and  
shall be null and void. Except in the instance of Operator advertising to sell  
its System Restaurant pursuant to the terms hereof, Operator shall not, without  
Franchisor's prior written consent, offer for sale or transfer at public or  
private auction or advertise publicly for sale or transfer, the furnishings,  
interior and exterior decor items, supplies, fixtures, equipment, Operator's  
sublease or the real or personal property used in connection with Operator's  
System Restaurant.  
  
14.2 CONSENT TO TRANSFER.  
  
 14.2 For all proposed transfers or assignments of this Agreement, and  
transfers of more than 51% of the outstanding and issued stock of Operator by  
one or more transfers or any transfer which, directly or indirectly, effectively  
changes management control of Operator, Franchisor will not unreasonably  
withhold its consent to any transfer or assignment which is subject to the  
restrictions of this Article, provided however, Franchisor shall not be required  
to give its consent unless all of the following conditions are met prior to the  
effective date of assignment:  
  
 14.2.1 Upon the execution of this Agreement and upon each direct or  
indirect transfer of an interest in this Agreement or in Operator and at any  
other time upon Franchisor's request, Operator shall, within 5 days prior to  
such transfer or at any other time at Franchisor's request, furnish Franchisor  
with an estoppel agreement indicating any and all causes of action, if any, that  
Operator may have against Franchisor or if none exist and a list of all  
shareholders or partners having an interest in this Agreement or in Operator,  
the percentage interest of each shareholder or partner, and a list of all  
officers and directors, in such form as Franchisor may require.  
  
 14.2.2 Operator's written request for transfer of either a partial or  
whole interest in this  
  
  
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Agreement or Operator's System Restaurant must be accompanied by an offer to  
Franchisor of a right of first refusal at the same price offered by any bona  
fide buyer less 5% percent Franchisor shall have the right and option,  
exercisable within 15 days after receipt of such written notification, to send  
written notice to Operator or such person that Franchisor or its third-party  
designee, intends to purchase the interest which is proposed to be transferred,  
on the same terms and conditions offered by the third party. If Franchisor  
accepts such offer, the 5% transfer/administrative fee due by Operator in  
accordance with Article 3 shall be waived by Franchisor. Any material change in  
the terms of an offer prior to closing shall cause it to be deemed a new offer,  
subject to the same right of first refusal by Franchisor, or its third-party  
designee, as in the case of the initial offer. Franchisor's failure to exercise  
such option shall not constitute a waiver of any other provision of this  
Agreement, including any of the requirements of this Article with respect to the  
proposed transfer.  
  
 14.2.3 The Operator is not in default under the terms of this Agreement,  
the Manuals or any other obligations owed Franchisor, and all of its then-due  
monetary obligations to Franchisor have been paid in full.  
  
 14.2.4 The Operator and its shareholders or members, if the Operator is a  
corporation or limited liability company, have executed a general release under  
seal, in a form prescribed by Franchisor, of any and all claims against  
Franchisor, its affiliates, subsidiaries, shareholders, directors, officers,  
subfranchisors and employees.  
  
 14.2.5 The transferee/assignee has demonstrated to Franchisor's  
satisfaction that it meets all of Franchisor's then-current requirements for new  
operators or for holders of an interest in a franchise, including, without  
limitation, possession of good moral character and reputation, satisfactory  
credit ratings, acceptable business qualifications, and the ability to fully  
comply with the terms of this Agreement.  
  
 14.2.6 The transferee/assignee has assumed this Agreement by a written  
assumption agreement approved by Franchisor, or has agreed to do so at closing,  
and at closing executes an assumption agreement approved by Franchisor.  
  
 14.2.7 The transferee/assignee, its manager or other employees responsible  
for the operation of the System Restaurant have satisfactorily completed  
Franchisor's training program.  
  
 14.2.8 The transferee/assignee executes such other documents as Franchisor  
may require, including a replacement franchise agreement on the then-standard  
franchise agreement form used by Franchisor, in order to assume all of the  
obligations of this Agreement, to the same extent, and with the same effect, as  
previously assumed by the assignor.  
  
 14.2.9 At the completion of Operator's sale transaction, Operator shall  
pay to Franchisor an administrative/transfer fee of 5% of the gross selling  
price of Operators System Restaurant or in the event of a nonsale management  
transfer, a fee of $1,500 to cover Franchisor's training expenses. This five 5%  
administrative transfer fee will not be due with respect to any transfer that  
(together with all other related previous, simultaneous, or proposed transfers)  
does not result in the transfer of control of Operator.  
  
  
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 14.2.10 Operator's rights may pass to Operator's next of kin or legatee if  
they assume Operator's obligations and attend and complete Franchisor's training  
program. Upon Operator's disability, Operator may sell the franchise or keep it,  
if operated by trained personnel.  
  
 14.2.11 Franchisor's consent to a transfer shall not constitute a waiver  
of any claims it may have against the transferring party arising out of this  
Agreement or otherwise.  
  
 14.2.12 If Operator is an individual, Franchisor hereby consents to the  
assignment of this Agreement and any and all obligations referable thereto  
without any fee charged by Franchisor to a corporation principally owned by  
Operator within 90 days from the date hereof. Upon such assignment and  
assumption by the corporation along with delivery of executed originals of same  
to Franchisor, the individual Operator shall be released from any and all  
personal liability.  
  
 ARTICLE 15. TERM, DEFAULT AND TERMINATION.  
  
15.1 TERM.  
  
 15.1.1 Provided Operator is not in default of the terms and conditions  
contained in its Location sublease and this Agreement, this Agreement shall  
continue for a period of 20 years or for any longer period coterminous with the  
term of the Location sublease.  
  
 15.1.2 Operator may renew the rights granted by this Agreement for 4  
additional terms of 5 years each, subject to the following conditions:  
  
 15.1.2.1 Operator gives Franchisor written notice of Operator's election  
to renew not less than 6 and not more than 24 months before the end of the then  
current term;  
  
 15.1.2.2 Operator is not in default of any provision of this Agreement or  
any amendments to this Agreement, the Location sublease, the Manuals or any  
monetary obligation owed to Franchisor or its affiliates; and  
  
 15.1.2.3 At Franchisor's request, Operator shall undertake and complete  
the reasonable renovation or modernization of its System Restaurant.  
  
 15.1.2.4 Operator shall execute Franchisor's then-current franchise  
agreement and related agreements.  
  
15.2 DEFAULTS WITHOUT OPPORTUNITY TO CURE.  
  
Operator shall be in default and Franchisor may, at its option, upon 30 days  
written notice to Operator, terminate this Agreement and all rights granted by  
it, without affording Operator any opportunity to cure the default, upon the  
occurrence of any of the following events:  
  
 15.2.1 Operator's knowingly or intentionally maintaining false books or  
records, or submitting any false report or payment to Franchisor;  
  
  
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 15.2.2 Operator's conduct of the System Restaurant licensed pursuant to  
this Agreement is so contrary to this Agreement, the System and the Manuals as  
to constitute an imminent danger to the public health (for example, selling  
spoiled food knowing that the food products are spoiled or allowing a dangerous  
condition arising from a lack of security for customers to continue despite  
Operator's knowledge of such condition), or selling regularly unauthorized  
products to the public after notice of default and continuing to sell such  
products whether or not Operator has cured the default after one or more  
notices;  
  
 15.2.3 The conviction of a felony, or a crime involving moral turpitude,  
or any other crime or offense that is reasonably likely, in the sole reasonable  
opinion of Franchisor, to adversely affect the System, Franchisor's Marks; the  
goodwill associated with the System or Franchisor's interest in each of them by  
Operator's, or its controlling or operating shareholders or members if Operator  
is a limited liability company, or Operator's partners if Operator is a  
partnership, excluding non-managing partners  
  
 15.2.4 Operator's intentional disclosure or use of the contents of the  
Manual, trade secrets or confidential or proprietary information provided to  
Operator by Franchisor in violation of this Agreement, excluding acts of  
independent employees or others not under Operator's control; or  
  
 15.2.5 If Operator repeatedly commits defaults under any provisions of  
this Agreement 8 or more occasions in any 12 month period, or 16 or more  
occasions in any consecutive 24 month period, even if Operator cured each such  
prior default, and even if Operator would otherwise be given an opportunity to  
cure the current default.  
  
 15.2.6 Operator's, without Franchisor's consent, ceasing to operate or  
otherwise abandoning its System Restaurant or, upon destruction of its System  
Restaurant, failure to rebuild and resume operation within a reasonable time.  
Cessation of the business shall not constitute a default under this Agreement if  
caused by condemnation, expiration of a Location lease pursuant to its terms at  
execution, natural, governmental or supplier related causes out of Operator's  
control, or when failure to rebuild following destruction of the System  
Restaurant is prohibited by law or the Location lease. In the event of  
termination pursuant to this subsection 15.2.6, the written notice period shall  
commence five days from the date Franchisor sends written notice to Operator. At  
the expiration of this time period, this Agreement shall be deemed terminated.  
For purposes of this article, ceasing to operate or otherwise abandoning its  
System Restaurant shall be defined as Operator's failure to open its Maui Tacos  
Restaurant for business for five consecutive days.  
  
15.3 DEFAULTS WITH OPPORTUNITY TO CURE.  
  
 15.3.1 Except as otherwise provided in this Agreement, Operator shall have  
10 days after Franchisor's written notice of default within which to remedy any  
default under this Agreement, and to provide evidence of such remedy to  
Franchisor. If any such default is not cured within that time period, or such  
longer time period as applicable law may require, Franchisor may, at its option,  
terminate this Agreement and all rights granted by it, by sending a 5 day  
written notice of cancellation of this Agreement to Operator. Upon the  
expiration of such 5 day period, this Agreement shall end and expire as if it  
were the day fixed for termination of this Agreement.  
  
  
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 15.3.2 Operator shall be in material default under this Article for any  
failure to comply with any of the requirements imposed by this Agreement. Such  
material defaults shall include, without limitation, the occurrence of any of  
the following events:  
  
 15.3.2.1 Operator's failure, refusal, or neglect to promptly pay any  
monies owed to Franchisor, its subsidiaries or affiliates, when due, or to  
submit the financial or other information required by Franchisor under this  
Agreement.  
  
 15.3.2.2 Operator's failure to maintain the standards specified by  
Franchisor in the Manual or otherwise.  
  
 15.3.2.3 Operator's failure, refusal or neglect to obtain Franchisor's  
prior written approval or consent as required by this Agreement.  
  
 15.3.2.4 Operator's misuse or unauthorized use of Franchisor's Marks or  
other material impairment of the goodwill associated therewith or Franchisor's  
rights therein.  
  
 15.3.2.5 Operator's commencement or conducting of any business operation,  
or marketing of any product, under a name or xxxx which, in Franchisor's  
reasonable opinion, is confusingly similar to Franchisor's Marks.  
  
 15.3.2.6. Operator's default, without cure after the applicable grace  
period, under any lease, sublease, sub-sublease, mortgage, or deed of trust  
covering the Location.  
  
 15.3.2.7 Operator's failure to procure or maintain the insurance required  
by this Agreement or in the lease and sublease for the Location.  
  
 15.3.2.8 Operator's default in the performance of any term, condition or  
obligation in payment of any indebtedness to its landlord or sublandlord,  
distributors or suppliers or others arising out of the purchase of inventory,  
supplies or purchase or lease of equipment for operation of its System  
Restaurant, and if any such default is not cured within 30 days after written  
notice by Franchisor to Operator, unless Operator is determined by a court of  
competent jurisdiction to be not in default.  
  
 15.4 In the event of a default by Operator, all of Franchisor's costs and  
expenses arising from such default, including reasonable legal fees and  
reasonable hourly charges of Franchisor's administrative employees shall be paid  
to Franchisor by Operator within 5 days after cure.  
  
 15.5 Notwithstanding the obligations of Operator and Franchisor to  
arbitrate all disputes and other conflicts, Operator and Franchisor acknowledge  
that certain defaults require immediate action to protect the appropriate party.  
Accordingly, Franchisor and Operator each hereby consent to and authorize the  
other party to apply to any court of competent jurisdiction for judicial  
assistance in restraining and enjoining violations of this Agreement. Both  
Franchisor or Operator are entitled to an injunction restraining Franchisor or  
Operator from committing or continuing to commit any default, breach or  
threatened breach of this Agreement, without showing or proving any actual  
damage sustained by the party seeking such relief.  
  
  
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 15.6 Non-enforcement by Franchisor of any violation of the terms of this  
Agreement by Operator shall not constitute a waiver of such violation by  
Franchisor nor shall Franchisor be deemed to have waived any of its rights to  
enforce compliance by Operator of such breach or any other breach of this  
Agreement.  
  
 ARTICLE 16. RIGHTS AND OBLIGATIONS UPON TERMINATION.  
  
Upon the termination of Operator's rights granted under this Agreement, (whether  
during the term of the Agreement or at its conclusion) the following apply:  
  
 16.1 Upon termination of this Agreement by lapse of time or by default,  
Operator's right to use Franchisor's Marks, or any other xxxx distributed by  
Franchisor or insignia or slogan used in connection therewith, or any  
confusingly similar trademark, service xxxx, trade name or insignia shall cease.  
Operator shall immediately discontinue use of Franchisor's Marks, System, and  
color scheme. Operator shall at its own cost, make cosmetic changes to  
Operator's System Restaurant from Franchisor's proprietary designs including,  
but not limited to, the removal of all Maui Tacos identifying materials and  
distinctive Maui Tacos cosmetic finishes, tile walls, interior wall coverings  
and colors, exterior finishes and colors, signage and Maui Tacos counter  
equipment (which shall be deemed proprietary to Franchisor) from the Location as  
Franchisor may reasonably direct.  
  
 16.2 Franchisor may retain all fees paid pursuant to this Agreement.  
  
 16.3 Any and all obligations of Franchisor to Operator under this  
Agreement shall immediately cease and terminate.  
  
 16.4 Any and all rights of Operator under this Agreement shall immediately  
cease and terminate.  
  
 16.5 In no event shall a termination or expiration of this Agreement  
affect Operator's obligations to take or abstain from taking any action in  
accordance with this Agreement. The provisions of this Agreement which  
constitute post-termination covenants and agreements including the obligation of  
Franchisor and Operator to arbitrate any and all disputes shall survive the  
termination or expiration of this Agreement.  
  
 16.6 Operator acknowledges and agrees that rights in and to Franchisor's  
Marks and the use thereof shall be and remain the property of Franchisor.  
  
 16.7 If Operator has registered any of Franchisor's Marks or the name  
"Maui Tacos" as part of Operator's assumed, fictitious or corporate name,  
Operator shall promptly amend such registration to delete Franchisor's Marks  
therefrom.  
  
 16.8 Operator shall immediately pay any and all amounts owing to  
Franchisor, its subsidiaries and affiliates.  
  
 16.9 Franchisor shall have the option, exercisable by written notice  
within 30 days after  
  
  
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the termination of this Agreement, to take an assignment of all telephone  
numbers (and associated listings) for Operator's System Restaurant. Operator is  
not entitled to any compensation from Franchisor if Franchisor exercises this  
option.  
  
 ARTICLE 17. INSURANCE.  
  
 17.1 Operator shall obtain and maintain insurance coverage which shall in  
each instance designate Franchisor, and its subsidiaries, as an additional named  
insured, with an insurance company approved by Franchisor, which approval shall  
not be unreasonably withheld as follows:  
  
 17.1.1 Comprehensive general liability insurance (including products  
liability and sexual harassment coverage); with coverage of $1,000,000 to  
$3,000,000 combined single limit for death, personal injury, and $100,000  
property damage coverage.  
  
 17.1.2 Business interruption insurance, including Location rentals and  
Additional Rentals for 12 months after casualty, in amounts equal to at least  
$100,000.  
  
 17.1.3 Workers' compensation insurance (coverage B) as required by  
applicable law.  
  
 17.1.4 Fire, and extended coverage insurance, insuring the construction of  
improvements and completed System Restaurant operated by Operator, for the full  
replacement value thereof.  
  
 17.1.5 If Operator establishes a delivery service for Authorized Products,  
Operator shall obtain separate non-owned auto coverage insurance. Operator may  
not directly or indirectly deliver any Authorized Products until such insurance  
is obtained and Franchisor named as additional insured therein.  
  
 17.2 In the event of damage to the System Restaurant covered by insurance,  
the proceeds of any such insurance shall be used to restore the System  
Restaurant to its original condition as soon as possible, unless such  
restoration is prohibited by the Location lease or Franchisor has otherwise  
consented to in writing. Upon obtaining such insurance, Operator shall promptly  
provide to Franchisor proof of such insurance coverage and/or at such other  
times upon the request of Franchisor.  
  
 17.3 Operator shall, prior to opening its System Restaurant, file with  
Franchisor, certificates of such insurance and shall promptly pay all premiums  
on the policies as they become due. In addition, the policies shall contain a  
provision requiring 30 days prior written notice to Franchisor of any proposed  
cancellation, modification, or termination of insurance. If Operator fails to  
obtain and maintain the required insurance, Franchisor may, at its option, in  
addition to any other rights it may have, procure such insurance for Operator  
without notice and Operator shall pay, upon demand, the premiums and  
Franchisor's costs in taking such action.  
  
 ARTICLE 18. SOLE OBLIGATIONS OF FRANCHISOR.  
  
 18.1 As described in Franchisor's Uniform Franchise Offering Circular (the  
"UFOC"), received by Operator at least 10 business days prior to the execution  
of this Agreement, Franchisor  
  
  
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has obligated itself to provide specific services to Operator. Franchisor also  
provides other voluntary services at its sole discretion. Franchisor and  
Operator agree that the following are the only required obligations of  
Franchisor:  
  
 18.1.1 To approve the Location of Operator.  
  
 18.1.2 To reasonably assist Operator with any operational or financial  
problem encountered by Operator, after notice to Franchisor in duplicate sent  
to: (i) Franchisor c/o General Counsel, 000 Xxxxxxxx - 00xx Xxxxx, Xxx Xxxx, Xxx  
Xxxx 00000; and (ii) Vice President - Operations, 0000 Xxx Xxxxxxxx, Xxxxx 000,  
Xxxxxxx, Xxxxxxx 00000 by certified mail (return receipt requested) or at any  
subsequent addresses established by Franchisor, of Operator's problem and the  
type of assistance needed. At no time shall reasonable assistance be interpreted  
to require Franchisor to pay any money to Operator. Franchisor, in its sole  
discretion, may provide any assistance at Franchisor's designated office or  
where Operator is located, at a time to be determined by Franchisor.  
  
 18.1.3 To reasonably administer to the advertising program. Operator  
acknowledges that pursuant to the advice of advertising and marketing  
professionals, advertising collections will at times be aggregated until  
sufficient revenues are accumulated to commence or complete an advertising or  
marketing program. Reasonable administration shall be deemed to be good faith  
attempts to utilize the advertising funds in accordance with the advice and  
suggestions of the advertising and marketing staff or outside advertising and/or  
marketing companies, consultants or other entities retained for such purpose.  
  
 18.1.4 To assist Operator in arranging for the initial financing of its  
System Restaurant, if feasible and necessary (Franchisor is not directly or  
indirectly responsible for the failure of Operator to meet the qualifying  
standards of such independent financing sources).  
  
 18.1.5 To supply to Operator a set of standard decor and layout plans and  
to thereafter approve the initial decor and layout of Operator's System  
Restaurant.  
  
 18.1.6 To loan Operator a copy of its Operations Manual or computer  
diskette thereof which manual contains mandatory and suggested specifications,  
standards and procedures. This Manual is confidential and remains Franchisor's  
property.  
  
 18.1.7 To train Operator in accordance with Article 3 herein, and to  
provide representatives of Franchisor to assist in opening the System  
Restaurant.  
  
 18.2 Franchisor shall not and cannot be held in breach of this Agreement  
until (i) Franchisor has received notice of any alleged breach from Operator in  
duplicate, by registered mail, sent to the parties set forth in paragraph 2 of  
this Article; and (ii) Franchisor has failed to remedy the breach within a  
reasonable period of time after such notice, which period shall not be less than  
60 days. This is a material term of this Agreement and may not be modified or  
changed by any arbitrator in an arbitration proceeding or otherwise in any court  
of competent jurisdiction.  
  
  
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 ARTICLE 19. POINT OF SALE SYSTEM, COLLECTION OF DATA.  
  
 19.1 This Agreement and the Manuals require the submission of weekly  
statistical control forms as well as other financial, operational and  
statistical information required by Operator and Franchisor to: (i) assist  
Operator in the operation of its System Restaurant in accordance with the  
System; (ii) allow Franchisor to monitor the Operator's gross sales, purchases,  
costs and expenses; (iii) enable Franchisor to develop chainwide statistics  
which may improve bulk purchasing; (iv) assist Franchisor in the development of  
new authorized products or the removal of existing unsuccessful Authorized  
Products; (v) enable Franchisor to refine existing Authorized Products; (vi)  
generally improve chainwide understanding of the System; and (vii) obtain new  
types of information unknown at this time (collectively, the "Information"). To  
achieve these results, cash collection and data processing systems are  
necessary.  
  
 19.2 Operator agrees to purchase and use the point of sale cash collection  
and data processing system (the "POS System") and only the specified software  
authorized by Franchisor, as specified in the Construction and Equipment Manual  
or otherwise by Franchisor in writing. The POS System includes a PC based cash  
register, register tape printer, magnetic stripe reader, cash drawer, defined  
Franchisor polling and register software and telecommunications equipment.  
  
 19.3 Operator agrees to (i) connect the POS System to Operator's telephone  
line(s); (ii) maintain it in good working order; and (iii) not disconnect any  
POS System connection or phone line at any time, for any reason, without prior  
written approval. Operator agrees, at Franchisor's request, to maintain  
membership in a designated third party network (such as Compuserve, AOL,  
Prodigy, etc.) for the purpose of implementing, transmitting, collecting and  
maintaining any Information or data exchange system. Operator specifically  
authorizes Franchisor to either "upload" or "download" information in and from  
or to its computers, cash registers or other such devices as allowed by law, as  
it relates to the System Operation by internet, intranet, and other networks or  
other means as they become available.  
  
 19.4 Operator agrees to pay to Franchisor up to $13 weekly (subject to  
reasonable annual increases) in the manner provided under Article 9 herein, for  
support service for the POS System software during the term of its franchise and  
any renewals. This fee will be collected by Franchisor for payment to 1 or more  
3rd party suppliers who are designated by Franchisor to provide the support  
service. The 3rd party suppliers will provide 24-hour telephone support and  
annual maintenance for any upgrades and enhancements that they make to the  
required POS System software. Franchisor may cancel this service on 30 days'  
written notice to Operator, and may resume these services at any time with any  
supplier Franchisor chooses. Franchisor may revise the POS System  
specifications. Operator may be required to upgrade or update its POS System  
recording system. On Franchisor's request, Operator must apply for and maintain  
debit card, credit card or other non-cash payment systems to enable customers to  
purchase products through these procedures. There is no contractual limitation  
on Franchisor's right to receive information through the POS System.  
  
 ARTICLE 20. RELATIONSHIP OF PARTIES, DISCLOSURE.  
  
 20.1 Franchisor and Operator are not and shall not be considered joint  
ventures, partners,  
  
  
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or agents of each other, or anything other than Franchisor and Operator, and  
neither shall have the power to bind or obligate the other except specifically  
as set forth in this Agreement. Franchisor and Operator agree that the  
relationship created by this Agreement is not a fiduciary relationship. Operator  
shall not, under any circumstances, act or hold itself out as an agent or  
representative of Franchisor. Operator agrees to indemnify and hold Franchisor  
harmless from any claims, demands, liabilities, actions suits or proceedings  
asserted by third parties arising out of the operation of Operator's System  
Restaurant or Operator's breach of any of the terms of this Agreement.  
Franchisor agrees to indemnify and hold Operator harmless from any claims,  
demands, liabilities, actions suits or proceedings asserted by third parties and  
arising out of Franchisor's operations unless caused by Operator.  
  
 20.2 As set forth in the UFOC delivered to Operator as described above,  
Operator acknowledges that Franchisor has entered into certain subfranchise  
agreements with subfranchisors and/or area developers in certain areas and  
territories. Pursuant to these contracts, the subfranchisors of Franchisor are  
obligated to provide certain sales, operational and support services for  
Franchisor. Operator acknowledges that the relationship between Franchisor and  
all of its subfranchisors and/or area developers is strictly contractual and  
that no subfranchisor and/or area developer is an agent of Franchisor.  
Accordingly, Operator acknowledges and agrees that any past, current or future  
subfranchisor is not the actual, express or implied agent of Franchisor, and has  
no power or authority to: (i) act on Franchisor's behalf; (ii) enter into or  
execute any agreement on Franchisor's behalf; (iii) make any representation or  
promise on Franchisor's behalf; or (iv) bind Franchisor in any way. Unless  
otherwise specifically agreed to in writing, Franchisor expressly disavows any  
acts by others, including subfranchisors, that purport to bind Franchisor in any  
way. Operator agrees to waive any claim or defense in any litigation or  
arbitration proceeding that a subfranchisor is the express or implied agent of  
Franchisor. Operator agrees that any attempt to raise, assert or justify such  
claim or defense in any proceeding constitutes a material default of this  
Agreement.  
  
 20.3 Articles have been published about Maui Tacos, specifically one  
entitled Beach Blanket Burrito which appeared in the December 1998 issue of The  
Chain Leader and the other entitled Hawaiian Style Mexican Hits the Mainland  
with Maui Tacos which appeared in the November 23, 1998 issue of Nation's  
Restaurant News (the "Printed Articles"). These Printed Articles as written may  
not be delivered to you by Franchisor as that may violate existing franchise  
laws, and if improperly delivered, Franchisor will not execute a franchise  
agreement until the violation is cured.  
  
 ARTICLE 21. DISPUTE RESOLUTION:  
 ARBITRATION AND LEGAL PROCEEDINGS.  
  
 21.1 Franchisor and Operator acknowledge that disputes or disagreements  
may arise during the term of this Agreement and any renewals thereto. Franchisor  
and Operator have elected to resolve such disputes or disagreements in a  
non-judicial alternative dispute resolution format ("ADR"). An ADR format  
minimizes the expense of dispute resolution and generally can be accomplished in  
a more expeditious and effective manner. By agreeing to an ADR format, both  
Operator and Franchisor are also waiving a number of rights, remedies and  
privileges which may arise in a judicial resolution format. In view, however, of  
the continuing relationship between Operator and Franchisor over the original  
and renewal terms of this Agreement, both Operator and  
  
  
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Franchisor agree that an ADR format is the most economical, efficient and  
practical way to resolve disputes and disagreements.  
  
 21.2 Accordingly, except as otherwise provided in this Agreement, in the  
event of any dispute or disagreement between Franchisor and Operator with  
respect to any issue arising out of or relating to this Agreement, its breach,  
its interpretation or any other disagreement between Operator and Franchisor,  
such dispute or disagreement shall be resolved by arbitration. In the event of  
any dispute or disagreement, Operator and Franchisor both agree to submit the  
dispute to arbitration in accordance with the least expensive procedure of the  
American Arbitration Association ("AAA"), and the application for such  
arbitration shall be filed in the AAA's New York City office. Franchisor and  
Operator agree that the hearing(s) shall be held in New York City, State of New  
York before one arbitrator. This paragraph shall not apply to any monetary  
defaults of Operator, including Operator's obligation to pay franchise and  
advertising fees to Franchisor, as to which Franchisor shall be free to utilize  
any right or remedy it may have at law or equity.  
  
 21.3 Franchisor and Operator agree that this Agreement evidences a  
transaction involving interstate commerce and that the enforcement of this  
arbitration provision and the confirmation of any award issued to either party  
by reason of an arbitration conducted pursuant to this arbitration provision is  
governed by the Federal Arbitration Act, 9 U.S.C. ss. 1 et seq.  
  
 21.4 Punitive or exemplary damages or attorney's fees may not be awarded  
by the arbitrator(s), and any such award shall not be enforceable or enforced by  
any court. Except as otherwise provided, each party shall bear its own  
attorney's fees, expert witness fees, and other court costs incurred in  
connection with any legal action or arbitration between Franchisor and Operator.  
If the waiver of punitive or exemplary damages or legal fees and related costs  
are in violation of the laws of the state where the Operator's System Restaurant  
is located, such claims may be awarded by the arbitrator(s), and any such award  
shall be enforceable or enforced in any court of appropriate jurisdiction. This  
agreement shall be strictly construed in the arbitration hearing. In no event  
can the material provisions of this Agreement including, but not limited to the  
method of operation, Authorized Product line or monetary obligations specified  
in this Agreement, amendments to this Agreement or in the Manuals be modified or  
changed by the arbitrator at the arbitration hearing.  
  
 21.5 Except for injunctive relief (including temporary restraining orders,  
preliminary injunctions and injunctions or similar relief which must be brought  
in an appropriate local forum), any legal proceeding authorized by this  
Agreement shall be commenced only in the Federal District Court for the Southern  
District of New York and both Franchisor and Operator consent to the  
jurisdiction in the Federal District Court for the Southern District of New  
York. In the event the parties do not meet the jurisdictional requirements for  
Federal Court, the parties consent to jurisdiction in the Supreme Court, New  
York County, State of New York. Operator agrees that mailing to its last known  
address by certified mail of any process shall constitute lawful and valid  
process. In all cases, Operator and Franchisor each waives any right to a trial  
by jury. Notwithstanding the foregoing, if the laws of the state where  
Operator's System Restaurant is located requires jurisdiction of the courts of  
that state or control by the laws of that state, then this Agreement shall be  
deemed modified to comply with the applicable laws thereto.  
  
 21.6 The terms of this article shall survive termination, expiration or  
cancellation of this  
  
  
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Agreement.  
  
 ARTICLE 22. EXECUTION, REQUESTS, CONSENTS AND WAIVERS.  
  
 22.1 This Agreement takes effect upon its acceptance and execution by  
Operator and Franchisor, and shall be governed by and construed in accordance  
with the laws of the State of New York, USA. Franchisor will consider written  
requests by Operator for Franchisor's consent to a waiver of any obligation  
imposed by this Agreement. Operator agrees, however, that Franchisor is not  
required to act uniformly with respect to waivers, requests and consents as each  
request will be considered on a case by case basis, and nothing shall be  
construed to require Franchisor to grant any such request. Any waiver granted by  
Franchisor shall be without prejudice to any other rights Franchisor may have,  
will be subject to continuing review by Franchisor, and may be revoked, in  
Franchisor's sole discretion, at any time and for any reason, effective upon 10  
days prior written notice to Operator. Franchisor makes no warranties or  
guarantees upon which Operator may rely, and assumes no liability or obligation  
to Operator by providing any waiver, approval, consent, assistance, or  
suggestion to Operator in connection with this Agreement, or by reason of any  
neglect, delay, or denial of any request.  
  
 22.2 Unless otherwise provided, whenever this Agreement requires Operator  
to obtain Franchisor's prior written consent, Operator shall timely address its  
written request for such consent in duplicate to the parties set forth in  
paragraph 2 of Article 18 or such other persons as Franchisor may designate in  
writing. Franchisor will then consider such request and advise Operator of the  
decision, in writing, within 45 days. Franchisor's failure to advise Operator  
will constitute Franchisor's consent to such request. The 45 day period shall  
not begin to run, however, until Operator has provided Franchisor with all  
information and documentation requested by Franchisor. Neither Operator nor  
Franchisor shall be deemed to have waived or impaired any right, power or option  
reserved by this Agreement, including, without limitation, its right to demand  
strict compliance with every term, condition, and covenant herein, or to declare  
any breach thereof a default and to terminate this Agreement prior to the  
expiration of its term, by virtue of any custom or practice of the parties at  
variance with the terms hereof; by any forbearance, delay, failure, or omission  
to exercise any right, power, or option, whether of the same, similar, or  
different nature, against Franchisor, Operator, or any other operator; or by the  
acceptance of any payments due after any breach of this Agreement.  
  
 ARTICLE 23. MISCELLANEOUS PROVISIONS.  
  
 23.1 This Agreement may be executed in any number of counterparts, each of  
which, when so executed and delivered, shall be deemed an original, but such  
counterparts together shall constitute but one and the same instrument.  
  
 23.2 This Agreement (as further explained in the UFOC) contains the entire  
agreement of the parties and cannot be modified, changed or amended except in  
writing and signed by Franchisor.  
  
 23.3 There is no other agreement, representation or warranty made by  
Franchisor or any other entity or person associated with Franchisor other than  
contained in this Agreement. This Agreement is not subject to or conditioned  
upon the obtaining of a Location for Operator's System  
  
  
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Restaurant.  
  
 23.4 Except as otherwise provided, each party shall bear its own  
attorney's fees arising from the negotiations and execution or lack of execution  
of this Agreement.  
  
 23.5 Each article, paragraph, subparagraph, term, and condition of this  
Agreement shall be considered severable. If for any reason, any portion of this  
Agreement is determined to be invalid or in conflict with any law or rule in a  
final ruling issued by any court, agency, or tribunal with valid jurisdiction in  
a proceeding to which Franchisor is a party, that ruling shall not effect the  
validity or enforceability of any other portion of this Agreement.  
  
 23.6 All notices to Franchisor required by the terms of this Agreement,  
unless otherwise provided, shall be sent by certified or registered mail or by  
overnight delivery service, addressed to the parties set forth in this  
Agreement, or at such other address as Franchisor designates. All notices to  
Operator required by the terms of this Agreement shall be sent by certified or  
registered mail or by overnight delivery service, addressed to Operator at the  
Location, or at such other or additional address as Operator designates in  
writing. If Operator refuses acceptance of any certified, registered or  
overnight delivery, acceptance shall be deemed to have occurred 48 hours after  
rejection of such notice.  
  
 23.7 Operator acknowledges that the evolution of the System requires the  
development of Nontraditional Maui Tacos Restaurants, Maui Tacos Distribution  
Points and Branded Products.  
  
 23.8 For the purpose of this article, a co-brand shall be defined as an  
independent operating system owned by another entity (not Franchisor) that is  
incorporated as an operational part within the Operator's System Restaurant. An  
example would be an independent ice cream/yogurt operation installed within  
Operator's System Restaurant. Subject to Franchisor's prior written approval,  
Operator may install approved co-branding marketing systems to be operated in  
conjunction with Operator's System Restaurant. Franchisor shall not be required  
to approve any co-branding marketing system unless Franchisor has recognized  
that co-branding system as an approved co-brand for operation within its system  
restaurants, either nationally or regionally. Inasmuch as Operator and its  
employees will be incorporating the co-brand within its System Restaurant, all  
sales of the co-brand shall be included within the definition of "gross sales"  
as defined in Article 9 herein and Operator shall pay to Franchisor franchise  
and advertising fees for such sales.  
  
  
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 IN WITNESS WHEREOF, the parties hereof have executed this Agreement as of  
the date of execution by Franchisor.  
  
 MAUI TACOS INTERNATIONAL, INC.  
  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Date of Execution Vice President  
  
 Franchisee Name  
  
  
Executed as of the date first  
above written. By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Individual Name, Individual Title  
  
By execution of this Agreement, the undersigned stockholder(s) of the corporate  
Operator, or members of the LLC, or the individual Operator hereby personally  
accepts and agrees to comply with Article 10 of this Agreement and acknowledges  
that the Franchisor has executed this Agreement in reliance upon the commitments  
contained in this Paragraph.  
  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Individual Name  
  
  
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