Exhibit 10.44  
 AGREEMENT  
  
  
 AGREEMENT made as of the 29th day of October, 1997 by and between Maui  
Tacos International, Inc., a Georgia corporation to be formed located at 0000  
Xxx Xxxxxxxx, Xxxxxxx, Xxxxxxx 00000 (hereinafter referred to as "MTII") and  
Blimpie International, Inc. located at 000 Xxxxxxxx, Xxx Xxxx, Xxx Xxxx 00000  
(hereinafter referred to as "Blimpie"), Lumi Kuke Partnership, a Hawaii limited  
partnership located at c/o Xxxxx X. Xxxxxxxx, Esq., 00 Xxxxx Xxxxxx Xxxxxx,  
Xxxxxxx, Xxxx, Xxxxxx, 00000 (hereinafter referred to as "Lumi Kuke"); Xxx Xxx,  
Inc. (corporate general partner of Lumi Kuke) located at c/o Xxxx Xxxxxx at Maui  
Tacos, 000 Xxxxx Xxxxxx, Xxxxxxx, Xxxx, Xxxxxx, 00000 and Xxxx Xxxxxx located at  
c/o Xxxxx X. Xxxxxxxx, Esq., P. O. Xxx 0000, Xxxxxxx, Xxxx, Xxxxxx, 00000  
(hereinafter referred to as "Xxxxxx") and Xxxx Xxxxxx located at c/o Xxxxxxx X.  
Xxxxx, Esq., Xxxx, Xxxxx & Xxxxx, Xxx Place, 0000 Xxxxxxxx Xxxx, X.X., Xxxxxx  
Xxxxx, Xxxxxxx, Xxxxxxx 00000 (hereinafter referred to as "Xxxxxx"); No Lava,  
Inc. a Hawaii corporation located at c/o Xxxxx X. Xxxxxxxx, Esq., 00 Xxxxx  
Xxxxxx Xxxxxx, Xxxxxxx, Xxxx, Xxxxxx, 00000 (hereinafter referred to as "No  
Lava"); Xxxxxx Xxxxxxx located at 0000 Xxx Xxxxxxxx, Xxxxxxx, Xxxxxxx 00000  
(hereinafter referred to as "Sitkoff"); and Xxxxxx Xxxxxx located at c/o Xxxxxxx  
X. Xxxxxxx, Esq., 000 Xxxxxxxx, Xxx Xxxx, Xxx Xxxx 00000.  
  
 PREAMBLE  
  
 Xxx Xxx, Inc. is the General Partner of Lumi Kuke and Xxxxxx and Xxxxxx  
are limited partners of Lumi Kuke. Lumi Kuke is the current owner of the  
trademark "Maui Tacos" and of certain intellectual property and trade secrets  
regarding the Maui Tacos business operation and format and an owner of four Maui  
Tacos restaurants in Maui, Hawaii. Xxxxxx is also the sole stockholders,  
officers and directors of No Lava owning 100% of the outstanding and issued  
shares of said corporation. No Lava is the former owner of a U.S.A. trademark  
application for the trademark "Maui Tacos" Serial Number 74/664,190, Class 25  
and 42 which is currently subject to a trademark office action having assigned  
all right, title and interest in and to the Maui Tacos trademark, any and all  
intellectual properties and trade secrets to Lumi Kuke on October 21, 1997. If  
for whatever reason the Maui Tacos trademark cannot be obtained, then the  
parties will create another trademark incorporating "Maui Tacos" therein. Lumi  
Kuke has previously authorized those corporations identified on the annexed  
Exhibit A by a cancelable license to utilize the trademark Maui Tacos in  
conjunction with their Hawaiian/Mexican restaurant operations. Collectively,  
Lumi Kuke and No Lava are the owners of six Maui Tacos restaurants whose  
locations are identified on Exhibit A.  
  
  
 13  
  
  
 Xxxx Xxxxxx is a food service expert and chef noted for his expertise in  
cooking and product development particularly of Hawaiian/Mexican food products  
and fruit type drinks including "Smoothies". Xxxxxx is a businessman and  
promoter/developer of concepts with special skills in public relations,  
marketing, private labeling and promotion of Hawaiian/Mexican restaurants and  
food products.  
  
 Blimpie is a New Jersey public corporation and the licensee of the Blimpie  
trademarks (Blimpie has received a 99 year license to sublicense the Blimpie  
trademarks from Xxxxxxx X. Xxxxx and Xxxxx X. Xxxxxx, Esq.) and franchisor of  
approximately 1,700 open Blimpie Restaurants and approximately 100  
subfranchises. Blimpie has been in the franchise and subfranchise business since  
1977 and is desirous of associating with Lumi Kuke, Xxxxxx and Xxxxxx on behalf  
of themselves and as representatives of Lumi Kuke in connection with the  
development of a franchise system specializing in Hawaiian/Mexican cuisine under  
the name "Maui Tacos" and a fruit type drink operation which will also sell  
"Smoothie's" whose names have yet to be developed.  
  
 Lumi Kuke, Xxxxxx and Xxxxxx have reviewed the current 1997 NYS/FTC and  
Hawaii/FTC Blimpie Restaurant Franchise and Subfranchise Disclosure Documents of  
Blimpie including the franchise agreement, subfranchise agreement, information  
regarding officers, directors, control persons, financial statements, and such  
other information as is available prior to the execution of this Agreement.  
Xxxxxx and Xxxxxx have visited Blimpie's executive offices in New York, New York  
as well as a number of Blimpie Restaurants and have reviewed materials regarding  
Blimpie and its executive staff. Blimpie has visited a number of the Maui Tacos  
locations set forth on the annexed Exhibit A and its executives have met with  
Xxxxxx in New York, New York and Xxxxxx and Xxxxxx in Hawaii.  
  
 Under discussion, and subject to a decision of the Board of Directors of  
MTII, is the development of one or more pilot locations which may be independent  
stand alone Maui Tacos outlets or co-branded Maui Tacos outlets in order to  
develop the operating system, establish all of the needed procedures and  
know-how required by MTII to effectively operate its business.  
  
 WHEREAS, Blimpie and Lumi Kuke each desire to associate with the other in  
the development of a franchise system which will be owned by MTII as hereinafter  
described; and  
  
  
  
 14  
  
  
 WHEREAS, Xxxxxx is the sole stockholder of No Lava; Xxx Xxx, Inc. is the  
general partner and Xxxxxx and Xxxxxx are the limited partners of Lumi Kuke; and  
  
 WHEREAS, Xxxxxx Xxxxxx is the individual who has introduced Xxxxxx to  
Blimpie and is entitled to a finders fee for such introduction.  
  
 NOW, THEREFORE, in consideration of the foregoing and the mutual terms,  
covenants and conditions herein below set forth, it is agreed as follows:  
  
 1. Corporation Formation. Blimpie has formed a Georgia corporation with  
the name of "Maui Tacos International, Inc." The corporation shall be authorized  
to issue 15,000,000 shares of common stock (no par value).  
  
 2. Shareholder Identification. For the subscription prices set forth in  
Article 3.1 herein, the applicable parties (for the purpose of this Agreement,  
applicable parties shall be defined to be Lumi Kuke and Blimpie, not Sitkoff,  
Xxxxxx or any of the Celebrities or other entities that receive shares from  
MTII) to this Agreement agree that they will perform all acts and execute all  
documents and instruments necessary to reflect ownership of MTII's stock in the  
following manner:  
  
 Shareholder Number of Shares Owned  
 ----------- ----------------------  
 Lumi Kuke 1,600,000  
 Blimpie 6,000,000  
 Celebrities or Other Entities  
 To Be mutually  
 agreed upon 800,000  
 Xxxxxx Xxxxxx 100,000  
 Xxxxxx Xxxxxxx 200,000  
  
The certificate or certificates representing the shares issued by MTII to all  
current and future shareholders shall have endorsed upon the face thereof the  
following legend: "This share certificate is held subject to the terms of an  
agreement dated October 29, 1997 made by the Corporation with Xxx Xxx, Lumi  
Kuke, No Lava, Blimpie, Xxxx and Xxxx Xxxxxx, Xxxxxx, Xxxxxx and Xxxxxxx, a copy  
of which is on file at the office of this corporation." At such time that MTII  
is involved in a public registration wherein its shares are sold to the public  
in accordance with applicable laws, rules and regulations, said shares shall not  
  
  
 15  
  
  
bear an inscription nor shall said public shareholders be obligated under this  
Agreement.  
  
With respect to shares to be issued to Celebrities or other entities, such  
decision shall be made by Lumi Kuke and Blimpie unanimously. Currently it is  
intended that 100,000 shares shall be sold for nominal consideration to Xxxxxx  
Xxxxx, Xxxxxxx Xxxxxxx and Xxxxx Xxxxxx. Under discussion are plans to issue  
shares over time to outside entities such as music promoters or other businesses  
which will result in a benefit to MTII whether via marketing, advertising,  
networking or some constructive benefit to MTII. Any additional sale or grant of  
the shares of MTII after the projected 800,000 shares to be sold for nominal  
consideration to Celebrities or other entities, shall be subject to a decision  
of the Board of Directors of MTII and its shareholders as may be appropriate in  
accordance with all applicable laws, rules and regulations. Any additional sale  
or grant of the shares of MTII shall only be for a proper corporate purpose, for  
fair and reasonable consideration in the event of a private placement sale of  
any of the shares of MTII or in the event of a grant of shares for nominal  
consideration to an entity that will provide reasonable services or benefits to  
MTII to merit such a grant for nominal consideration or in conjunction with an  
authorized employee stock option or benefit plan for the employees of MTII. The  
grant for nominal consideration of any of the shares of MTII to any relative of  
any member of the Board of Directors of MTII (excluding Xxxxxx or Xxxxxx) or  
Blimpie shall require the consent of Lumi Kuke prior to such transaction.  
  
 3. Subscription Price.  
  
 3.1 Blimpie shall pay the following subscription price for its shares:  
Blimpie shall invest as a capital contribution the sum of $10,000 and shall  
within 30 days from the execution date of all parties loan MTII the sum of  
$240,000 to be repaid five (5) years from the date of receipt plus interest  
equal to the average of the prime rate of Citibank, N.A. over said five (5) year  
term. Annexed to this Agreement is the form of the promissory note to be  
executed by MTII. Thereafter Blimpie may in its sole discretion without any  
obligation to do so, loan to MTII such other sums as needed by MTII in an amount  
not to exceed $1,250,000 on the same terms as the initial loan but payable five  
(5) years after receipt of said funds plus interest compounded annually equal to  
the average of the prime rate of Citibank, N.A. over said five (5) year as said  
funds are needed by MTII. However Blimpie shall have the right to cease loaning  
MTII any funds after the first loan of $240,000 at any time in its sole  
discretion.  
  
  
 16  
  
  
 3.2 Lumi Kuke shall pay the following subscription price for its shares:  
Lumi Kuke shall pay MTII the sum of $100.00 for its shares in MTII.  
  
 3.2.1 Upon the execution of this Agreement, Xxx Xxx, Xxxxxx and Xxxxxx  
shall cause Lumi Kuke for the consideration of $100 paid to Lumi Kuke by MTII to  
assign, convey and transfer all right, title and interest they may have in (i)  
the Maui Tacos trade name; (ii) the Maui Tacos trademark and (iii) all trade  
secrets and intellectual property regarding the Maui Tacos system of operation,  
to MTII. It is acknowledged by MTII that any right, title and interest it may  
receive from Lumi Kuke in the Maui Tacos trademark is subject to the obtaining  
of said trademark and there are no representations or warranties that said  
trademark may be obtained from the U.S. Patent office or when said trademark may  
be obtained. MTII shall continue seeking to have the Maui Tacos name registered  
but may also file a second trademark using the Maui Tacos name in part as well  
as seek to file state trademarks whenever and wherever MTII commences business  
activities. At the request of MTII, the parties hereto shall jointly cooperate  
in an attempt to sell MTII branded products as currently developed by Lumi Kuke  
and/or Xxxxxx and Xxxxxx in appropriate states in order to facilitate state  
trademark filings.  
  
 3.3 Sitkoff and Xxxxxx shall each pay $100 to MTII.  
  
 3.4 Celebrities. By execution hereof, the signators to this Agreement  
hereby acknowledge that in order to obtain publicity and public awareness, it is  
contemplated that agreed upon Celebrities and other entities will be granted  
shares in MTII for nominal consideration in anticipation that their association  
with MTII will facilitate franchise and subfranchise sales.  
  
 4. The initial by-laws of MTII are annexed.  
  
 4.1 The initial first Board of Directors of MTII shall consist of 3  
members for the first month of operations and then five directors elected by the  
existing shareholders as of the date of the first Board of Director election.  
Said shareholders shall elect Xxxxxx Xxxxxxx as Chairman, Xxxxxxx X. Xxxxx as  
Vice Chairman and Xxxxx X. Xxxxxx, Esq. and, at the written request of Xxxx  
Xxxxxx and Xxxxxx, at any time within 6 months from the date hereof the  
shareholders shall elect Xxxx Xxxxxx and Xxxxxx to serve as members of the Board  
of Directors for a one-year term. The Board of Directors members shall serve for  
a one year period until election of the successor Board of Directors pursuant to  
the by-laws  
  
  
 17  
  
  
of MTII.  
  
 4.2 The Board of Directors of MTII shall elect the following persons to  
the corporate offices listed below:  
  
 President: Xxxxxx Xxxxxxx  
 Vice President: Xxxxxxx X. Xxxxx  
 Secretary: Xxxxxxx X. Xxxxxxx  
 Treasurer: Xxxxx X. Xxxxxx, Esq.  
  
Chairman of the Board of Directors shall be Xxxxxxx X. Xxxxx and Vice Chairman  
Xxxxx X. Xxxxxx, Esq.  
  
 4.3 All checks shall require the signature of Xxxxxx Xxxxxxx, Xxxxxxx X.  
Xxxxx or Xxxxx X. Xxxxxx, Esq.  
  
 4.4 MTII shall bank at NationsBank of Georgia, N.A. or a branch thereof.  
  
 4.5 The officers and other employees of MTII shall be paid salaries and  
other compensation as determined by the Board of Directors in its sole  
discretion. In order to protect Lumi Kuke it is agreed that all compensation  
paid to officers and other employees shall be reasonable and consistent with  
industry standards. In the event that Lumi Kuke contends that any compensation  
payable to any officer or employee is unreasonable and inconsistent with  
industry standards, Lumi Kuke may commence an arbitration with the American  
Arbitration Association to declare that the compensation is unreasonable and  
inconsistent with industry standards and seeking to establish appropriate  
compensation. The arbitrator's decision shall be final.  
  
 4.6 Annexed to this Agreement are the by-laws of MTII which are hereby  
approved by the undersigned parties.  
  
 5. Option To Purchase. Lumi Kuke, Xxxxxx, Sitkoff and their respective  
successors and assigns hereby grants to Blimpie a 15 year option, expiring on  
the 15th anniversary date of this Agreement, 2012 at 5:00 p.m. New York time, to  
purchase all or any part of their respective holdings of MTII common stock at an  
exercise price of $5.00 per share.  
  
 6. Blimpie Stock Conversion Rights. After MTII has completed two fiscal  
years  
  
  
  
 18  
  
  
of operation, all of MTII's shareholders except Blimpie shall have the right,  
from the end of the second fiscal year through the end of the ninetieth day  
after the public issuance of Blimpie's audited financials for the second such  
year, by written notice of election to Blimpie and the other MTII shareholders,  
to convert all or a portion of their respective shares of MTII common stock into  
Blimpie common $.01 par value stock (hereinafter the "Converting Shareholders")  
pursuant to the following formula (hereinafter the "Conversion Election"):  
  
 6.1 Said electing shareholders shall establish a ratio equal to the ratio  
of (i) MTII earnings based on the average of two years of MTII earnings or the  
second year's earnings if less than the first year's earnings to (ii) Blimpie  
consolidated earnings (including MTII earnings for the same period). The highest  
ratio can be one to one but there cannot be a ratio where there are more than  
one Blimpie share for one MTII share.  
  
 6.2 Converting shareholders shall specify in writing the number of their  
MTII shares they elect to convert (hereinafter the "Conversion Shares").  
  
 6.3 Each converting shareholders, subject to the Aggregate Conversion  
Limitation (defined below in Article 6.43), shall be entitled to receive the  
number of Blimpie shares (hereinafter the "Converted Shares") which are equal  
to:  
  
 6.3.1 The number of Conversion Shares for each converting shareholder;  
  
 6.3.2 Multiplied by a fraction which shall:  
  
 6.3.2.1 Be deemed to never be greater than one (1);  
  
 6.3.2.2 Have a numerator which is the lesser of the earnings per share  
of MTII for:  
  
 6.3.2.2.1 The last twelve (12) months; or  
  
 6.3.2.2.2 The last twenty-four (24) months; and  
  
 6.3.2.3 Have a denominator which is the earnings per share for Blimpie for  
the applicable period of time in subsection 6.3.2.2.1 or 6.3.2.2.2, including  
the consolidated MTII earnings of Blimpie but excluding the earnings of any  
other shareholder of MTII.  
  
For example, if MTII earns $.50 for the fiscal year and Blimpie consolidated  
earnings (assuming Blimpie owns 70% of the outstanding shares of MTII) which  
includes 70% MTII, earnings was $1.00, MTII can convert two MTII shares to one  
Blimpie share. MTII  
  
  
 19  
  
  
accounting procedures such as GAAP and GAAS shall be the same procedures as  
applied by Blimpie to its own earnings. Notwithstanding the foregoing, the right  
of conversion by MTII shareholders shall be conditioned upon the following:  
  
 6.4 In no event may the electing shareholders of MTII exercise the  
Conversion Election in the aggregate in any point in time, to own more than ten  
(10) percent of the outstanding and issued shares of Blimpie (hereinafter the  
"Aggregate Conversion Limitation").  
  
 6.5 Subject to the limitations set forth in Article 6.4 herein, each  
shareholder can only elect to convert in relationship to the percentage of their  
shares as compared to the other shareholders entitled to convert. For example,  
if Lumi Kuke owns 44% of the shares of the non-Blimpie shareholders, Lumi Kuke  
can convert up to 44% of 10% of the outstanding and issued shares of Blimpie  
International, Inc. or 4.4% of Blimpie International, Inc. stock.  
  
 6.6 If less than all of the shareholders of MTII notify Blimpie of their  
intent to convert their shares, all of the other non-electing shareholders shall  
receive a notice from Blimpie of its receipt of such conversion election notice  
by the electing shareholder(s). The non-electing shareholders of MTII shall then  
be afforded the opportunity to also elect to convert their shares to Blimpie  
shares within the next forty five (45) day period after receipt of notice.  
  
 6.7 If such conversion results in the issuance of ten percent of the  
outstanding and authorized shares of Blimpie, but does not result in the  
purchase of all MTII shares not held by Blimpie, then in such an event, Blimpie  
shall have the option of purchasing the remaining shares held by the electing  
shareholders at five dollars per share pursuant to Article 4 herein and if said  
shares are not purchased pursuant to said option, then the option granted to  
Blimpie shall be deemed null and void and of no further force and effect.  
  
 7. Existing Maui Tacos Locations. At such time that MTII is approved by  
the State of Hawaii to award franchise agreements, Lumi Kuke and No Lava shall  
jointly and individually cause the corporations listed on Exhibit A to enter  
into franchise agreements with MTII which will provide for franchise fees of 6%  
of gross sales and 4% for advertising. However, so long as Lumi Kuke and/or No  
Lava are the controlling shareholders or if Xxxxxx or Xxxxxx are the controlling  
shareholders of the corporations listed on Exhibit A,  
  
  
  
 20  
  
  
said franchise and advertising fees shall be waived. At such time that any or  
all of the corporations or their assets are sold to third parties, then the  
waiver of franchise and advertising fees shall be deemed null and void and of no  
further force and effect so that said transferee shall then be obligated to pay  
to MTII said franchise and advertising fees. All new Maui Tacos locations  
whether owned directly or indirectly by Lumi Kuke or No Lava shall be  
franchisees of MTII paying all franchise and advertising fees without any waiver  
or cessation of same whatsoever.  
  
 8. Option to Purchase. Subject to the rights of Blimpie as is set forth in  
Article 5 herein and the Conversion rights in Article 6.7 herein, the shares of  
all MTII shareholders shall be subject to an option by MTII and the remaining  
shareholders as set forth herein. Said shares or any right, title or interest  
therein whether now owned or hereafter acquired, shall not be sold, assigned,  
transferred, pledged, or otherwise disposed of or encumbered, except in  
accordance with the provisions of this Agreement. Any disposition or encumbrance  
of shares contrary to the provisions hereof shall be void. In the event that any  
shareholder desires to sell all of its, his or her shares (no shareholder may  
sell a part of its/his/her shares except pursuant to the Conversion rights set  
forth in Article 6 hereof) to an offeree, the selling shareholder shall give at  
least thirty (30) days' notice in writing by certified mail with return receipt  
requested to the other shareholders and MTII, setting forth the number of shares  
for sale and the terms and conditions of the said offer. Within the thirty day  
(30) period, a special meeting of the shareholders shall be called by MTII to  
which the directors shall be invited, upon not less than five (5) days' nor more  
than ten (10) days' written notice to all directors and shareholders. Such  
meeting shall be held at the principal office of MTII or such other place as may  
be designated in the notice. At such meeting, the shares that the offering  
shareholder desires to sell shall be offered for sale and shall be subject to an  
option to purchase by MTII, which option shall be exercised, if at all, at the  
time of such meeting or any adjourned date thereof not to exceed ten days.  
 8.1 If MTII does not purchase all shares of the selling shareholder, the  
shares not so purchased shall be subject to an option in favor of the  
non-selling shareholder(s) to each purchase a proportionate share of such  
shares. Such option shall be exercised, if at all, at the time of the meeting of  
shareholders or any adjourned date thereof not to exceed ten (10) days.  
  
 8.2 Within five (5) days after the meeting of shareholders, the Secretary  
of MTII shall notify the shareholder who desires to sell its, his or her or its  
shares of the action taken at the meeting. Such notice shall state how many  
shares, if any, MTII has elected to purchase and, if MTII has not elected to  
purchase all shares, the number of shares, if any,  
  
  
 21  
  
  
that each of the other shareholders has elected to purchase.  
  
 8.3 The Option to Purchase set forth above in Article 8 shall be deemed  
null and void in the event of a public sale of any of the shares of MTII and the  
remaining shareholders and MTII shall execute any and all documents required by  
securities counsel to waive any and all options or modify this Agreement as is  
necessary to effectuate the intent of this Article.  
  
 8.4 The parties to this Agreement agree and acknowledge that the  
infrastructure of Blimpie will be providing support services to MTII for fair  
and reasonable compensation and it shall not be deemed a violation of this  
Agreement or self dealing for such services to be provided. Nothing contained  
herein shall be deemed to limit or in any way to directly or indirectly limit or  
modify Blimpie's right to authorize any type of menu change or expansion of the  
product line of all or some of the Blimpie Restaurant system controlled by  
Blimpie or of any other operation or system now owned or hereinafter acquired or  
developed by Blimpie except at MTII's units which menu changes shall be  
determined by the Board of Directors of MTII. It is acknowledged that Blimpie  
formerly owned five full service Tex-Mex Bar/Restaurants which included a full  
line of Mexican-type products. Moreover, Blimpie recently has authorized a  
Chicken Fajita sandwich for the Blimpie system and it is possible that other  
ethnic/Mexican products may be authorized in addition to the core menu of  
Blimpie Restaurants. Blimpie agrees, however, that it will not duplicate any of  
the recipes of Lumi Kuke or Xxxxxx except to the extent of duplicated recipes  
currently in Blimpie's possession from its Border Cafe' operations. Blimpie  
shall provide copies of its recipes to Lumi Kuke or Xxxxxx at their request with  
a copy to their attorney for their records.  
  
 9. Representations and Warranties. By execution hereof, the signators to  
this Agreement hereby acknowledge that there have been no other agreements or  
promises or understandings nor have their been any other representations,  
warranties, forecasts, estimates, inducements or projections of any type or  
nature with respect to success, projected sales volume, net profits, gross  
profits, loans committed, capital investment promised, or any other information  
made by any of the signators to this Agreement or any of their officers,  
directors or others, or any other person or entity or others in connection with  
this transaction other than those set forth herein, if any.  
  
 10. Arbitration. In the event of a dispute or conflict between any of the  
shareholders, whether current or future, including but not limited to,  
Celebrities and other entities that receive shares pursuant to this Agreement,  
the dispute or conflict shall be  
  
  
 22  
  
  
submitted to the American Arbitration Association in New York, New York before a  
single arbitrator whose decision shall be final. In no event shall the terms and  
conditions of this Agreement be modified or changed. At the arbitration, the  
Federal Rules of Evidence and Procedure shall be applied and irrelevant  
information shall not be subject to review by the arbitrator and any  
arbitrator's decision whether final or preliminary that violates any applicable  
law, rule or regulation shall be subject to review by a Federal Court and said  
judge shall be empowered and directed to vacate or modify any such decision or  
award. It is the intention of the parties to enable the judiciary to modify or  
prevent improper decisions by an arbitrator. Nothing contained herein shall  
limit or prevent any party to this Agreement from requesting from any court of  
competent jurisdiction for judicial assistance in restraining and enjoining  
violations of this Agreement.  
  
 11. Term of Agreement. This Agreement shall remain in force until  
terminated in writing by all of the shareholders then holding shares in MTII.  
  
 12. Notices. All notices, offers, acceptances, waivers and other  
communications by any party to any party under this Agreement shall be in  
writing and shall be sufficiently given if delivered to and acknowledged in  
writing by the addressee in person or if mailed postage pre-paid and by  
certified mail, return receipt requested or sent by nationally recognized  
overnight carrier service (for example Federal Express), to such addressee at  
its/his/her respective address set forth below, or to such other address as such  
addressee, by notice to all other parties given in accordance with this  
paragraph, may designate from time to time. Lumi Kuke, Xxx Xxx, MTII, Xxxxxx,  
Xxxxxx, Sitkoff, Xxxxxx and Blimpie and all other future shareholders shall  
provide the name and address of an attorney who shall be deemed to be authorized  
to accept notices, civil process and all other legal communications for each  
party if said party cannot be notified or served. Facsimile or e-mail notices  
shall not be valid notice under this agreement.  
  
 12.1 Such notices shall be addressed to the parties as follows:  
  
 If to MTII or Blimpie:  
 Xxxxxxx X. Xxxxx, President  
 000 Xxxxxxxx, 00xx Xxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 AND  
 Xxxxx X. Xxxxxx, Esq.  
 000 Xxxxxxxx, 00xx Xxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 AND  
  
  
 23  
  
  
 Xxxxxx X. Xxxxxx, Esq.  
 Hall Xxxxxxx Xxxx Xxxxxxxx & Xxxx LLP  
 000 Xxxxx Xxxxxx - 00xx xxxxx  
 Xxx Xxxx, Xxx Xxxx 00000-0000  
  
 If to Xxxxxx, Lumi Kuke or Xxx Xxx:  
  
 Xxxx Xxxxxx  
 c/o Alive Enterprises  
 0000 Xxxxx Xxxxx Xxxx  
 Xxxxx, Xxxx, XX 00000  
 AND  
 c/o Xxxxxxx X. Xxxxx, Esq.  
 Xxxx, Xxxxx & Xxxxx  
 Xxx Place  
 0000 Xxxxxxxx Xxxx, X.X.  
 Xxxxxx Xxxxx  
 Xxxxxxx, Xxxxxxx 00000  
  
 If to Xxxxxx, No Lava, Lumi Kuke or Xxx Xxx:  
  
 Xxxx and Xxxx Xxxxxx  
 c/o Alive Enterprises  
 0000 Xxxxx Xxxxx Xxxx  
 Xxxxx, Xxxx, XX 00000  
 AND  
 Xxxxx X. Xxxxxxxx, Esq.  
 P. X. Xxx 0000  
 Xxxxxxx, Xxxx, Xxxxxx, 00000  
  
 If to Sitkoff:  
  
 Xxxxxx Xxxxxxx  
 c/o Xxxxxx X. Xxxxxx, Esq.  
 Weener & Xxxxx LLP  
 0000 Xxxxxxx Xxxxxxx, Xxxxx 000  
 Xxxxxxx, Xxxxxxx 00000  
  
 If to Xxxxxx:  
  
 Xxxxxx Xxxxxx  
  
  
 24  
  
  
 c/o Xxxxxxx X. Xxxxxxx, Esq.  
 000 Xxxxxxxx, Xxxxx 0000  
 Xxx Xxxx, Xxx Xxxx 00000  
  
MTII, Blimpie, Xxxxxx, Xxxxxx, Sitkoff, Lumi Kuke, Xxx Xxx and Xxxxxx hereby  
appoint the attorneys set forth above in this Article to receive notice and  
process for them pursuant to Article 12 above.  
  
 12.2 Notices shall be deemed given seven (7) business days after receipt  
when sent in accordance with the foregoing.  
  
 12.3 Benefit. This Agreement shall be binding upon and shall operate for  
the benefit of MTII, Blimpie, Lumi Kuke, No Lava, Xxxxxx, Xxxxxx, Sitkoff,  
Xxxxxx and Celebrities and other entities who of which receive shares pursuant  
to this Agreement and all other future shareholders and their respective heirs,  
permitted assignees and transferees and legal representatives. It shall also be  
binding upon any transferee who has received any shares in accordance with the  
provisions of Article 8 hereof and the heirs and legal representatives of such  
transferee, and upon any person to whom any of the shares are transferred in  
violation of the provisions of this Agreement and its/his/her heirs or legal  
representatives. Each of the shareholders shall include in his or her last will  
and testament an appropriate provision referring to the Agreement and authorize  
and direct his or her individual executors to carry out the terms thereof.  
Failure to execute such a will however, shall not affect the rights or  
obligations of any party to this Agreement.  
  
 13. Support Services. Xxxxxx shall provide any and all necessary advisory  
and consulting services required by MTII in order to develop an appropriate  
system of operation which will convert the existing Maui Tacos restaurant  
concept into a noncooking system which shall include recipes, recommended  
equipment, systems of service, controls, portions, employee requirements and any  
other matter needed to create the business system which will then be part of the  
MTII franchise program. Xxxxxx shall be available as is needed by MTII for such  
consulting services, it being understood however, that Xxxxxx'x responsibilities  
to MTII shall be solely limited to the provision of information regarding the  
above items and MTII is responsible for developing the new Maui Tacos business  
system after receipt of such information.  
  
 13.1 Xxxxxx and Xxxxxx shall each reasonably assist BI Concept Services,  
Inc. ("BI Concepts") soon to be the wholly owned subsidiary of Blimpie that  
coordinates all  
  
  
 25  
  
  
construction, equipment and design for Blimpie Restaurants in order to develop  
the required equipment, decor, specifications, CAD systems, etc. for use by  
MTII. Such assistance shall be deemed to only include the provision of  
information as to the current equipment being utilized by Maui Tacos and their  
advice and recommendations regarding any equipment that may vary or replace  
existing types of equipment in use. If the Board of Directors of MTII decides to  
utilize BI Concepts' services to supply equipment, it is acknowledged that BI  
Concepts includes profit xxxx-ups for its services consistent with the same  
xxxx-up formula utilized by Blimpie in the sale of equipment to franchisees of  
Blimpie.  
  
 13.2 Xxxxxx shall also provide any and all necessary advisory and  
consulting services required by MTII in order to develop a juice/Smoothie's  
system of operation which will be used with the new Maui Tacos restaurant  
concept or independently as a stand-alone business or co-brand with other  
concepts to be utilized as determined by the Board of Directors of MTII. Such  
services shall include recipes, recommended equipment, systems of service,  
controls, portions, employee requirements and any other matter needed to create  
the business system which will then be part of the MTII franchise program.  
Xxxxxx shall be available as is needed by MTII.  
  
 13.3 With respect to any services provided by Xxxxxx or Xxxxxx, such  
services are intended to be commercially reasonable and are nonexclusive. Such  
services are subject to a prior reasonable notice as to when the respective  
services are needed.  
  
 13.4 Xxxxxx shall provide consultation services to MTII with respect to  
marketing, private labeling, promotions and public relations in order to  
facilitate the commencement of MTII's business. Xxxxxx shall negotiate on behalf  
of MTII its relationship with the Celebrities and outside entities who will be  
sold shares of MTII for nominal consideration. Xxxxxx shall receive no  
compensation for such consultation or negotiation services except MTII shall pay  
Xxxxxx'x approved expenses in connection with such matters.  
  
 14. Miscellaneous Provisions. This Agreement may not be changed or  
modified nor may any provision hereof be waived, except by a written instrument  
signed by the respective parties to this Agreement as may be appropriate under  
applicable law or their assignees.  
  
 14.1 This Agreement shall be construed in accordance with the laws of the  
State of New York.  
  
  
 26  
  
  
 14.2 This Agreement shall bind and benefit the heirs, executors,  
administrators, successors and assigns of the parties hereto.  
  
 14.3 This entire Agreement shall survive closing.  
  
 14.4 Xxxxxx and Xxxxxx warrant and represent that: (i) Lumi Kuke and Xxx  
Xxx have the power and authority to execute this Agreement and grant to MTII the  
rights set forth herein; and (ii) such transaction as contemplated herein does  
not, with respect to the agreements by Lumi Kuke or No Lava, violate any  
applicable laws, rules and regulations nor the rights of any creditors or third  
parties and that said transaction is valid and binding.  
  
 14.5 This Agreement may be executed in counterparts, each of which shall  
be considered an original agreement.  
  
 15. Broker. The signators to this Agreement acknowledge and warrant and  
represent to the others that there is no broker or any other party entitled to a  
commission or other compensation arising from this Agreement involved in this  
transaction except Xxxxxx.  
  
 16. Xxxxxx Consulting. MTII intends to retain Xxxx Xxxxxx for the first  
year of operations for compensation to be negotiated between MTII and Xxxx  
Xxxxxx. Currently the negotiated compensation for Xxxx Xxxxxx is $300 per day  
plus a reasonable travel expenses. With respect to air travel, Xxxxxx shall  
receive coach seats for all U.S.A. travel and, if international air travel is  
required, business class.  
  
 17. Abandonment and Business Failure. In the event that the business of  
MTII is unsuccessful to the extent that Blimpie and Lumi Kuke are unwilling to  
devote any material further time, effort or funds or any developmental  
activities, then in such an event the parties shall execute an agreement  
agreeing to abandon their efforts to operate the business of MTII. In such an  
event in any geographic area not exploited, MTII hereby grants to Lumi Kuke an  
option to purchase a royalty-free license for the Maui Tacos trade name and  
trademark for the consideration of $100 for use in such unexploited areas. With  
respect to any and all then existing agreements made by MTII as of the date of  
such transfer, MTII shall continue to provide all the servicing and support of  
existing MTII franchisees and subfranchisors. Lumi Kuke and any entity that  
receives a royalty-free license of the MTII trademarks shall execute a written  
agreement establishing a reasonable protected territory  
  
  
 27  
  
  
around each existing franchisee and/or subfranchisor.  
  
 18. Cessation of Business Activities. In the event MTII fails to operate  
its business in a profitable manner, however, if either MTII or Blimpie  
continues to seek to develop franchises and/or subfranchises and to continue to  
run the business, then in such an event business activities shall not be deemed  
to have ceased. In the event of a cessation of business activities, i.e., the  
failure of either MTII or Blimpie to continue to seek to develop franchises  
and/or subfranchises, then such cessation of business for a one hundred twenty  
(120) day period shall be deemed to be abandonment and subject to the provisions  
of Article 17 herein.  
  
 19. Sale of Blimpie International, Inc. In the event of a merger or  
acquisition of Blimpie whereby management control is transferred from either  
Xxxxx and/or Xxxxxx or the current executives of Blimpie to third parties  
(excluding individual sales of stock in Blimpie by said individuals pursuant to  
either public registrations or sale of SEC Rule 144 shares), such sale, merger  
or acquisition shall also include the interests of Lumi Kuke. In the event,  
however, if Lumi Kuke is unable to negotiate an acceptable purchase price based  
upon its sole discretion for its shares from the merged entity or transferee,  
then a shareholders agreement shall be executed by the merged entity or  
transferee with Lumi Kuke reasonably protecting its interests with respect to  
dividends, voting, transfer of the business and such other protections as may be  
reasonably expected to protect minority shareholders in such a situation. The  
intent of this article is to provide a mechanism to establish reasonable  
minority shareholder protections but enable the continuation of competent  
management with the ability to function in a reasonable manner as is consistent  
with other businesses of similar nature. If the parties cannot agree, the issue  
shall be submitted to arbitration pursuant to Article 10 herein and the decision  
of the arbitrator shall be final.  
  
 20. Attorneys. Blimpie has been represented by Xxxxxx Xxxxxx, Esq. of Hall  
Xxxxxxx Xxxx Xxxxxxxx & Xxxx LLP and Xxxxx X. Xxxxxx, Esq., Xxxxxx has been  
represented by Xxxxxxx X. Xxxxx, Esq., Xxxx, Xxxxx & Xxxxx, Mr. and Xxx. Xxxxxx,  
No Lava and Lumi Kuke have been represented by Xxxxx X. Xxxxxxxx, Esq., Xxxxxx  
has been represented by Xxxxxxx X. Xxxxxxx, Esq. and Sitkoff has been  
represented by Xxxxxx X. Xxxxxx, Esq. of Weener & Xxxxx LLP.  
  
 21. Blimpie Warrants. Blimpie hereby agrees to issue to Lumi Kuke one or  
more warrants (the "Warrants") entitling Lumi Kuke to purchase, in the  
aggregate, up to  
  
  
 28  
  
  
50,000 shares of the common stock, $.01 par value. of Blimpie International,  
Inc. (the "Common Stock") at an exercise price equal to the mean of the high and  
low prices of the Common Stock quoted on the NASDAQ National Stock Market on the  
date of this Agreement. Blimpie shall direct its securities counsel to provide  
the appropriate documentation for the Warrants. Lumi Kuke shall jointly execute  
and deliver to Blimpie, within ten (10) days of the date hereof a written notice  
specifying the identities of the holder or holders of, and the number of shares  
of Common Stock issuable pursuant to, each of the Warrants. None of the Warrants  
shall be issued until such notice has been received by Blimpie. Lumi Kuke (a  
"Holder") hereby warrants and represents to Blimpie as follows:  
  
 21.1 Neither the Warrants nor the Common Stock issuable upon exercise of  
the Warrants (the "Warrant Shares") has been registered pursuant to a  
registration statement (a "Registration Statement") under the Securities Act of  
1933, as amended (the "Securities Act"). Until such time as a Registration  
Statement pertaining to the Warrant Shares shall be declared effective by the  
Securities and Exchange Commission (the "Commission"), Blimpie shall not be  
required to issue any certificate for shares of Common Stock purchased upon the  
exercise of the Warrants unless, in connection with such exercise.  
  
 21.2 The exercising Holder makes and delivers the following  
representations to Blimpie in writing:  
  
 21.2.1 The Holder is purchasing the Warrant Shares solely for his or her  
own account.  
  
 21.2.2 The Holder is an "accredited investor" (as that term is defined in  
rule 501 of Regulation D under the Act). The Holder has received and read, or  
the person who exercises full investment discretion to act in the Holder's  
behalf, has received and read Blimpie's Annual Report on Forms 10-KSB or 10K for  
its most recent fiscal year, Blimpie's quarterly reports on Form 1O-QSB or 1O-Q  
for all periods between the end of Blimpie's most recently completed fiscal year  
and the date of exercise of the Warrant, Blimpie's most recent annual report to  
shareholders, Blimpie's most recent proxy statement delivered to shareholders in  
connection with the election of directors, and all such other information and  
documentation as the Holder, or the person who exercises full investment  
discretion to act in the Holder's behalf, has requested from Blimpie. The Holder  
has relied on nothing other than said information and documentation in deciding  
whether to exercise the Warrants. The Holder acknowledges that it has been  
given, or the person who exercises full investment discretion to act on the  
Holder's behalf has been given, the opportunity to ask questions and receive  
  
  
 29  
  
  
satisfactory answers concerning the purchase of Warrant Shares upon exercise of  
the Warrants, the operations and financial condition of Blimpie, and the  
accuracy of the information provided by Blimpie to the Holder or the person who  
exercises full investment discretion to act in the Holder's behalf.  
  
 21.2.3 The Holder has no intention of distributing or reselling the  
Warrant Shares or any part thereof, or interest therein, in any transaction  
which would be in violation of the securities laws of the United States of  
America or any state securities laws, without prejudice, however, to the  
Holder's right at all times to sell or otherwise dispose of all or any part of  
the Warrant Shares pursuant to the above-mentioned registration thereof under  
the Securities Act and, if applicable, qualification under such state securities  
laws or under an exemption from such registration available under the Securities  
Act.  
  
 21.2.4 If the Holder desires to sell or otherwise dispose of all or any  
part of the Warrant Shares (other than pursuant to an effective Registration  
Statement under the Securities Act or a sale or other disposition made pursuant  
to the Commission's Rule 144), if requested by Blimpie, the Holder will deliver  
to Blimpie, an opinion of counsel, reasonably satisfactory in form and substance  
to Blimpie and its counsel, that such exemption is available.  
  
 21.2.5 Upon original issuance thereof, and until such time as the same is  
no longer required under the applicable requirements of the Securities Act, the  
certificates evidencing the Holder's ownership of the Warrant Shares (and all  
certificates for securities issued in exchange therefor or substitution thereof)  
shall bear the following legend:  
  
 "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT  
 BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS  
 AMENDED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS.  
 SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE  
 ABSENCE OP REGISTRATION OR AN EXEMPTION THEREFROM  
 UNDER SAID ACT OR SUCH LAWS."  
  
 22. This Agreement is intended to be executed in original and by fax. The  
parties plan to disseminate faxed copies of the Agreement and originals in  
anticipation that when all parties have signed one or more agreements, whether  
by fax or original, this Agreement shall be deemed valid and effective. All  
parties hereof agree to execute as many duplicate originals as may be requested  
by Blimpie.  
  
  
 30  
  
  
 IN WITNESS WHEREOF, the parties have executed this Agreement as of the  
date first above written.  
  
 Maui Tacos International, Inc.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 President  
  
 Blimpie International, Inc.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 President  
  
 No Lava, Inc.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 President  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Xxxx Xxxxxx  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Xxxx Xxxxxx  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Xxxxxx Xxxxxxx  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Xxxxxx Xxxxxx  
  
  
Signatures Continued On Following Page  
 31  
  
  
 Lumi Kuke Limited Partnership  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 President of Xxx Xxx, Inc.  
  
 Xxx Xxx, Inc.  
  
  
 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 President  
  
  
  
  
 32