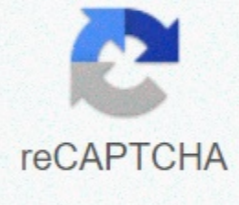




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Food franchise agreement pdf

Download PDF: Mama Fu's Noodle House Franchise Agreement 1 The original documents were scanned as an image. The original file can be downloaded at the link above. MAMA FU'S NOODLE HOUSE, INC. FRANCHISE AGREEMENT THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 200 (the "Effective Date"), by and between MAMA FU'S NOODLE HOUSE, INC., a Georgia corporation with its principal office at 1935 Peachtree Road, Atlanta, Georgia 30309 ("Franchisor"), and _____, a _____ with (its principal office) (his/her residence) at _____ ("Franchisee"). WITNESSETH: WHEREAS, Franchisor at a substantial expenditure of time, effort and money has established a system of developing, opening, operating and promoting fast casual restaurants offering Pan-Asian noodle dishes, other food products and beverages and related restaurant services under the name "MAMA FU'S ASIAN HOUSE" ("Mama Fu's Restaurants" or "Restaurants") (the "Mama Fu's System"); and WHEREAS, the distinguishing features of the Mama Fu's System, include, but are not limited to, the name "MAMA FU'S ASIAN HOUSE" and all such other trade names, trademarks, service marks, logos, emblems, insignia and signs developed for use with the Mama Fu's System from time to time (collectively, the "Marks"); specially designed fixtures, equipment, facilities, containers, and other items used in serving and dispensing food products; products, methods, procedures, recipes, distinctive food products and the formula and quality standards therefor; and instructional materials and training courses; all of which may be changed, improved and further developed by Franchisor from time to time; and WHEREAS, Franchisor has acquired knowledge and experience in the composition, distribution, advertising and sale of food products by Restaurants using the Mama Fu's System and with respect to the style of the facilities and signs used by said Restaurants and has successfully established a reputation, demand and goodwill for the products sold by such Restaurants; and WHEREAS, Mama Fu's Restaurants and the products sold therein have a reputation for quality that has been acquired and is being maintained by requiring all franchisees of the Mama Fu's System to maintain high standards of quality and service; and WHEREAS, Franchisee recognizes the value and benefits to be derived from utilizing the Mama Fu's System and being associated with Franchisor, the Marks and other distinctive features of the Mama Fu's System, and now desires to obtain a franchise from Franchisor to use the Mama Fu's System and to operate a Mama Fu's Restaurant at an approved location, and Franchisor is willing to grant Franchisee the right to operate a Mama Fu's Restaurant, all subject to the terms and conditions hereinafter set forth. NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, it is mutually understood, agreed and covenanted as follows: MF/FA/CORP/ 1083047.1/0305 1.1. GRANT OF FRANCHISE During the term of this Agreement, Franchisor hereby grants to Franchisee the nonexclusive right and license, and Franchisee undertakes the obligation, to develop and operate a Mama Fu's Restaurant and to use solely in connection therewith, the Marks and the Mama Fu's System in accordance with the terms and conditions of this Agreement only at the Franchised Site, as such term is hereinafter defined. Franchisee agrees to use the Marks and Mama Fu's System, as they are changed, improved and further developed by Franchisor from time to time. Unless otherwise agreed to by Franchisor, Franchisee has four months from the Effective Date to complete the initial training as required by Section 14.1 and to commence operation of the Restaurant. Franchisee must obtain Franchisor's written approval prior to commencing operation of the Restaurant. 2. TERM AND RENEWAL 2.1 Initial Term. Unless terminated earlier in accordance with the terms and conditions set forth herein, this Agreement and the franchise granted hereunder shall have an initial term of 10 years commencing as of the Effective Date (the "Initial Term"). 2.2 Renewal. Upon the expiration of the Initial Term, Franchisee shall have the right to renew the franchise granted hereunder for an additional 10 year period provided that all of the following conditions are met: (i) Franchisee gives Franchisor written notice of its election to renew the franchise not less than six months prior to the expiration of the Initial Term; (ii) Franchisee is not, when notice is given, and does not become prior to the expiration of the Initial Term, in default of any provision of this Agreement or any other agreement between Franchisee and Franchisor or its subsidiaries or affiliates or with any other creditor or supplier of the Restaurant or lessor or sublessor of the Franchised Site, and Franchisee shall have fully and faithfully performed all of its obligations under this Agreement and all such other agreements throughout their terms; (iii) Franchisee shall execute, at Franchisor's option, Franchisor's then-current form of Franchise Agreement, which Franchise Agreement shall supersede in all respects the terms and conditions of this Agreement and may contain terms and conditions substantially different from those set forth herein, including, without limitation, an increase in Royalty Fees or Advertising Fees (as such terms are hereinafter defined); provided, however, the renewal Franchise Agreement shall not provide for any additional renewal rights; (iv) Franchisee shall pay a renewal fee equal to the then-current Franchise Fee (as such term is hereinafter defined) charged by Franchisor; (v) Franchisee shall complete, at its own expense and to Franchisor's satisfaction, all maintenance, refurbishing, renovation, modernizing and remodeling of the Restaurant as Franchisor shall reasonably require so as to reflect the current image and standards of Mama Fu's Restaurants; MF/FA/CORP/ 083047.1/0305 2 (vi) Franchisee shall be current in the payment of all obligations to Franchisor and to any of its affiliates and subsidiaries as well as lessors, vendors and suppliers of the Restaurant; (vii) Prior to renewal, Franchisee and/or Franchisee's supervisory and operational manager(s) shall at Franchisee's expense, attend and successfully complete to Franchisor's reasonable satisfaction any retraining program Franchisor may require; (viii) Franchisee and its owners execute a general release, in a form satisfactory to Franchisor, of any and all claims it may have against Franchisor, including any affiliates or subsidiaries, and its and their officers, directors, shareholders, managers, members, partners., employees and agents; and (ix) Franchisee provides Franchisor with evidence that Franchisee has the right to remain in possession of the Franchised Site or to secure and develop a suitable alternative site acceptable to Franchisee for the renewal term. 3. FRANCHISED SITE AND TERRITORY 3.1 Franchised Site. The rights granted to Franchisee hereunder shall be nonexclusive and shall be restricted to the operation of a single Mama Fu's Restaurant to be located at the address and location set forth on Exhibit A attached hereto (the "Franchised Site"). During the term of this Agreement, the Franchised Site shall be used exclusively to operate a Restaurant. In connection with the execution of the any lease or sublease for the Franchised Site, Franchisee must execute, and cause the lessor and/or sublessor of the Franchised Site to execute, the Lease Addendum attached to the Market Development Agreement entered into between Franchisor and Franchisee (the "Development Agreement"), in addition to complying with any other obligations and conditions contained in the Development Agreement relating to the lease or sublease of the Franchised Site and the development and construction of the Restaurant. The rights granted to Franchisee are for the specific Franchised Site and cannot be transferred to any other location, except with Franchisor's prior written approval. 3.2 Territorial Protection. Franchisor will not establish for itself or grant a franchise to any other party to establish a Restaurant within the territory specified on Exhibit A attached hereto (the "Franchise Territory"). Notwithstanding anything herein to the contrary, if any disagreement arises regarding the area comprising the Franchise Territory, then Franchisor's decision as to the definition of the Franchise Territory shall be final and binding. Except as expressly provided in the first sentence of this Section 3.2, Franchisee acknowledges that the franchise granted under this Agreement is non-exclusive and Franchisee has no right to exclude, control or impose conditions on the location or development of other or future franchises under the Marks, or on any sales or distribution of products under the Marks or other business activities of Franchisor or any other party licensed to use the Marks. 3.3 Reservation of Rights. Franchisor retains the right, in its sole discretion, to: (i) Establish and operate, and grant to other franchisees or licensees the right to establish and operate, a Mama Fu's Restaurant or any other business using the Marks, the MF/FA/CORP/ 1083047.1/0305 3 Mama Fu's System or any variation of the Marks and the Mama Fu's System, in any location outside the Franchise Territory, on any terms and conditions that Franchisor deems appropriate; (ii) Develop, use and franchise anywhere (including within the Franchise Territory) the rights to any trade names, trademarks, service marks, commercial symbols, emblems, signs, slogans, insignia, patents or copyrights not designated by Franchisor as Marks, for use with similar or different franchise systems for the sale of similar or different products or services than those constituting a part of the Mama Fu's System, without granting Franchisee any rights therein; (iii) Offer, ship, sell and provide products or services identified by the Marks or other trademarks, service marks, commercial symbols or emblems to customers located in the Franchise Territory through any distribution channel or method, including grocery stores, convenience stores, Internet (or any other existing or future form of electronic commerce), and delivery services, irrespective of the proximity to the Restaurant without compensation to Franchisee; provided, however, that any such sales will not be made from a Mama Fu's Restaurant located in the Franchise Territory. (iv) Own, operate, franchise or license anywhere, even in close proximity to the Restaurant licensed hereunder, restaurants of any other type whatsoever operating under marks other than the Marks; and (v) Engage in any other activity, action or undertaking that Franchisor is not expressly prohibited from taking under this Agreement. 3.4 Catering and Delivery Services. Franchisor acknowledges and agrees that Franchisee may provide catering and delivery services within a reasonable distance from the Franchised Site not to exceed 25 miles, within or without the Franchise Territory, but solely in connection with providing such catering and delivery services and provided such services are made by ground transportation. Subject to the foregoing maximum mileage restriction, Franchisee may provide catering and delivery services in the exclusive territories of other Mama Fu's franchisees, and other Mama Fu's franchisees may provide the same services in the Franchise Territory. 4. INITIAL FRANCHISE FEE Upon the execution of this Agreement, Franchisee shall pay to Franchisor an initial franchise fee in an amount set forth on Exhibit A (the "Franchise Fee"). In the event the Development Agreement requires the payment of a development fee by Franchisee to Franchisor, there shall be credited toward the payment of the Franchise Fee all or a portion of those development fees in the manner and to the extent provided for in the Development Agreement. Franchisee acknowledges and agrees that the Franchise Fee is paid as consideration for Franchisor granting Franchisee the right to develop, open and operate the Restaurant using the Marks and the Mama Fu's System, and that the Franchise Fee is fully earned by Franchisor at the time this Agreement is executed, and the Franchise Fee shall not be refundable for any reason. MF/FA/CORP/ 1083047.1/0305 5. ROYALTY FEE; METHOD OF PAYMENT; LATE PAYMENT 5.1 Royalty Fee. In addition to all other amounts required to be paid hereunder, during the term hereof, Franchisee agrees to pay to Franchisor for the rights granted hereunder a royalty fee equal to 5% of the Gross Sales (as such term is hereinafter defined) of the Restaurant (the "Royalty Fee"). Payment of the Royalty Fee shall be made on or before Tuesday of each week for Gross Sales of the Restaurant for the preceding week. 5.2 Definition of Gross Sales. Gross Sales shall mean the amount of sales of all products and services sold in, on, about or from the Restaurant, together with any other revenues derived from the operation of the Restaurant, whether by Franchisee or by any other person, whether or not in accordance with the terms hereof, and whether for cash or on a charge, credit, barter or time basis, including, but not limited to, all such sales and services (i) where orders originate and/or are accepted by Franchisee in the Restaurant but delivery or performance thereof is made from or at any place other than the Restaurant or (ii) pursuant to telephone or other similar orders received or filled at or in the Restaurant. For purposes of determining the Royalty Fee and Advertising Fee, there shall be deducted from Gross Sales: (a) the amount of refunds, allowances or discounts to customers (including coupon sales) up to 5% of the Gross Sales, provided the related sales have previously been included in Gross Sales; and (b) the amount of any excise or sales tax levied upon retail sales and paid over to the appropriate governmental authority. 5.3 Automated Bank Draft. Franchisee understands and agrees that Franchisor reserves the right and may require, in its sole discretion, that all Royalty Fees, Advertising Fees, Advertising Cooperative (as defined below) contributions and other fees or contributions required to be paid to Franchisor or any Advertising Cooperative hereunder must be paid by automated bank draft or other reasonable means necessary to ensure payment of such fees are received by Franchisor or the appropriate Advertising Cooperative. Franchisee agrees to comply with Franchisor's payment instructions. 5.4 Late Payments and Insufficient Funds. All overdue payments for Royalty Fees, Advertising Fees and other fees required to be paid hereunder shall bear interest from the date due at the rate specified by Franchisor from time to time, up to the highest rate permitted by the law, but in no event shall such rate exceed 18% per annum. Interest shall accrue on all late payments regardless of whether Franchisor exercises its right to terminate this Agreement as provided for herein. In addition to its right to charge interest as provided herein, Franchisor may charge Franchisee a \$100.00 late payment fee for all such overdue payments and a \$100.00 insufficient funds fee for each check, automated bank draft payment, or other payment method that is not honored by Franchisee's financial institution. Franchisee acknowledges that Franchisor has the right to set off amounts Franchisee owes Franchisor against any amounts Franchisor may owe Franchisee. 5.5 Application of Payments. Notwithstanding designation by Franchisee to the contrary, all payments made by Franchisee hereunder will be applied by Franchisor at its discretion to any of Franchisee's past due indebtedness. MF/FA/CORP/083047.1/0305 6. RECORDS, REPORTS AND AUDITS 6.1 Bookkeeping and Recordkeeping. Franchisee agrees to establish a bookkeeping and recordkeeping system conforming to the requirements prescribed from time to time by Franchisor, relating, without limitation, to the use and retention of daily sales slips, coupons, purchase orders, purchase invoices, payroll records, check stubs, bank statements, sales tax records and returns, cash receipts and disbursements, journals and general ledgers. Franchisee acknowledges and agrees that if Franchisor is required or permitted by statute, rule, regulation or any other legal requirement to disclose any information regarding Franchisee or the operation of the Restaurant, including, without limitation, earnings or other financial information, Franchisor shall be entitled to disclose such information. In addition, Franchisee hereby expressly permits Franchisor to disclose any such information to potential purchasers (and their employees, agents, and representatives) of Franchisor in connection with the sale or transfer of any equity interests or assets of Franchisor or any merger, reorganization or similar restructuring of Franchisor. 6.2 Reporting. Franchisee must provide Franchisor with those financial reports required by Franchisor from time to time. All such reports shall be prepared in accordance with the generally accepted accounting principles of the United States, to the extent applicable. Franchisee's current reporting obligations include the following: (i) A statement of relevant Gross Sales in the form required by Franchisor to be delivered with each payment of the Royalty Fee and Advertising Fee no later than 5:00 p.m. on each Tuesday; (ii) A monthly unaudited balance sheet and profit and loss statement in a form satisfactory to Franchisor covering Franchisee's business for the prior month and fiscal year to date, all of which shall be certified by Franchisee as true and correct and delivered to Franchisor no later than the 21st day of each month; (iii) Annual financial statements compiled or reviewed by an independent certified public accountant in a form satisfactory to Franchisor, which shall include a statement of income and retained earnings, a statement of cash flows, and a balance sheet of Franchisee, all for the fiscal year then ended. If Franchisee does not, in the ordinary course, obtain financial statements compiled or reviewed by an independent certified public accountant, then Franchisee may provide internally prepared financial statements which shall be certified as true and correct by Franchisee or Franchisee's principal executive officer or chief financial officer if Franchisee is a partnership, corporation or limited liability company. Franchisor shall have the right at any time to require audited annual statements to be provided to it, at Franchisee's expense; (iv) An annual copy of Franchisee's signed 1120 or 1120S tax form as filed with the Internal Revenue Service (or any forms which take the place of those forms), MF/FA/CORP/083047.1/0305 6 and local sales and use and income tax reports Franchisee is required to file, all to be delivered within 30 days after filing; (v) A statement of local advertising expenditures made pursuant to Section 11.3 below for each calendar quarter and fiscal year to date, in a form satisfactory to Franchisor, MF/FA/CORP/083047.1/0305 6 with invoices documenting such expenditures (if required by Franchisor), to be delivered within 15 days after the end of each calendar quarter; and (vi) Any other data, information and supporting records reasonably requested by Franchisor. All reports or other information required to be submitted under this Section 6.2 shall be submitted to the attention of Franchisor's franchise department. If any of the reports or other information required to be given to Franchisor in accordance with this Section are not received by Franchisor by the required deadline, Franchisor may charge Franchisee a late submission fee equal to \$100.00. 6.3 Audit. Franchisee shall allow representatives of Franchisor to inspect Franchisee's books and records at all reasonable times in order to verify Gross Sales that Franchisee reports as well as to verify Franchisee's advertising expenditures required by Section 11.3 below and any other matters relating to this Agreement and the operation of the Restaurant. If an inspection reveals that Gross Sales of Franchisee have been understated, Franchisee shall immediately pay to Franchisor the amount of Royalty Fees and Advertising Fees overdue, unreported or understated, together with interest as prescribed in Section 5.4 above. All inspections shall be at the expense of Franchisor; provided, however, if the inspection results in a discovery of a discrepancy in the Gross Sales reported by Franchisee of 5% or more, then Franchisee shall pay or reimburse Franchisor for any and all reasonable expenses incurred by Franchisor in connection with the inspection, including, but not limited to, attorneys' and accounting fees and travel expenses, room and board and compensation of Franchisor's employees, as well as interest on the amounts owed at the highest legal rates allowed from the date payment was due. 7. OPERATIONS MANUAL During the term of this Agreement, Franchisor will loan to Franchisee one copy of, or provide Franchisee with electronic access to, Franchisor's confidential operations manual (the "Operations Manual"), which may consist of printed manuals, computerized documents or software, information provided on the internet or an extranet, audiotapes, videotapes, or any other medium Franchisor adopts periodically for use with the Mama Fu's System and designates as part of the Operations Manual. The Operations Manual will contain information and specifications concerning the standards and specifications of the Mama Fu's System, the development and operation of the Restaurant and any other information and advice Franchisor may periodically provide to its franchisees. Franchisor may update and change the Operations Manual periodically to reflect changes in the Mama Fu's System and the operating requirements applicable to Mama Fu's Restaurants, and Franchisee expressly agrees to comply with each requirement within such reasonable time as Franchisor may require, or if no time is specified, within 30 days after receiving notification of the requirement. Franchisee shall at all times ensure that its copy of the Operations Manual and any other confidential materials supplied by Franchisor to Franchisee are kept current and up to date. Franchisee must keep any printed Operations Manual in a secure location at the Restaurant, and must restrict employee access to the Operations Manual on a need to know basis, and take reasonable steps to prevent unauthorized disclosure or copying of any information in any printed or computerized MF/FA/CORP/1083047.1/0305 7 Operations Manual. If Franchisor and Franchisee have any disagreement about the most current contents of the Operations Manual, Franchisor's master copy of the Operations Manual will control. Upon the expiration or termination of this Agreement for any reason, Franchisee must return all copies of the Operations Manual to Franchisor, and upon Franchisor's request, certify to Franchisor that Franchisee has not kept any copies in any medium. The Operations Manual is confidential, copyrighted and Franchisor's exclusive property. 8. MODIFICATION AND IMPROVEMENTS TO THE MAMA FU'S SYSTEM 8.1 Modification by Franchisor. Franchisee recognizes and agrees that from time to time hereafter, Franchisor may change, modify or improve the Mama Fu's System, including, without limitation, modifications to the Operations Manual, the menu and format, the processes and systems to support the business, the menu items and other product ingredients, the products offered for sale, the required equipment, the signage, the presentation and usage of the Marks, and the adoption and use of new, modified or substituted Marks or other proprietary materials. Franchisee agrees to accept, use and/or display for the purposes of this Agreement any such changes, modifications or improvements to the Mama Fu's System, including, without limitation the adoption of new, modified or substituted Marks, as if they were part of the Mama Fu's System as of the Effective Date, and Franchisee agrees to make such expenditures as such changes, modifications or improvements to the Mama Fu's System may require. For purposes of this Agreement, all references to the Mama Fu's System shall include such future changes, modifications and improvements. 8.2 Modification by Franchisee. If Franchisee develops any new modification, concept, process, improvement or slogan in the operation or promotion of the Restaurant or to the Mama Fu's System, the same shall be deemed a work made for hire, and Franchisee shall promptly notify Franchisor of, and provide Franchisor with all necessary information, regarding such modification, concept, process, improvement or slogan, without compensation to Franchisee. Franchisee acknowledges that any such modification, concept, process, improvement or slogan shall become Franchisor's sole and exclusive property and that Franchisor may use or allow other franchisees to use the same in connection with the Mama Fu's System or the operation of Mama Fu's Restaurants, without compensation to Franchisee. 9. OBLIGATIONS OF FRANCHISEE Franchisee recognizes the mutual benefit to Franchisee, Franchisor and other franchisees of the Mama Fu's System of the uniformity of the appearance, services, products and advertising of the Mama Fu's System and acknowledges and agrees that such uniformities are necessary for the successful operation of Mama Fu's Restaurants. Franchisee also acknowledges and agrees that products and services sold under the Marks and at Mama Fu's Restaurants have a reputation for excellence. This reputation has been developed and maintained by Franchisor, and Franchisee acknowledges and agrees that it is of the utmost importance to Franchisor, Franchisee, and all other franchisees of the Mama Fu's System that such reputation be maintained. To this end, Franchisee covenants and warrants with respect to the operation of the Restaurant that Franchisee and its employees and agents will comply with all of the requirements of the Mama Fu's System and the Operations Manual and will throughout the term of this Agreement: MF/FA/CORP/ 1083047.1/0305 (i) Operate the Restaurant and prepare and sell all products and services sold therein in accordance with the specifications, standards, business practices and policies of Franchisor now in effect or hereafter promulgated, and comply with all requirements of Franchisor, the Mama Fu's System and the Operations Manual as they are now or hereafter established, including, without limitation, any health, sanitation and cleanliness standards and specifications. Franchisor and its duly authorized representatives shall have the right, if they so elect, at all reasonable times, to enter and inspect the Restaurant to ensure that Franchisee is complying with such specifications, standards, business practices, policies and requirements and to test any and all equipment, systems, products and ingredients used in connection with the operation of the Restaurant. If Franchisee in any way shall fail to maintain the standards of quality for the products and services as established by Franchisor from time to time, Franchisor shall notify Franchisee in writing of the failure and give Franchisee 10 days in which to cure such failure. If Franchisee fails to cure such failure within such 10 day period, Franchisor shall, in addition to any other remedy available to it, have the right to assign to the Restaurant such persons as it deems necessary for the training of Franchisee's employees to ensure that the standards of quality for the products and services are maintained. Franchisee shall reimburse Franchisor for all costs associated with providing such personnel, including costs of transportation, meals, lodging, salaries, wages and other compensation (including fringe benefits); (ii) Maintain at all times, at its expense, the Restaurant and its machinery, equipment, fixtures, furnishings, furniture, decor, premises, parking areas, landscape areas, if any, and interior and exterior signs in an excellent, clean, attractive and safe condition in conformity with the Operations Manual and Franchisor's high standards and public image. Franchisee shall promptly make all repairs and replacements thereto as may be required to keep the Restaurant in the highest degree of sanitation, repair and condition and to maintain maximum efficiency and productivity. However, Franchisee shall not undertake any alterations or additions (but may perform maintenance and make repairs) to the buildings, equipment, premises or parking areas associated with the Restaurant without the prior written approval of Franchisor. If Franchisor changes its image or standards of operation with respect to the Restaurant, Franchisee expressly agrees to comply with each change within such reasonable time as Franchisor may require, or if no time is specified, within 30 days after receiving notification of the change. (iii) Comply with all applicable laws, rules, ordinances and regulations that affect or otherwise concern the Restaurant or the Franchised Site, including, without limitation, zoning, disability access, signage, fire and safety, fictitious name registrations, sales tax registration, and health and sanitation. Franchisee will be solely responsible for obtaining any and all licenses and permits required to operate the Restaurant. Franchisee must keep copies of all health, fire, building occupancy and similar inspection reports on file and available for Franchisor to review. Franchisee must immediately forward to Franchisor any inspection reports or correspondence stating that Franchisee is not in compliance with any such laws, rules, ordinances and regulations. (iv) Maintain sufficient inventories and employ sufficient employees to operate the Restaurant at its maximum capacity and efficiency at such hours or days as MF/FA/CORP/ 1083047.1/0305 9 Franchisor shall designate or approve in the Operations Manual or otherwise, and operate the Restaurant for such hours or days so designated or approved by Franchisor. (v) Require all employees of the Restaurant to wear uniforms conforming to the specifications and standards Franchisor may from time to time designate in the Operations Manual or otherwise. (vi) Require all employees of the Restaurant to conduct themselves at all times in a competent and courteous manner and use best efforts to ensure that its employees maintain a neat and clean appearance and render competent, sober and courteous service to patrons of the Restaurant. Franchisor shall have no control over Franchisee's employees, including, without limitation, work hours, wages, hiring or firing. (vii) Use only those ingredients, products, supplies, furnishings and equipment that conform to the standards and specifications designated by Franchisor in the Operations Manual or otherwise. From time to time, Franchisor may designate approved suppliers, including itself or its affiliates, whose enumerated products or services shall be deemed to satisfy Franchisor's standards. Unless otherwise required by Franchisor, or if Franchisor designates an exclusive designated supplier, Franchisee may purchase any and all products, supplies, furnishings and equipment from any available source, so long as such products, supplies, furnishings and equipment conform to the standards and specifications established by Franchisor. If Franchisor designates itself as a supplier, Franchisor has the right to earn a profit on any items it supplies. Franchisor and its affiliates may receive payments, discounts or other consideration from suppliers in consideration of such suppliers' dealings with Franchisee and/or the system of Mama Fu's franchisees and may use all amounts received by it without restriction. Franchisor is not required to give Franchisee an accounting of supplier payments or to share the benefit of supplier payments with Franchisee or other Mama Fu's franchisees. (viii) Prominently display at the Restaurant and the Franchised Site signs using the name "MAMA FU'S ASIAN HOUSE"; and/or other signs, of such nature, form, color, number, location and size, and containing such material as Franchisor may from time to time reasonably direct or approve in writing; and not display in the Restaurant or at the Franchised Site or elsewhere any sign or advertising media of any kind to which Franchisor reasonably objects. Franchisor or its authorized representatives may at any time during normal business hours enter the Restaurant or the Franchised Site and remove any objectionable signs or advertising media. (ix) Use Franchisee's best and continuing efforts to fully promote and develop the Restaurant and use the Franchised Site only for the purposes designated in this Agreement and avoid any activities that would conflict or interfere with or be detrimental to such purposes. (x) Sell only those products and services from the Restaurant specified by Franchisor from time to time in the Operations Manual or otherwise, and refrain from maintaining or using vending machines, video game machines, telephone booths, or entertainment devices not included in the Mama Fu's System, unless approved in writing by Franchisor. MF/FA/CORP/083047.1/0305 10 (xi) Refrain from deviating from the formulas, recipes or specifications of materials and ingredients of food as specified by Franchisor, without the prior written consent of Franchisor, and adhere to the menu and all changes, alterations, additions and subtractions thereof, thereto or therefrom as specified by Franchisor from time to time and follow all specifications of Franchisor as to the uniformity of products and weight, quality and quantity of unit products served and sold, and serve and sell only such menu items as are designated by Franchisor. Franchisee shall not sell any additional food and/or drink items or any other merchandise of any kind without the prior written approval of Franchisor. (xii) For carry-out orders, serve all products in such printed paper containers, boxes, wrappers, trays, soft drink cups and carry-out bags the conform to the standards and specifications designated by Franchisor in the Operations Manual or otherwise. (xiii) Make no physical changes from blueprint specifications or approved remodeling plans in connection with the premises constituting the Restaurant on the Franchised Site, or the design thereof, or any of the materials used therein, or their colors, without the express written approval of Franchisor, except that Franchisee will, upon request of the Franchisor, make such reasonable alterations to the Restaurant or premises as may be necessary to conform to the then-current marketing and operating standards and specifications of the Mama Fu's System. Franchisee will paint the Restaurant (interior or exterior) at such intervals as Franchisor may reasonably determine to be advisable, which determination shall in no event be more than once in any calendar year, using paints which will be in accordance with specifications given by Franchisor. (xiv) Ensure that an individual who has completed the initial training program described in Section 14.1 below is at the Restaurant at all times during normal business hours as established by Franchisor from time to time. (xv) Participate in all national, regional or local advertising and promotional activities Franchisor requires. Franchisee understands that Franchisor implements promotions such as discount coupons, frequent customer cards, special menu promotions and other activities intended to enhance customer awareness and build traffic at Mama Fu's Restaurants on a national, regional or local level. Franchisee understands that its participation in these programs is essential to its success and that its participation may entail some cost to Franchisee. Franchisee agrees that Franchisor has no obligation to reimburse Franchisee for any costs it incurs due to its mandatory participation in these special promotional programs. 10. POINT OF SALE SYSTEM AND INFORMATION TECHNOLOGY Franchisee, at its expense, must purchase and use a computerized cash collection and data processing system (the "POS System") that meets the standards and specifications provided by Franchisor from time to time in the Operations Manual or otherwise. Franchisee must enter all sales and other information Franchisor requires in the POS System. Franchisor may periodically require Franchisee, at its expense, to upgrade or update the POS System to remain in compliance with the standards and specifications required by Franchisor. Franchisee, at its expense, must maintain the POS System in good working order and connected to any telephone system or computer network that Franchisor requires. Franchisor may require Franchisee, at its expense, to MF/FA/CORP/083047.1/0305 11 configure and connect the POS System to Franchisor's systems to provide Franchisor with continuous real-time access to all information and data stored on the POS System. Franchisor may require Franchisee to pay Franchisor or its designated third parties reasonable fees to support and upgrade the POS System and a reasonable fee to Franchisor or its designated third party for polling or collecting data from the POS System. In addition to the POS System, Franchisee, at its expense, must equip the Restaurant with the computer hardware and software that Franchisor specifies periodically and maintain access to the Internet or other computer network(s) that Franchisor specifies. In addition, Franchisee, at its expense, must also apply for and maintain other credit card, debit card or other non-cash payment systems that Franchisor periodically requires. 11. ADVERTISING 11.1 Grand Opening. Franchisee, at its sole expense, must develop and implement a grand opening promotion approved by Franchisor to introduce or (if Franchisee is purchasing an existing Restaurant) to re-introduce the Restaurant to the public during the period that is 30 days prior and 60 days after the opening of the Restaurant or 60 days after the transfer of the Restaurant (if Franchisee is purchasing an existing Restaurant). Franchisee is required to spend a minimum of \$10,000 for the grand opening promotion. To the extent Franchisor has developed or approved marketing or advertising programs and materials for the Restaurant's grand opening, Franchisee must use such programs and materials. 11.2 Advertising Fund. In addition to all other amounts required to be paid hereunder, during the term hereof, Franchisee must pay to Franchisor, or such other entity designated by Franchisor, an amount based upon Gross Sales to be designated by Franchisor from time to time, in its sole discretion, provided such amount shall not exceed 2% of Gross Sales (the "Advertising Fee"), which amount shall be used by the Advertising Fund (as such term is hereinafter defined). The Advertising Fee shall be the same for all Mama Fu's franchisees. Payment of the Advertising Fee shall be made on or before Tuesday of each week and be based upon Gross Sales of the Restaurant for the preceding week. Advertising Fees shall be paid concurrently with the payment of the Royalty Fees. The Advertising Fee will be expended for the benefit of Franchisor, Franchisee and all other franchisees or users of the Mama Fu's System for the production or purchase of such radio, television, print and/or other advertising materials or services as Franchisor deems necessary or appropriate, in its sole discretion, on a national, regional or local basis (the "Advertising Fund"). The expenditure of such funds for advertising is to be under the control of, and in the discretion of, Franchisor at all times, or such other entities designated by Franchisor. Franchisee understands and acknowledges that the Advertising Fund is intended to maximize and support general public recognition, brand identity, sales and patronage of Mama Fu's Restaurants for the benefit of all Mama Fu's Restaurants and that Franchisor undertakes no obligation to ensure that the Advertising Fund benefits each Mama Fu's Restaurant in proportion to its respective contributions. Franchisor agrees that all funds contributed to the Advertising Fund may be used to meet any and all costs (including, without limitation, reasonable salaries and overhead incurred by Franchisor) of maintaining, administering, directing and preparing national, regional or local advertising materials, programs and public relations activities including, without limitation, the costs of preparing and conducting television, radio, magazine, billboard, MF/FA/CORP/ 1083047.1/0305 12 newspaper, direct response literature, direct mailings, brochures, collateral advertising material, implementing websites for Franchisor and/or its franchisees, surveys of advertising effectiveness and other media programs and activities, employing advertising agencies to assist therewith and providing promotional brochures, decals and other marketing materials. The Advertising Fund shall be established as a separate banking account and monies received shall be accounted for separately from Franchisor's other funds and shall not be used to defray any of Franchisor's general operating expenses, except for such reasonable salaries, administrative costs and overhead as Franchisor may incur in activities reasonably related to the administration or direction of the Advertising Fund and its advertising programs (including, without limitation, conducting market research, preparing advertising and promotional materials, collecting and accounting for contributions to the Advertising Fund, paying for the preparation and distribution of financial statements, legal and accounting fees and expenses, taxes, and other reasonable direct and indirect expenses incurred by Franchisor or its authorized representatives in connection with programs funded by the Advertising Fund). The Advertising Fund will not be Franchisor's asset. A financial statement of the operations of the Advertising Fund shall be prepared annually, and shall be made available to Franchisee upon request. Franchisor may spend in any fiscal year more or less than the aggregate contribution of all Mama Fu's Restaurants to the Advertising Fund in that year, and the Advertising Fund may borrow from Franchisor or others to cover deficits or invest any surplus for future use. Any lender loaning money to the Advertising Fund shall receive interest at a reasonable rate. All interest earned on monies contributed to the Advertising Fund will be used to pay advertising costs before other assets of the Advertising Fund are expended. Franchisor may cause the Advertising Fund to be incorporated or operated through a separate entity at such time as Franchisor may deem appropriate, and such successor entity, if established, will have all rights and duties specified in this Section. Franchisor will not be liable for any act or omission with respect to the Advertising Fund that is consistent with this Agreement and done in good faith. Except as expressly provided in this Section 11.2, Franchisor assumes no direct or indirect liability or obligation to Franchisee with respect to the maintenance, direction or administration of the Advertising Fund. Franchisee acknowledges and agrees that Franchisor is not operating or acting as a trustee or fiduciary with respect to the Advertising Fees collected. Franchisee agrees to participate in any promotion, marketing or advertising campaigns created by the Advertising Fund. Franchisor may reduce contributions of franchisees to the Advertising Fund and upon notice to Franchisee, reduce the Advertising Fund's operation or terminate the Advertising Fund and distribute unspent monies to those contributing franchisees in proportion to their contributions in the past. 11.3 Local Advertising. Franchisee agrees that, in addition to the payment of the Advertising Fee and any amounts required under Section 11.1 hereof, it will spend a reasonable amount each calendar quarter for local market advertising but in no event less than 2% of Gross Sales per calendar quarter. The amount of advertising funds expended by Franchisee for individual local market advertising shall be determined by Franchisee, subject to the foregoing minimum requirement. Local advertising expenditures shall not include incentive programs, including, without limitation, costs of honoring coupons, food costs incurred in honoring sales promotions, salaries, contributions, donations, press parties, in-store fixtures or equipment, menus, serving guides and nutritional facts, yellow page advertising and exterior or interior signage. If Franchisee fails to make advertising expenditures in accordance with this Section, Franchisor shall have the right to spend an amount not to exceed 2% of the Gross Sales of the MF/FA/CORP/083047.1/0305 13 Restaurant on local advertising on behalf of Franchisee, and Franchisee must reimburse Franchisor for such expenses. Failure to comply with this Section shall be deemed a material breach of this Agreement. 11.4 Advertising Cooperatives. In connection with the Restaurant and any and all other Mama Fu's Restaurants owned or operated by Franchisee, Franchisee shall participate, if required by Franchisor, in any local, regional or national cooperative advertising group, consisting of other franchisees of Mama Fu's Restaurants, when and if any such groups are created (each, an "Advertising Cooperative"). The particular Advertising Cooperative(s) in which Franchisee may be required to participate shall be designated by Franchisor in its sole discretion (which designations may be based upon, without limitation, the particular Designated Market Area or the Area of Dominant Influence, as those terms are used in the advertising industry, where the Mama Fu's Restaurants operated by Franchisee are located). Franchisee's payments to any Advertising Cooperative shall be determined by Franchisee and those other franchisees of the Mama Fu's System and/or Franchisor, as the case may be, who are participants in such Advertising Cooperative, as set forth in the by-laws of that Advertising Cooperative or membership, dues, participation or other payment agreements of such Advertising Cooperative. Franchisee, however, may not be required to spend more than 2% of Gross Sales per annum in connection with any Advertising Cooperative. Amounts paid to an Advertising Cooperative shall be credited against payments Franchisee is otherwise required to make for local advertising as required by Section 11.3 above. Any payments to an Advertising Cooperative shall be in addition to the amounts required to be paid or spent under Sections 11.1 and 11.2 hereof. Franchisee shall enter into such formal agreements with such other franchisees of the Mama Fu's System and/or Franchisor, as the case may be, as shall be necessary or appropriate to accomplish the foregoing. If Franchisee becomes delinquent in its dues or other payments to the Advertising Cooperative, such delinquency shall be deemed a failure to participate in the Advertising Cooperative and a material breach of this Agreement. Franchisor may upon 30 days' written notice to Franchisee suspend or terminate an Advertising Cooperative's program or operations. 11.5 Approval of Advertising. Any and all advertising and marketing materials (whether developed in connection with an Advertising Cooperative or otherwise) not prepared or previously approved by Franchisor shall be submitted to Franchisor at least two weeks prior to any publication or run date for approval, which may be arbitrarily withheld. Franchisor may grant or withhold its approval, in its sole discretion. Franchisor will provide Franchisee with written notification of its approval or disapproval within a reasonable time. In the event Franchisor does not notify Franchisee of its approval or disapproval within 10 days of Franchisor's receipt of the materials, the materials shall be deemed approved. Franchisee must discontinue the use of any approved advertising within five days of Franchisee's receipt of Franchisor's request to do so. No advertising or promotion by Franchisee shall be conducted on or through the Internet/world wide web or other electronic transmission via computer without express prior written approval by Franchisor. All advertising and promotion by Franchisee must be factually accurate and shall not detrimentally affect the Marks or the Mama Fu's System, as determined in Franchisor's sole discretion. MF/FA/CORP/1083047.1/0305 14.12. COUNSELING AND ADVISORY SERVICES AND ONSITE ASSISTANCE During the term of this Agreement, Franchisor may, in its sole discretion, upon the request of Franchisee, furnish counseling and advisory services to Franchisee with respect to the opening and operation of the Restaurant, including consultation and advice regarding the following: (i) equipment selection and layout; (ii) employee selection and training; (iii) advertising and promotion; (iv) recipes, food, formulas and specifications; (v) bookkeeping and accounting; (vi) purchasing and inventory control; (vii) operational problems and procedures; (viii) periodic inspections; and (ix) new developments and improvements to the Mama Fu's System. These counseling and advisory services shall occur at Franchisor's offices or via telephone or e-mail. Franchisor shall provide such assistance at no expense to Franchisee; provided, however, Franchisor reserves the right, in its sole discretion, to charge Franchisee a reasonable fee for unusual, extensive or extraordinary assistance requested by Franchisee and/or require Franchisee to reimburse Franchisor for expenses incurred by it in connection with providing such counseling and advisory services. In addition, if requested by Franchisee and Franchisor's personnel are available, Franchisor may provide onsite assistance and training at the Restaurant, however, Franchisor reserves the right to charge a reasonable fee for this onsite assistance plus expenses and costs incurred by Franchisor in rendering such assistance. In no event shall Franchisor be liable to Franchisee in connection with providing or failing to provide such services. 13. OPENING ASSISTANCE Franchisor shall provide Franchisee with an opening person(s) to assist in the opening of the Restaurant and the training of Franchisee's employees. The opening person(s) will remain at the Restaurant for such length of time as Franchisor shall deem necessary. Franchisor shall provide such opening person(s) at no charge to Franchisee; provided, however, Franchisor reserves the right, in its sole discretion, to charge Franchisee for extraordinary travel and living expenses incurred by such opening person(s) in connection with providing such opening assistance. In the event Franchisee needs and requests additional opening assistance from Franchisor's personnel, and Franchisor approves such request, Franchisee will pay all costs and expenses of such personnel, for as long as any such additional personnel assist at the Restaurant. The costs and expenses associated with this assistance include, but are not limited to, wages, salary, transportation, meals, lodging and fringe benefits. All personnel provided under this Section shall be selected by Franchisor and is subject to change or removal by Franchisor in its sole discretion. 14. TRAINING 14.1 Initial Training. And when required by Franchisor, the person(s) designated by Franchisee to assume primary responsibility for managing the Restaurant (each, a "Manager") must attend and successfully complete to the satisfaction of Franchisor an initial management training program specified by Franchisor or a comparable training program approved in advance by Franchisor in its sole discretion. Each person required to complete the initial training program must successfully complete it before the Restaurant may open for business. No fee will be charged by Franchisor for the participation of up to two individuals in the training program, however, the Franchisee shall be responsible for the costs and expenses (such as transportation, MF/FA/CORP/ 083047.1/0305 15 lodging, meals and compensation) of each person who attends the training. The Restaurant must at all times be operated by a Manager who has successfully completed the initial training program. Franchisor reserves the right to waive all or a portion of the training program in its sole discretion. 14.2 Training of Employees. Franchisee shall implement a training program approved by Franchisor for employees of the Restaurant and shall be responsible for the proper training of its employees. Franchisee agrees not to employ any person who fails or refuses to complete Franchisee's training program or is unqualified to perform his or her duties at the Restaurant in accordance with the requirements established for the operation of a Mama Fu's Restaurant. 14.3 Additional Training. Franchisee and its Managers and employees shall attend and conduct such additional training programs as Franchisee may from time to time reasonably require relating to the operation of the Restaurant and the Mama Fu's System. Franchisee also may be required to purchase training films or other instructional materials as specified by Franchisor from time to time in the Operations Manual or otherwise. 14.4 Conferences. Franchisor may require Franchisee and/or one or more of the operating managers of the Restaurant to attend conferences which may be offered by Franchisor from time to time. Franchisee will be responsible for the travel and living expenses of such persons, and Franchisor may charge a reasonable fee sufficient to cover the costs and expenses of such conferences. 15. MARKS 15.1 Ownership of the Marks. Franchisee acknowledges and agrees that nothing herein contained shall give Franchisee any right, title or interest in and to the Marks, except the non-exclusive right to use the Marks in connection with the operation of the Restaurant under the Mama Fu's System in accordance with the terms of this Agreement. Franchisee also acknowledges and agrees that the Marks and all goodwill now or in the future pertaining to the Marks are the sole and exclusive property of Franchisor and that it shall not raise or cause to be raised any questions concerning, or objections to, the validity or ownership of such Marks on any grounds whatsoever. Franchisee will not seek to register, re-register or assert claim to or ownership of, or otherwise appropriate to itself, any of the Marks or any marks or names confusingly similar to the Marks, or the goodwill symbolized by the Marks except insofar as such action inures to the benefit of and has the prior written approval of Franchisor. Upon the expiration, termination or cancellation of this Agreement, whether by lapse of time, default or otherwise, Franchisee agrees immediately to

