

## **SETTLEMENT AGREEMENT**

### **BETWEEN**

**THE STATES OF MASSACHUSETTS,  
CALIFORNIA, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW  
YORK, NORTH CAROLINA, OREGON, AND PENNSYLVANIA**

### **AND**

**ARBY'S RESTAURANT GROUP, INC.**

### **PARTIES**

1. The States of Massachusetts, California, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, and Commonwealth of Pennsylvania (the "Settling States"), by and through their Attorneys General (collectively, "the Attorneys General"), are charged with enforcement of, among other things, their respective state's consumer protection and antitrust laws, and other related statutes and regulations.

2. Arby's Restaurant Group, Inc. ("Arby's") is a Delaware corporation with its principal offices or place of business in Atlanta, Georgia. Arby's is a franchisor, and its corporate and franchisee-operated locations are in the business of offering roast beef sandwiches, among other food products, for sale to consumers.

### **DEFINITIONS**

3. "No-Poach Provisions" refers to the terms in the license agreements entered into between Arby's and its franchisees (the "franchise agreement") that state franchisees subject to such agreements may not solicit employees of Arby's or of other Arby's franchisee to terminate

or reduce their employment with Arby's or an Arby's franchisee. Arby's hereby represents and affirms that, with respect to its documents and agreements in the United States, other than (i) the franchise agreement, (ii) restrictive covenants contained in some purchase agreements, and (iii) certain severance and employment agreements between Arby's and its employees (in some cases, called "Restrictive Covenant Agreement"), no other document or agreement to which Arby's is a party exists that restricts, limits or prevents any Arby's franchisee or Arby's-operated store from hiring, recruiting or soliciting employees of Arby's or any other Arby's franchisee for employment.

4. "Arby's" shall mean Arby's Restaurant Group, Inc. and shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, subsidiaries, and franchisor entities.

#### **THE INVESTIGATION BY THE ATTORNEYS GENERAL**

5. The Attorneys General undertook an investigation pertaining to certain No-Poach Provisions contained in Arby's franchise agreement or any other document which restricts franchisees from hiring or soliciting employees of Arby's and/or other Arby's franchisees for employment. As a result of the investigation, the Attorneys General determined:

- a. Arby's has independently-owned franchise locations in each of the Settling States; and
- b. Beginning in 2013, Arby's began including No-Poach Provisions in its franchise agreements.

- c. Arby's use of No-Poach Provisions in its franchise agreements may have limited job opportunities and deprived other franchisees of the opportunity to hire workers with requisite skills and experience. The economic consequences of these restrictions may be significant.

6. The Attorneys General allege that this course of conduct may constitute a violation of the Settling States' antitrust laws. The Attorneys General further allege that these methods, acts, or practices may constitute unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Settling States' consumer protection laws, and may violate other laws in some or all of the Settling States governing the free exercise of the right to contract for employment.

7. Arby's: (i) expressly denies that the conduct described above constitutes a contract, combination, or conspiracy in restraint of trade under any applicable antitrust law or regulation; (ii) expressly denies that the conduct described above constitutes an unfair method of competition and/or deceptive acts or practices in the conduct of trade or commerce in violation of any consumer protection laws; (iii) expressly denies that the conduct described above constitutes a violation of any law governing the free exercise of the right to contract for employment; (iv) expressly denies that the conduct described above violated any other law or regulation; and (v) expressly denies the allegations set forth in Paragraph 6 above.

8. Arby's enters into this Agreement for the purpose of resolving this investigation only.

9. This Agreement is made without trial or adjudication of any issue of fact or law. The parties have voluntarily and knowingly entered into this Agreement in order to avoid the time, expense, and uncertainty of litigation.

10. The Attorneys General have conferred in good faith with Arby's and its attorneys, and the parties have agreed to resolve the allegations through this Agreement.

### **ASSURANCES**

11. Arby's agrees that it will no longer include No-Poach Provisions in any of its franchise agreements in the United States signed after the execution date of this Agreement.

12. Arby's agrees it will not enforce any No-Poach Provision in any of its existing franchise agreements in the United States and will not seek to intervene in any action brought by the Attorney General of any of the Settling States against a current or former franchisee that enforces or attempts to enforce an existing No-Poach Provision.

13. Within 45 days of execution of this Agreement, Arby's will send a letter to all of its current franchisees with stores located in the Settling States that have No-Poach Provisions in their franchise agreements, stating that Arby's, in accordance with an agreement with the Attorney General of the franchisee's State, is requesting that the No-Poach Provisions be removed from existing franchise agreements. The notice that Arby's will send to these franchisees will be substantially in the form of the letter attached hereto as Exhibit A. That letter will include the proposed amendment that Arby's is requesting that each of its franchisees in the Settling States agree to, which will remove the No-Poach Provisions from the franchise agreements.

14. The proposed amendment that will be included with each letter will be substantially in the form of the amendment attached hereto as Exhibit B.

15. The letter to franchisees will also include a request that the franchisees post a notice at the workplace in a location where it can easily be read to inform employees of this Agreement. Arby's will recommend that such notice be posted through December 31, 2020. A template of such notice in English and Spanish is attached hereto as Exhibit C. Arby's will post this notice in all of its own operated stores in the Settling States through December 31, 2020.

16. If, after the 45-day period set forth in Paragraph 13, Arby's becomes aware of a franchisee with a store located in one of the Settling States attempting to enforce No-Poach Provisions, and Arby's is unable to persuade such franchisee to desist from enforcing or attempting to enforce such provision, Arby's shall notify the Attorney General of the state in which the store is located and the Massachusetts Attorney General within thirty (30) days of learning of the attempted enforcement. Notice shall be provided by both United States Postal Service and email to the appropriate Settling States' signatory to this Agreement.

17. In addition to sending the letter to its current franchisees in the Settling States pursuant to Paragraph 13 above, Arby's will respond promptly to any inquiries from such franchisees regarding the request to amend the terms of the franchise agreement and will encourage its current franchisees in the Settling States to sign the proposed amendment. Within 150 days of execution of this Agreement, Arby's will provide: (a) a list of all current franchisees in the Settling States which indicates whether each franchisee has executed the proposed amendment, refused to execute the proposed amendment, or is requesting an extension to execute

the proposed amendment to the Settling States; and (b) copies of all executed amendments it has obtained with its current franchisees in the Settling States to the respective Attorney General of each Settling State and a copy to the Massachusetts Attorney General. However, Arby's is under no obligation to offer its franchisees any consideration – monetary or otherwise – in order to induce them to sign the proposed amendment or to post the notice described in paragraph 15 (or to keep the notice posted through December 31, 2020). Similarly, Arby's is under no obligation to take adverse action against any franchisees refusing to sign the proposed amendment or to post the notice described in paragraph 15. A decision by a franchisee not to amend its franchise agreement, or not to do so within 150 days of this Agreement, or not to post the notice described in paragraph 15, or not to keep the notice posted through December 31, 2020, shall not mean that Arby's has not complied with its obligations under this Agreement.

18. If Arby's learns that a current franchisee in a Settling State intends in good faith to sign the proposed amendment but is unable to do so within the time period specified in Paragraph 17, Arby's will notify the respective Attorney General of the Settling State in which the franchisee operates, and the Massachusetts Attorney General, to seek a mutually agreeable extension. During any such extension, that Attorney General will not take further investigative or enforcement action against the franchisee for the use of No-Poach Provisions.

19. Within 180 days of execution of this Agreement, Arby's will submit a declaration to the Attorneys General, signed under penalty of perjury, stating whether all provisions of this Agreement have, to the best of its knowledge following due diligence, been satisfied.

### **MISCELLANEOUS PROVISIONS**

20. This Agreement shall be governed by and interpreted in accordance with the respective laws of the Settling State that is seeking to enforce the Agreement against Arby's or against which Arby's is seeking enforcement.

21. Arby's is represented by and has consulted with counsel in connection with the decision to enter into this Agreement.

22. This Agreement shall be binding upon, and applies to Arby's, including each of its respective directors, officers, managers, agents acting within the scope of their agency, and employees, as well as their respective successors and assigns, subsidiaries, franchisor entities, or other entities through which Arby's may now or hereafter act with respect to the conduct described in this Settlement.

23. This Agreement shall have the same effect as an Assurance of Discontinuance, Assurance of Voluntary Compliance, or a Stipulated Judgment, and it may be filed in court pursuant to the respective laws of each Settling State.<sup>1</sup>

24. In the event that any of the Settling States believe that Arby's has breached the terms of this Agreement:

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<sup>1</sup> With respect to California, this Agreement will only become effective once it has been entered as a stipulated judgment pursuant to California Code of Civil Procedure section 664.6.

a. The Settling State or States will provide written notice of the alleged breach to Arby's, by both United States Postal Service first class mail and e-mail, to the below addresses.

Nils H. Okeson  
Chief Administrative Officer,  
General Counsel & Secretary  
Arby's Franchisor, LLC  
1155 Perimeter Center West  
Atlanta, GA 30338

E-mail: [nokeson@arbys.com](mailto:nokeson@arbys.com)

Robert A. Atkins  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064

E-mail: [ratkins@paulweiss.com](mailto:ratkins@paulweiss.com)

b. Arby's will have forty-five (45) days following receipt of the written notice to cure any alleged breach, after which time the Settling States may bring claims if they are not satisfied that Arby's has cured the alleged breach or breaches identified in the written notice.

25. If a court of competent jurisdiction enters a final, non-appealable judgment in which it determines that Arby's has materially breached this Agreement, then:

a. For each material breach of this Agreement that results in a refusal to hire, Arby's shall pay the Settling States an aggregate amount up to \$100,000, determined at the Settling States' discretion, unless Arby's establishes that its breach was unintentional and that Arby's cured the breach within forty-five (45) days of receipt of written notice from the Settling States.

b. For each material breach of this Agreement that does not result in a refusal to hire, Arby's shall pay the Settling States an aggregate amount up to \$10,000, determined at the Settling

States discretion, unless Arby's establishes that its breach was unintentional and Arby's cured the breach within forty-five (45) days of receipt of written notice from the Settling States; and

c. In the event that a payment is due under this Paragraph, Arby's shall also pay the reasonable fees and costs incurred by the Settling States in enforcing the terms of this Agreement if litigation is required, including without limitation reasonable attorneys' fees, expenses, and costs, as determined by the court.

26. The Attorneys General agree not to proceed with or institute any civil action or other proceeding under their respective laws, and statutes, and regulations against Arby's or other entities through which Arby's may now or hereafter act with respect to the conduct described in this Settlement, for the use of No-Poach Provisions prior to the execution of this agreement. The Attorneys General further agree not to proceed with or institute any civil action or other proceeding under their respective state's laws, statutes, and regulations against any of Arby's former franchisees<sup>2</sup>, for the use of No-Poach Provisions prior to the execution of this agreement, or any of Arby's current franchisees, for the use of No-Poach Provisions prior to the execution of this agreement, to the extent such franchisee enters into the proposed amendment described in Paragraph 14 above and posts the proposed notice described in Paragraph 15. Notwithstanding this paragraph, nothing in this Agreement shall be construed as preventing the Attorneys General from pursuing or instituting a civil action or other proceeding relating to a suspected violation of this Agreement, with respect to claims relating to conduct occurring after the date of this

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<sup>2</sup> Only the six former franchisees, specifically identified by Arby's, which previously operated fourteen (14) restaurants in the Settling States, shall benefit from this provision.

agreement. Any claims or potential claims of individuals or classes of individuals not party to this Agreement are not waived, released, or otherwise affected by this Agreement, even if one or more of the Attorneys General could have brought those claims on their behalf.

27. Notwithstanding Paragraph 26, the Attorneys General reserve the right to take further investigative or enforcement action against any current franchisee in any Settling State that does not sign the proposed amendment described in Paragraph 14, or fails to post the proposed notice described in Paragraph 15.

28. Nothing in this Agreement shall be construed as relieving Arby's of a duty to comply with all applicable federal, state and local laws, regulations, rules, and permits. Other than with respect to breaches of this Agreement, the Settling States are not required to provide notice in advance of taking any enforcement action if necessary to protect the health, safety or welfare of the public.

29. This Agreement contains the complete agreement between the Attorneys General and Arby's related to the conduct at issue. No promises, representations, or warranties other than those set forth in this Agreement have been made by the Attorneys General or by Arby's. This Agreement supersedes all prior communications, discussions, or understandings regarding No-Poach Provisions between the Attorneys General and Arby's, whether oral or in writing. This Agreement can only be modified or supplemented by a written document signed by both parties to which such modification or supplementation applies.

30. The Attorneys General and Arby's agree and represent that any persons signing this Agreement are authorized by proper authorities to execute this Agreement on their behalf.

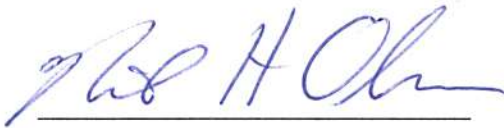
By signing below, Arby's agrees to comply with all of the terms of this Agreement.

31. Execution of this Agreement does not constitute an approval by the Settling States of any of Arby's business acts or practices.

32. Arby's may petition the Attorneys General of any Settling State to modify or terminate the Agreement on the basis of material changes in law, rule, regulation, judicial or administrative decision or interpretation.

AGREED TO AND APPROVED BY:

ARBY's FRANCHISOR, LLC



Nils H. Okeson  
Chief Administrative Officer,  
General Counsel & Secretary  
Arby's Franchisor, LLC

FOR THE SETTLING STATES:

MASSACHUSETTS



Cynthia Mark  
Chief, Fair Labor Division  
Massachusetts Office of the Attorney  
General  
One Ashburton Place  
Boston, MA 02108  
(617) 963-2626  
[cynthia.mark@state.ma.us](mailto:cynthia.mark@state.ma.us)

IOWA



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Office of the Iowa Attorney General  
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CALIFORNIA



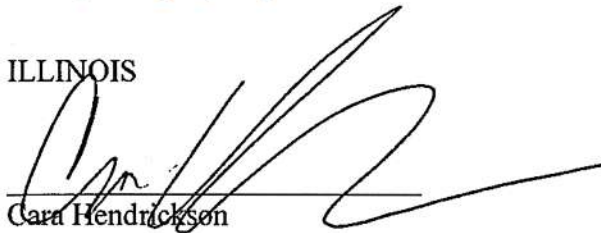
Satoshi Yanai  
Supervising Deputy Attorney General  
Office of the Attorney General  
Worker Rights and Fair Labor Bureau  
300 S. Spring Street, Suite 1702  
Los Angeles, CA 90013  
(213) 269-66416400  
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MARYLAND



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Deputy Chief, Antitrust Division  
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200 Saint Paul Place  
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ILLINOIS



Cara Hendrickson  
Public Interest Division Chief  
Office of the Illinois Attorney General  
Workplace Rights Bureau  
100 W. Randolph Street, 11th floor  
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MINNESOTA



Joseph C. Meyer  
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NEW JERSEY



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Glenn J. Moramarco  
Assistant Attorney General  
AAG in Charge of Special Litigation  
25 Market Street, PO Box 112  
Trenton, NJ 08625  
609-376-3235  
[Glenn.Moramarco@law.njoag.gov](mailto:Glenn.Moramarco@law.njoag.gov)

NORTH CAROLINA



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Daniel Wilkes  
Assistant Attorney General  
North Carolina Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699  
(919) 716-6400  
[dwilkes@ncdoj.gov](mailto:dwilkes@ncdoj.gov)

NEW YORK



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ReNika Moore  
Labor Bureau Chief  
New York State  
Office of the Attorney General  
28 Liberty Street  
New York, NY 10005  
(212) 416-6280  
[ReNika.Moore@ag.ny.gov](mailto:ReNika.Moore@ag.ny.gov)

OREGON



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Tim Nord, Special Counsel  
Civil Enforcement Division  
Financial Fraud and Consumer Protection  
Section  
Oregon Department of Justice  
1162 Court St NE, Salem, OR 97301  
(503) 934-4400  
[tim.d.nord@doj.state.or.us](mailto:tim.d.nord@doj.state.or.us)

PENNSYLVANIA



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Nancy A. Walker  
Chief Deputy Attorney General  
Fair Labor Section  
Commonwealth of Pennsylvania  
Office of Attorney General  
1600 Arch Street, Suite 300  
Philadelphia, PA 19103  
(215) 560-2704  
[nwalker@attorneygeneral.gov](mailto:nwalker@attorneygeneral.gov)

## EXHIBIT A

## SAMPLE NOTICE TO FRANCHISEES

Dear [Franchisee Name]:

In July 2018, Arby's received a request for information from the Attorneys General of California, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, and Pennsylvania (the "States") requesting information about provisions in our license agreement that restrict the hiring or solicitation of employees (sometimes referred to as "no-poaching" clauses). We have cooperated fully with the investigation.

Without admitting that Arby's or its franchisees violated any law or regulation, or acted improperly in any respect, we have reached an agreement with the States. This agreement provides that Arby's will, among other things, no longer include in any U.S. license agreement or renewal signed after the date of our agreement with the States any provisions that restrict the hiring or solicitation of employees. The agreement also provides that Arby's will not enforce any such provisions in any of our existing license agreements in the U.S.

We believe the system's interests are best served by resolving the investigation quickly and cooperatively on these terms, and avoiding the uncertainty and cost of protracted litigation.

Our agreement with the States also includes a requirement that we request, from franchisees with locations in the States, that they agree to amend their existing license agreements to remove the provisions, if any, that restrict the hiring or solicitation of employees. Enclosed for your signature is an amendment to your license agreement(s) with Arby's to satisfy that requirement. Our agreement with the States also includes a requirement that we request, from franchisees with locations in the States, that they post a notice at the workplace in a location where it can easily be read to inform employees of our agreement with the States, from the date you sign the Amendment through December 31, 2020.

To the extent that you agree to the proposed amendment to your license agreement, and post the attached notice to your employees through December 31, 2020, the States have committed to not pursue any suit, or take any investigative or enforcement action against you, for conduct relating to the relevant provisions of your franchise agreement, up to and including the date you sign the amendment.

We therefore recommend that you sign and return the amendment to me as soon as possible, and post the notice attached to this letter as requested. If you decide not to sign the enclosed amendment or post the notice through December 31, 2020, the States have indicated that they will reserve the right to investigate you and/or pursue enforcement actions against you relating to the contractual provisions described above.

Should you have any questions regarding this matter, please contact me at [nokeson@InspireBrands.com](mailto:nokeson@InspireBrands.com).

Please do not provide comments regarding this matter to members of the media. If you receive any media inquiries regarding this matter, please refer them to [Press@InspireBrands.com](mailto:Press@InspireBrands.com).

Sincerely,

Nils H. Okeson General Counsel Arby's Restaurant Group, Inc.

## EXHIBIT B

**AMENDMENT  
TO  
ARBY'S FRANCHISOR, LLC LICENSE AGREEMENT**

The Arby's Franchisor, LLC ("Arby's") License Agreement(s) between Arby's ("We") and the undersigned franchisee ("You") listed in Exhibit A hereto (as amended, the "License Agreement(s)") shall be amended in accordance with the following terms.

1. Background. We and You are parties to each License Agreement and You operate one or more franchised outlets in California, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, or Pennsylvania under the License agreement(s). We have determined that it is in the best interests of the franchise system to not enforce the portions of Section 13:1 described below and in Appendix A attached hereto. The purpose of this Amendment to your License Agreement(s) is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the License agreement(s).

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, You and We agree that Sub-section (ii) of Section 13.1 and the sentence immediately thereafter are hereby deleted from each License Agreement, as shown in Appendix A attached hereto, and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the License Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, each License Agreement. If there is an inconsistency between this Amendment and any License Agreement, the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Agreement effective as of \_\_\_\_\_, 2019 (the "Effective Date").

**ARBY'S FRANCHISOR, LLC**

**[FRANCHISEE'S NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## Appendix A

### Modifications:

**Section 13:1 Covenant Not to Compete:** Licensee covenants that, during the term of this License Agreement, and also for a period of twelve (12) months after termination of this License Agreement for any reason, and in addition to and not as a limitation of any other restriction upon Licensee contained herein, neither Licensee, nor any Guarantor, nor any general partner of Licensee if Licensee is a partnership, nor any shareholder, limited partner, member or other equity owner holding at least a fifteen percent (15.0%) interest in Licensee, shall, without prior written permission of Arby's, either directly or indirectly, for himself or on behalf of or in conjunction with any other person or entity: ~~(i) engage or be engaged in any capacity in, operate, manage or have a fifteen percent (15.0%) or greater interest in any business offering roast beef sandwiches for sale to consumers and located within the Protected Area for Licensee's Restaurant as specified in Exhibit B.; or (ii) solicit or attempt to solicit any officer, employee or independent contractor of Arby's or its affiliates or of any Arby's licensee in the Arby's System to terminate or reduce his or her employment or business relationship with Arby's or its affiliates or with such Arby's licensee and shall not assist any other person or entity in such a solicitation. In addition, Arby's covenants that, during the term of this License Agreement, neither Arby's nor any affiliates controlled by Arby's will solicit or attempt to solicit any officer, employee or independent contractor of Licensee or its affiliates to terminate or reduce his or her employment or business relationship with Licensee or its affiliates and shall not assist any other person or entity in such a solicitation.~~

### Provision as Amended:

**Section 13:1 Covenant Not to Compete:** Licensee covenants that, during the term of this License Agreement, and also for a period of twelve (12) months after termination of this License Agreement for any reason, and in addition to and not as a limitation of any other restriction upon Licensee contained herein, neither Licensee, nor any Guarantor, nor any general partner of Licensee if Licensee is a partnership, nor any shareholder, limited partner, member or other equity owner holding at least a fifteen percent (15.0%) interest in Licensee, shall, without prior written permission of Arby's, either directly or indirectly, for himself or on behalf of or in conjunction with any other person or entity engage or be engaged in any capacity in, operate, manage or have a fifteen percent (15.0%) or greater interest in any business offering roast beef sandwiches for sale to consumers and located within the Protected Area for Licensee's Restaurant as specified in Exhibit B.

## EXHIBIT C

EMPLOYEE NOTICE  
(post through December 31, 2020)

In July 2018, the Attorney General of your state asked Arby's to stop using or enforcing No-Poach Provisions in its franchise agreement. The Attorney General believes that these provisions may have prevented some employees from getting a job at another Arby's location.

Arby's does not believe that it acted improperly in any way, and denies that it violated any law. Nevertheless, Arby's cooperated with the Attorney General and agreed to stop using or enforcing these provisions.

You are allowed to be recruited or hired by Arby's or another Arby's franchisee in the future, if you so desire.

If you have any questions or concerns, please contact your state Attorney General's Office [include list of state #s or Email].

AVISO PARA EMPLEADO  
(publique hasta el 31 de diciembre de 2020)

En julio de 2018, el Fiscal General de su estado solicitó a Arby's que deje de usar o hacer cumplir cláusulas de no contratación de otros empleados de Arby's o de franquiciatarios en sus acuerdos de franquicia. El Fiscal General cree que estas cláusulas pueden haber impedido a algunos empleados de conseguir un trabajo en otra locación de Arby's.

Arby's no cree que actuó incorrectamente de ninguna manera, y niega que haya violado cualquier ley. Sin embargo, Arby's cooperó con el Fiscal General y acordó a dejar de usar o hacer cumplir estas cláusulas.

Se le permite ser reclutado o contratado por Arby's u otro franquiciatario de Arby's en el futuro, si así lo desea.

Si tiene cualquier pregunta o preocupaciones, por favor contacte y a la Oficina del Fiscal General de su estado [include list of phone numbers or Email].

**SETTLEMENT AGREEMENT**

**BETWEEN**

**THE STATES OF MASSACHUSETTS, CALIFORNIA, ILLINOIS, IOWA,  
MARYLAND, MINNESOTA, NEW JERSEY, NEW YORK, NORTH CAROLINA,  
PENNSYLVANIA, RHODE ISLAND, VERMONT, AND THE DISTRICT OF COLUMBIA**

**AND**

**DUNKIN' BRANDS, INC.**

**PARTIES**

1. The States of Massachusetts, California, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Rhode Island, Vermont, the District of Columbia, and the Commonwealth of Pennsylvania (the "Settling States"), by and through their Attorneys General (collectively, "the Attorneys General"), are charged with enforcement of, among other things, their respective state's consumer protection and antitrust laws, and other related statutes and regulations.

2. Dunkin' Brands, Inc. ("Dunkin' Brands") is a corporation with its principal offices or place of business in Canton, Massachusetts. Dunkin' Brands is the parent corporation and manager of the franchisor of the Dunkin' Donuts franchise system<sup>1</sup>, and franchisee-owned and operated locations are in the business of offering coffee and baked goods, among other food and beverage products, for sale to consumers.

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<sup>1</sup> The parties to this Agreement acknowledge that Dunkin' Brands changed the name of the "Dunkin' Donuts franchise system" to the "Dunkin' franchise system" as of January 1, 2019. Any reference herein to the "Dunkin' Donuts franchise system" and/or to "Dunkin' Donuts franchisees" applies to the "Dunkin' franchise system" and/or "Dunkin' franchisees".

### **DEFINITIONS**

3. "Older No-Poach Provision(s)" refers to any and all language contained within franchise agreements or any other documents which restricts, limits, or prevents any Dunkin' Donuts franchisee from hiring, recruiting, or soliciting employees of Dunkin' Brands and/or any other Dunkin' Donuts franchisee for employment.

4. "Newer No-Poach Provision(s)" refers to any and all language contained within franchise agreements or any other documents which restricts, limits, or prevents a Dunkin' Donuts franchisee from hiring, recruiting, or soliciting employees of Dunkin' Brands and/or its affiliates for employment and/or restricts, limits or prevents Dunkin' Brands and/or its affiliates from hiring, recruiting, or soliciting employees of a Dunkin' Donuts franchisee for employment.

5. "Dunkin' Brands" shall mean Dunkin' Brands, Inc. and shall include its predecessors or successors in interest, assigns, parent corporations, holding companies, subdivisions, controlled subsidiaries, affiliated entities, officers, directors, trustees, partners, managers, agents acting within the scope of their agency, and employees.

6. "Execution Date" is the date on which all parties sign this Agreement and a copy of the fully executed Agreement is received by Dunkin' Brands via the notice provisions set forth in Paragraph 28.

### **THE INVESTIGATION BY THE ATTORNEYS GENERAL**

7. The Attorneys General undertook an investigation pertaining to the Older No-Poach Provision and the Newer No-Poach Provision contained in the Dunkin' Donuts franchise agreements and other restrictions on employees' ability to move between employment at different Dunkin' Donuts franchises or locations. As a result of the investigation, the Attorneys General determined:

- a. Dunkin' Brands has independently-owned and operated franchise locations in each of the Settling States, but has no corporately-owned or operated retail locations in any of the Settling States;
- b. From at least 1988 to 2000 and in the year 2010 Dunkin' Brands included an Older No-Poach Provision in the Dunkin' Donuts franchise agreement;
- c. From 2001 to 2009, Dunkin' Brands did not include a provision in its franchise agreements that restricts, limits, or prevents any Dunkin' Donuts franchisee from hiring, recruiting, or soliciting employees of Dunkin' Brands and/or any other Dunkin' Donuts franchisee for employment;
- d. From 2011 to the present, Dunkin' Brands has included Newer No-Poach Provisions in all Dunkin' Donuts franchise agreements;
- e. The Attorneys General allege that Dunkin' Brands' use of the Older No-Poach Provision in Dunkin' Donuts franchise agreements may have limited, and may continue to limit job opportunities, restricted franchisee employees' earning potential and upward job mobility, and deprived other franchisees of the

opportunity to hire workers with requisite skills and experience. The Attorneys General also allege that the economic consequences of these restrictions may be significant.

8. The Attorneys General allege that this course of conduct may constitute a violation of the Settling States' antitrust laws. The Attorneys General further allege that these methods, acts, or practices may constitute unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Settling States' consumer protection laws and may violate other laws in some or all of the Settling States governing the free exercise of the right to contract for employment.

9. Dunkin' Brands expressly denies that the conduct described in Paragraph 7 and 8 constitutes a contract, combination, or conspiracy in restraint of trade in violation of any law or regulation, and expressly denies that it has engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade, or violates any other law or regulation, including but not limited to federal and/or state antitrust laws and/or any state consumer protection laws. Neither this Agreement nor its terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Dunkin' Brands or any current or former Dunkin' Donuts franchisee.

10. Dunkin' Brands asserts that it has not in the past and is not currently engaged in any litigation seeking to enforce either the Older No-Poach Provision or the Newer No-Poach Provision and is unaware of any litigation that has been brought by or against any Dunkin'

Donuts franchisee seeking to enforce either the Older No-Poach Provision or the Newer No-Poach Provision.

11. Dunkin' Brands enters into this Agreement for the purpose of resolving this investigation only, and this Agreement does not create or affect any rights for any third party.

12. This Agreement is made without initiation of any legal proceedings against Dunkin' Brands or any of its franchisees and without trial or adjudication of any issue of fact or law. Without an admission by Dunkin' Brands to any violation of law, the parties have voluntarily and knowingly entered into this Agreement in order to avoid the time, expense, and uncertainty of litigation.

13. The Attorneys General have conferred in good faith with Dunkin' Brands and its attorneys, and the parties have agreed to resolve the allegations through this Agreement.

#### ASSURANCES

14. Subject to Paragraph 9 above, Dunkin' Brands agrees:

- a. It will not include an Older No-Poach Provision in any of its franchise agreements in the United States entered into after the Execution Date. Dunkin' Brands further agrees that no later than April 1, 2019, it will not include a Newer No-Poach Provision or any similar provision in any of its franchise agreements for Dunkin' Donuts stores in the United States.
- b. It will not enforce either the Older No-Poach Provision or the Newer No-Poach Provision in any of its franchise agreements in the United States and will not seek to intervene in any action brought by the Attorney General of any of the

Settling States against a current or former franchisee that enforces or attempts to enforce an existing Older No-Poach Provision or Newer No-Poach Provision. Dunkin' Brands may defend itself and its practices in any action in which it is named as a party.

- c. Within 30 days after the Execution Date, Dunkin' Brands agrees to send a communication (hereinafter referred to as "Communication A") to all current Dunkin' Donuts franchisees in the Settling States with a franchise agreement that contains a Newer No-Poach Provision informing them of this Agreement and the contents of this Paragraph. Communication A will be substantially in the form of the communication attached hereto as Exhibit A.
- d. Within 30 days after the Execution Date, Dunkin' Brands will send a communication (hereinafter referred to as "Communication B") to all current Dunkin' Donuts franchisees in the Settling States with a franchise agreement that contains the Older No-Poach Provision (hereinafter referred as the "Older No-Poach Franchisees"), stating that Dunkin' Brands, in accordance with an agreement with the Attorneys General, is requesting that the Older No-Poach Franchisees sign an amendment to the franchise agreement which removes the Older No-Poach Provision from their franchise agreements. Communication B will be substantially in the form of the communication attached hereto as Exhibit A. Along with Communication B, Dunkin' Brands will send the Older No-Poach Franchisees a proposed amendment to the franchise agreements that

Dunkin' Brands is requesting that each of the Older No-Poach Franchisees agree to, which, if agreed to, would remove the Older No-Poach Provision from their franchise agreements (hereinafter referred to as the "Proposed Amendment"). The Proposed Amendment will be substantially in the form of the amendment attached hereto as Exhibit B.

- e. Communication B will also request that the Older No-Poach Franchisees post a notice at the workplace in a location where it can easily be read by the franchisees' employees that inform them of this Agreement (hereinafter referred to as the "Notice") and provide a copy of that Notice to all such franchisees. Dunkin' Brands will request that the Older No-Poach Franchisees post the Notice until December 31, 2020. A template of the Notice in English and Spanish is attached hereto as Exhibit C.
- f. If, after the 30-day period set forth in Paragraph 14(c), Dunkin' Brands becomes aware in the normal course of its business of information that an Older No-Poach Franchisee with a store located in one of the Settling States is enforcing or attempting to enforce an Older No-Poach Provision, and Dunkin' Brands, through reasonable efforts, is unable to persuade such franchisee to desist from enforcing or attempting to enforce such provision, Dunkin' Brands will notify the Attorney General of the state in which the store is located and the Massachusetts Attorney General within thirty (30) days of learning of the enforcement or attempted enforcement. For sake of clarity, "reasonable efforts"

will include Dunkin' Brands' sending a letter to an Older No-Poach Franchisee urging that franchisee to desist from enforcing or attempting to enforce such provision.

- g. In addition to sending Communication B to the Older No-Poach Franchisees, Dunkin' Brands will respond promptly to any inquiries from such franchisees regarding the request to enter into the Proposed Amendment and, in responding to such inquiries, will take reasonable steps to encourage the Older No-Poach Franchisees to sign the Proposed Amendment. Within 120 days of the Execution Date, Dunkin' Brands will provide: a) a list of all current Older No-Poach Franchisees in each of the Settling States indicating whether each such franchisee has executed the Proposed Amendment, refused to execute the Proposed Amendment, or is requesting an extension to execute the Proposed Amendment to the respective Settling States, and b) copies of all executed Proposed Amendments signed by Older No-Poach Franchisees to the respective Attorney General of each Settling State and a copy to the Massachusetts Attorney General. Notwithstanding these reporting obligations, Dunkin' Brands is under no obligation to offer Older No-Poach Franchisees any consideration – monetary or otherwise – in order to induce them to sign the Proposed Amendment or take any adverse action against any such Older No-Poach Franchisees if they refuse to sign the Proposed Amendment. A decision by an Older No-Poach Franchisee not to sign the Proposed Amendment at all or not to

sign the Proposed Amendment within 120 days of the Execution Date or thereafter shall not mean that Dunkin' Brands has breached its obligations under this Agreement.

- h. If Dunkin' Brands learns that an Older No-Poach Franchisee intends in good faith to sign the Proposed Amendment for a franchise located in a Settling State but is unable to do so within 120 days of the Execution Dates, Dunkin' Brands will notify both the respective Attorney General of the Settling State in which the Older No-Poach Franchisee is operating such franchise and the Massachusetts Attorney General, to seek a mutually agreeable extension. During any such extension, the Attorneys General will not take further investigative or enforcement action against the Older No-Poach Franchisee for the enforcement of the Older No-Poach Provision.
- i. Within 150 days of the Execution Date, Dunkin' Brands will submit a declaration to the Attorneys General, signed under penalty of perjury, stating whether Dunkin' Brands has satisfied all of its obligations under Paragraph 14 of this Agreement.

#### **MISCELLANEOUS PROVISIONS**

15. This Agreement shall be governed by and interpreted in accordance with the respective laws of the Settling State that is seeking to enforce the Agreement against Dunkin' Brands or against which Dunkin' Brands is seeking enforcement.

16. Dunkin' Brands is represented by and has consulted with counsel in connection with the decision to enter into this Agreement.

17. This Agreement shall be binding upon Dunkin' Brands, its predecessors or successors in interest, parent corporations, holding companies, subdivisions, subsidiaries, affiliated entities, officers, directors, trustees, partners, agents, servants, employees, and contract workers, or other entities through which Dunkin' Brands may now or hereafter act with respect to the conduct alleged. For sake of clarity, the parties hereby acknowledge that no Dunkin' Donuts franchisee is an "affiliated entity" of Dunkin' Brands.

18. This Agreement shall have the same effect as an Assurance of Discontinuance, Assurance of Voluntary Compliance, or a Stipulated Judgment, and it may be filed in court pursuant to the respective laws of each Settling State.<sup>2</sup>

19. In the event that any of the Settling States has credible information sufficient to form a belief that Dunkin' Brands has materially breached the terms of this Agreement:

- a. The Settling State or States will provide written notice to Dunkin' Brands of the alleged breach pursuant to the Notice provisions set forth in Paragraph 28 below. The Notice must contain reasonably detailed information about the alleged material breach sufficient to allow Dunkin' Brands to make an inquiry about the circumstances;
- b. Dunkin' Brands will have forty-five (45) days following receipt of the written notice to cure any alleged breach or to provide the Settling State or

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<sup>2</sup> With respect to California, this Agreement will only become effective once it has been entered as a stipulated judgment pursuant to California Code of Civil Procedure section 664.6.

States with an explanation as to why the circumstances set forth in the Notice do not constitute a material breach;

- c. The Settling State or States will not file suit under Paragraph 20 below before the expiration of Dunkin' Brands' 45-day deadline under Sub-Paragraph (b) above;
- d. Notwithstanding the provisions of this Paragraph, none of the Settling State is required to provide notice to Dunkin' Brands in advance of taking any enforcement action if such action is necessary to protect the health, safety or welfare of the public.

20. If a court of competent jurisdiction determines that Dunkin' Brands has materially breached this Agreement, then:

- a. For each such material breach of this Agreement by Dunkin' Brands that directly resulted in a refusal by a Dunkin' Donuts franchisee to hire a prospective employee who at the time of the refusal was an employee of an Older No-Poach Franchisee, Dunkin' Brands shall pay the Settling State or States an aggregate amount up to \$100,000, determined at the Settling State or States' discretion, unless Dunkin' Brands establishes that the breach was unintentional and that Dunkin' Brands cured the breach within forty-five (45) days of receipt of written notice from the Settling States pursuant to Paragraph 19 above.

- b. For each such material breach of this Agreement that does not result in a refusal to hire by a Dunkin' Donuts franchisee to hire a prospective employee who at the time of the refusal was an employee of an Older No-Poach Franchisee, Dunkin' Brands shall pay the Settling State or States an aggregate amount up to \$10,000, determined at the Settling State or States' discretion, unless Dunkin' Brands establishes that the breach was unintentional and Dunkin' Brands cured the breach within forty-five (45) days of receipt of written notice from the Settling States or State pursuant to Paragraph 19 above; and
- c. In the event that a payment is due under this Paragraph, Dunkin' Brands shall also pay the reasonable fees and costs incurred by the Settling State or States in enforcing the terms of this Agreement, including without limitation attorneys' fees, expenses, and the costs of investigation and litigation, as determined by the court.

21. The Attorneys General agree not to proceed with or institute any civil or other proceeding against Dunkin' Brands (as defined in Paragraph 5 above) for the alleged enforcement of either the Older No-Poach Provision or the Newer No-Poach Provision that may have taken place prior to the Execution Date. The Attorneys General further agree not to proceed with or institute any civil or other proceeding against Dunkin' Donuts franchisees that have executed the Proposed Amendment described in Paragraph 14(c) and (d), and posted the Notice required by Paragraph 14(e). Notwithstanding this paragraph, nothing in this Agreement shall be construed

as preventing the Attorneys General, in the event of a suspected violation of this Agreement, from proceeding with or instituting any civil or other proceeding against Dunkin' Brands concerning Dunkin' Brands' alleged enforcement of either an Older No-Poach Provision or a Newer No-Poach Provision that may have taken place after the Execution Date. Nothing in this Agreement serves to waive, release, or otherwise affect any claims or potential claims of individuals or classes of individuals not party to this Agreement, even if one or more of the Attorneys General could have brought those claims on their behalf.

22. Notwithstanding Paragraph 21, the Attorneys General reserve the right to take further investigative or enforcement action against any current Older No-Poach Franchisee in any Settling State that does not sign the Proposed Amendment described in Paragraph 14(c) and (d), or fails to post the Notice described in Paragraph 14(e).

23. Nothing in this Agreement shall be construed as relieving Dunkin' Brands of a duty to comply with all applicable federal, state and local laws, regulations, rules, and permits.

24. This Agreement contains the complete agreement between the Attorneys General and Dunkin' Brands related to the issues raised in this Agreement. No promises, representations, or warranties other than those set forth in this Agreement have been made by the Attorneys General or by Dunkin' Brands. This Agreement supersedes all prior communications, discussions, or understandings regarding the Older No-Poach Provisions and the Newer No-Poach Provisions between the Attorneys General and Dunkin' Brands, whether oral or in writing. This Agreement can only be modified or supplemented by a written document signed by Dunkin'

Brands and the Attorney General of the Settling State for which a modification would be effective.

25. The Attorneys General and Dunkin' Brands agree and represent that any persons signing this Agreement are authorized by proper authorities to execute this Agreement on their behalf. By signing below, Dunkin' Brands and the Attorneys General agree to comply with all of the terms of this Agreement.

26. Execution of this Agreement does not constitute an approval by the Attorneys General of any of Dunkin' Brands' business acts or practices.

27. Execution of this Agreement does not constitute an admission by Dunkin' Brands that any of its acts or omissions or those of any Dunkin' Donuts franchisee have violated any federal or state laws or the legal rights of any parties.

28. All written notices required by this Agreement from any Settling State to Dunkin' Brands shall be sent by certified mail via the United States Postal Service to:

Chief Legal Officer  
Dunkin' Brands, Inc.  
130 Royall Street  
Canton, MA 02021

All written notices from Dunkin' Brands to the States shall be sent by both certified mail via the United States Postal Service and email to the appropriate Settling State's signatory to this Agreement.

29. Dunkin' Brands may petition the Attorney General of any Settling State to modify or terminate the Agreement on the basis of material changes in fact, law, rule, regulation, judicial or administrative decision or interpretation.

AGREED TO AND APPROVED BY:

DUNKIN' BRANDS, INC.



Jeffrey L. Karlin  
Assistant Secretary  
Dunkin' Brands, Inc.

FOR THE SETTLING STATES:

MASSACHUSETTS



Cynthia Mark  
Chief, Fair Labor Division  
Massachusetts Office of the Attorney General  
One Ashburton Place  
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DISTRICT OF COLUMBIA



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ILLINOIS

BY: 

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IOWA



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MINNESOTA



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NEW JERSEY



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NEW YORK



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New York State  
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NORTH CAROLINA



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RHODE ISLAND



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VERMONT



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## EXHIBIT A

COMMUNICATION A [TO NEWER NO-POACH FRANCHISEES]

Dear [Franchisees]:

In July 2018, the Attorneys General of Massachusetts, California, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Rhode Island, Vermont, the District of Columbia, and the Commonwealth of Pennsylvania (the "States") requested information from Dunkin' Brands regarding our franchise agreements. In particular, the States objected to any "No-Poach Provisions" which either restrict franchisees from the hiring or solicitation of employees of other Dunkin' Donuts franchisees and/or Dunkin' Brands employees ("Older No-Poach Provisions") and provisions that prohibit Dunkin' franchisees from hiring Dunkin' Brands employees and Dunkin' Brands from hiring the employees of any Dunkin'-Donuts franchisee ("Newer No-Poach Provisions"). These No-Poach Provisions, which are also known as "non-solicitation" or "no hire" provisions, appear in some Dunkin' Donuts franchise agreements. The States allege that the use of such provisions violates antitrust and consumer protection statutes. You are receiving this communication because your Franchise Agreement contains a Newer No-Poach Provision that prohibits you from hiring any Dunkin' Brands employee, and Dunkin' Brands from hiring any of your employees.

We have cooperated with the investigation and have entered into a Settlement Agreement in which we have denied that Dunkin' Brands or its franchisees have violated any law or regulation or acted improperly in any respect. Nonetheless, we believe that the franchise system's interests are best served by resolving this matter without costly and protracted litigation.

Under the Agreement with the States, Dunkin' Brands will not seek to enforce any No-Poach Provision in any of our franchise agreements in the United States. Moreover, by April 1, 2019, Dunkin' Brands will not include any such provisions in any future franchise agreements.

Please be advised that should you attempt to prohibit any of your employees from being hired or recruited by Dunkin' Brands or another Dunkin' Brands franchisee, Dunkin' Brands has agreed that it will not intervene or help to enforce it and your actions may be subject to further investigation by the States.

If you have any questions or concerns, please contact me at [Contact Info].

If you receive any media inquiries, please refer them to [contact].

Sincerely,

[Name, Title]

COMMUNICATION B [TO OLDER NO-POACH FRANCHISEES]

Dear [Franchisees]:

In July 2018, the Attorneys General of Massachusetts, California, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Rhode Island, Vermont, the District of Columbia, and the Commonwealth of Pennsylvania (the "States") requested information from Dunkin' Brands regarding our franchise agreements. In particular, the States objected to any "No-Poach Provisions" which either restrict franchisees from the hiring or solicitation of employees of other Dunkin' Donuts franchisees and/or Dunkin' Brands employees (the "Older No-Poach Provision") and provisions that prohibit Dunkin' Donuts franchisees from hiring Dunkin' Brands employees and Dunkin' Brands from hiring the employees of any Dunkin' Donuts franchisee. These No-Poach Provisions, which are also known as "non-solicitation" or "no hire" provisions, appear in some Dunkin' Brands franchise agreements. The States allege that the use of such provisions violates antitrust and consumer protection statutes. You are receiving this communication because your Franchise Agreement contains a Older No-Poach Provision that prohibits you from hiring another franchisee's employees or any Dunkin' Brands employee.

We have cooperated with the investigation and have entered into a Settlement Agreement in which we have denied that Dunkin' Brands or its franchisees have violated any law or regulation or acted improperly in any respect. Nonetheless, we believe that the franchise system's interests are best served by resolving this matter without costly and protracted litigation.

Under the Agreement with the States, Dunkin' Brands will not seek to enforce any No-Poach Provision in any of our franchise agreements in the United States. Moreover, by April 1, 2019, Dunkin' Brands will not include any such provisions in any future franchise agreements.

Please be advised that should you attempt to enforce any such provision against another franchisee, Dunkin' Brands has agreed that it will not intervene or help to enforce it and your actions may be subject to further investigation by the States.

Our Agreement with the States requires that we request from franchisees with locations in any of the States whose franchise agreements contain the Older No-Poach Provision that they agree to amend their existing franchise agreements to remove the Older No-Poach Provision, and to provide notice to their employees of this Agreement. We will be sending you shortly: (1) a proposed amendment to each of your franchise agreement(s) with Dunkin' Brands that contain the Older No-Poach Provision and, and (2) a notice to your employees provided by the States in multiple languages that should be posted in a place within your restaurant in which your employees may view it. **The notice must be posted in a location where it can easily be read by your employees at each franchise which is currently operating under a franchise agreement with an**

**Older No-Poach Provision until December 31, 2020.** To the extent that you agree to this amendment to your franchise agreement and post the enclosed employee notice in a location where it can easily be read by your employees, the States have committed to not pursue any suit, or take any investigative or enforcement action against you for conduct relating to the Older No-Poach Provision of your franchise agreement, up to and including the date you sign the amendment.

When you receive the proposed amendment, please sign and return it to the Contracts Department as soon as possible. If you decide not to sign the amendment within 90 days of receipt of the same and/or fail to post the employee notice for the required period of time, the States have indicated that they will reserve the right to investigate you and/or pursue enforcement actions against you relating to the Older No-Poach Provision.

If you have any questions or concerns, please contact me at [Contact Info].

If you receive any media inquiries, please refer them to [contact].

Sincerely,

[Name, Title]

## EXHIBIT B

**AMENDMENT TO  
FRANCHISE AGREEMENT**

THIS AMENDMENT TO FRANCHISE AGREEMENT is made this [Date] (the "Effective Date") by and Dunkin' Donuts Franchising LLC and/or any of its affiliated entities (hereinafter referred to as "FRANCHISOR") and [the undersigned franchisee] (hereinafter referred to as "FRANCHISEE")

WITNESSETH:

WHEREAS, FRANCHISOR and FRANCHISEE have determined that it is in the parties' best interests remove certain portions of the Franchise Agreement described below relating to restriction on the recruitment and hiring of each other's employees and/or those of other Franchisees.

AGREEMENT:

1. The above recitals are true and correct and, with all instruments referenced therein, incorporated by reference.
2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, any provision of the Franchise Agreement that restricts either party's ability to recruit or hire each other's employees and/or those of another Dunkin' franchisee are hereby deleted from the Franchise Agreement and is of no further force or effect.
3. The Franchise Agreement is hereby ratified, in full force or effect, without modification or extinction, except as expressly set forth in this Amendment. This Amendment shall be attached to and made part of the Franchise Agreement. If there is an inconsistency between this Amendment and any Franchise Agreement, the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto with respect to its terms, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this

## EXHIBIT C

**EMPLOYEE NOTICE**  
**(post until December 31, 2020)**

In July 2018, the Attorney General of your state began an inquiry with respect to the use of No-Poach Provisions in Dunkin' Franchise Agreements. Some of these provisions may have restricted the hiring, recruitment or solicitation of employees between different Dunkin' franchises. These provisions might have prevented you from getting a job at another Dunkin' location.

Dunkin' Brands does not believe that it or its franchisees violated any law or acted improperly. Dunkin' Brands has cooperated with the Attorney General's investigation and has agreed to take steps to assist in the prevention of the use or enforcement any such provision that appears in any Dunkin' Franchise Agreement.

Therefore, please be aware that you are allowed to be recruited or hired by Dunkin' Brands or another Dunkin' franchisee in the future, if you so desire.

If you have any questions or concerns, please contact your state Attorney General's Office [include list of state #s or Email]

**AVISO PARA EMPLEADO**  
**(publique hasta el 31 de diciembre de 2020)**

En julio de 2018, el Fiscal General de su estado solicitó a Dunkin' Brands que deje de usar o hacer cumplir cláusulas de no contratación de otros empleados de Dunkin' Brands o de franquiciatarios en sus acuerdos de franquicia. El Fiscal General cree que estas cláusulas pueden haber impedido a algunos empleados de conseguir un trabajo en otra locación de Dunkin' Brands.

Dunkin' Brands no cree que actuó incorrectamente de ninguna manera, y niega que haya violado cualquier ley. Sin embargo, Dunkin' Brands cooperó con el Fiscal General y acordó a dejar de usar o hacer cumplir estas cláusulas.

Se le permite ser reclutado o contratado por Dunkin' Brands u otro franquiciatario de Dunkin' Brands en el futuro, si así lo desea.

Si tiene cualquier pregunta o preocupaciones, por favor contacte y a la Oficina del Fiscal General de su estado [include list of phone numbers or Email].

## **SETTLEMENT AGREEMENT**

### **BETWEEN**

**THE STATES OF MASSACHUSETTS,  
CALIFORNIA, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW  
YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND,  
VERMONT, AND THE DISTRICT OF COLUMBIA**

### **AND**

**FIVE GUYS FRANCHISOR, LLC**

### **PARTIES**

1. The States of Massachusetts, California, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia (the “Settling States”), by and through their Attorneys General (collectively, “the Attorneys General”), are charged with enforcement of, among other things, their respective state’s consumer protection and antitrust laws, and other related statutes and regulations.

2. Five Guys Franchisor, LLC is a Delaware limited liability company with its principal offices or place of business in Lorton, Virginia. Five Guys Franchisor, LLC is a franchisor, and its corporate and franchisee-operated restaurants are in the business of offering hamburgers, hot dogs, and French fries, among other food products, for sale to consumers under the service mark Five Guys® Burgers and Fries.

### **DEFINITIONS**

3. “No-Poach Provisions” refers to any and all language contained within franchise or license agreements or any documents ancillary thereto which restricts, limits or prohibits any

Five Guys franchisee or Five Guys-operated store from hiring, recruiting or soliciting employees of Five Guys and/or any other Five Guys franchisee for employment. Such language includes, but is not limited to, any “no-solicitation,” “no-switching,” and/or “no-hire” provisions.

4. “Five Guys” shall mean Five Guys Franchisor, LLC, and shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, affiliates, controlled subsidiaries, and predecessor franchisor entities.

#### **THE INVESTIGATION BY THE ATTORNEYS GENERAL**

5. The Attorneys General undertook an investigation pertaining to certain No-Poach Provisions contained in Five Guys’ franchise agreements and other restrictions on employees’ ability to move between employment at different Five Guys franchises or locations. As a result of the investigation, the Attorneys General determined:

- a. Five Guys has independently-owned franchise locations in each of the Settling States;
- b. Beginning in at least 2003, Five Guys began including No-Poach Provisions in its franchise agreements; and
- c. Five Guys’ use of No-Poach Provisions in its franchise agreements may have limited, and may continue to limit job opportunities, restricted employees’ earning potential and upward job mobility, and deprived other franchisees of the opportunity to hire workers with requisite skills and

experience. The economic consequences of these restrictions may be significant.

6. The Attorneys General allege that this course of conduct may constitute a violation of the Settling States' antitrust laws. The Attorneys General further allege that these methods, acts, or practices may constitute unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Settling States' consumer protection laws, and may violate other laws in some or all of the Settling States governing the free exercise of the right to contract for employment.

7. Five Guys denies that its use of No-Poach Provisions violated the Settling States' laws or resulted in the consequences referenced above.

8. Five Guys enters into this Agreement for the purpose of resolving this investigation only, and this Agreement does not create any rights for any third party.

9. This Agreement is made without trial or adjudication of any issue of fact or law and without the initiation of any legal action by any of the Settling States. Without admitting to any violation of law, the parties have voluntarily and knowingly entered into this Agreement in order to avoid the time, expense, and uncertainty of litigation.

10. The Attorneys General have conferred in good faith with Five Guys and its attorneys, and the parties have agreed to resolve the allegations through this Agreement.

### **ASSURANCES**

11. Five Guys agrees that it will no longer include No-Poach Provisions in any of its franchise agreements in the United States signed after the execution date of this Agreement.

12. Five Guys agrees it will not enforce any No-Poach Provision in any of its existing franchise agreements in the United States and will not seek to intervene in any action brought by the Attorney General of any of the Settling States against a current or former franchisee that enforces or attempts to enforce an existing No-Poach Provision. However, Five Guys may fully defend itself and its practices in any case in which it is named as a party.

13. Within 30 days of execution of this Agreement, Five Guys will send a letter to all of its current franchisees with stores located in the Settling States who are operating under franchise agreements containing No-Poach Provisions (the “Affected Franchisees”), stating that Five Guys, in accordance with an agreement with the Attorney General of the State in which the store is located, is requesting that the No-Poach Provisions be removed from existing franchise agreements. The notice that Five Guys will send to these franchisees will be substantially in the form of the letter attached hereto as Exhibit A. That letter will include the proposed amendment that Five Guys is requesting that the Affected Franchisee agree to, which will remove the No-Poach Provisions from its franchise agreements.

14. The proposed amendment that will be included with each letter will be substantially in the form of the amendment attached hereto as Exhibit B.

15. The letter to Affected Franchisees will also include instructions to post a notice at the workplace in a location where it can easily be read to inform employees of this Agreement. Five Guys will recommend that such notice be posted through December 31, 2020. A template of such notice in English and Spanish is attached hereto as Exhibit C. Five Guys will also post this

notice in its own restaurants located in the Settling States. Such notice shall be posted through December 31, 2020.

16. If, after the 30-day period set forth in Paragraph 13, Five Guys becomes aware of a franchisee with a store located in one of the Settling States attempting to enforce a No-Poach Provision, and Five Guys is unable to persuade such franchisee to desist from enforcing or attempting to enforce such provision, Five Guys will notify the Attorney General of the state in which the store is located and the Massachusetts Attorney General within thirty (30) days of learning of the attempted enforcement. Notice shall be provided by both United States Postal Service and email to the appropriate Settling States' signatory to this Agreement.

17. In addition to sending the letter to its current franchisees in the Settling States pursuant to Paragraph 13 above, Five Guys will respond promptly to any inquiries from such franchisees regarding the request to amend the terms of the franchise agreement and will encourage its current franchisees in the Settling States to sign the proposed amendment. Within 150 days of execution of this Agreement, Five Guys will provide: (a) a list of all Affected Franchisees in the Settling States that indicates whether each such franchisee has executed the proposed amendment, refused to execute the proposed amendment, or is requesting an extension to execute the proposed amendment to the Settling States; and (b) copies of all executed amendments it has obtained with the Affected Franchisees to the Massachusetts Attorney General. However, Five Guys is under no obligation to offer its franchisees any consideration – monetary or otherwise – in order to induce them to sign the proposed amendment or take any adverse action against such franchisees if they refuse to do so. A decision by a franchisee not to

amend its franchise agreement, or not to do so within 150 days of this Agreement, shall not mean that Five Guys has not complied with its obligations under this Agreement.

18. If Five Guys learns that an Affected Franchisee in a Settling State intends in good faith to sign the proposed amendment but is unable to do so within the time period specified in Paragraph 17, Five Guys will notify the Massachusetts Attorney General, to seek a mutually agreeable extension. During any such extension, the Attorneys General will not take further investigative or enforcement action against the franchisee for the use of No-Poach Provisions.

19. Within 180 days of execution of this Agreement, Five Guys will submit a declaration to the Attorneys General, signed under penalty of perjury, stating whether all provisions of this Agreement have been satisfied.

#### **MISCELLANEOUS PROVISIONS**

20. This Agreement shall be governed by and interpreted in accordance with the respective laws of the Settling State that is seeking to enforce the Agreement against Five Guys or against which Five Guys is seeking enforcement.

21. Five Guys is represented by and has consulted with counsel in connection with the decision to enter into this Agreement.

22. This Agreement shall be binding upon Five Guys, and any company or entity through which it does business, or which is under its direct or indirect control by any means, or any of those companies' or entities' predecessors or successors in interest, parent corporations, holding companies, subdivisions, subsidiaries, affiliated entities, officers, directors, trustees, partners, agents, servants, employees, and contract workers.

23. This Agreement shall have the same effect as an Assurance of Discontinuance, Assurance of Voluntary Compliance, or a Stipulated Judgment, and it may be filed in court pursuant to the respective laws of each Settling State.<sup>1</sup>

24. In the event that any of the Settling States believe that Five Guys has breached the terms of this agreement:

- a. The Settling State or States will provide written notice of the alleged breach to Five Guys by both United States Postal Service and email to the below contacts:

Erin Lewis Roberts, Esquire  
Deputy General Counsel  
Five Guys  
10718 Richmond Highway  
Lorton, VA 22074  
email: [eroberts@fiveguys.com](mailto:eroberts@fiveguys.com)

with copy to:  
Jan Gilbert, Esquire  
Gray Plant Mooty  
600 New Hampshire Avenue, NW  
The Watergate – Suite 700  
Washington, DC 20037

- b. Five Guys will have forty-five (45) days following receipt of the written notice to cure any alleged breach; and
- c. Notwithstanding the cure period provided in Sub-Paragraph (b) above, the Settling States are not required to provide notice in advance of taking any

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<sup>1</sup> With respect to California, this Agreement will only become effective once it has been entered as a stipulated judgment pursuant to California Code of Civil Procedure section 664.6.

enforcement action if necessary to protect the health, safety or welfare of the public.

25. If a court of competent jurisdiction determines that Five Guys has materially breached this Agreement, then:

- a. For each material breach of this Agreement that results in a refusal to hire, Five Guys shall pay the Settling States an aggregate amount of no more than \$100,000, determined at the Settling States' discretion, unless Five Guys establishes that the breach was unintentional and that Five Guys cured the breach within forty-five (45) days of receipt of written notice from the Settling States.
- b. For each material breach of this Agreement that does not result in a refusal to hire, Five Guys shall pay the Settling States an aggregate amount of no more than \$10,000, determined at the Settling States discretion, unless Five Guys establishes that the breach was unintentional and Five Guys cured the breach within forty-five (45) days of receipt of written notice from the Settling States; and
- c. In the event that a payment is due under this Paragraph, Five Guys shall also pay the reasonable fees and costs incurred by the Settling States in enforcing the terms of this Agreement, if litigation is required, including without limitation attorneys' fees, expenses, and the costs of investigation and litigation, as determined by the court.

26. The Attorneys General agree not to proceed with or institute any civil action or other proceeding against Five Guys or any company through which Five Guys does business or which is under its direct or indirect control by any means, for the use of No-Poach Provisions prior to the execution of this Agreement. The Attorneys General further agree not to proceed with or institute any civil action or other proceeding against any of Five Guys' current franchisees, for the use of No-Poach Provisions prior to the execution of this agreement, to the extent such franchisee enters into the proposed amendment described in Paragraph 14 above and posts the proposed notice described in Paragraph 15. Notwithstanding this paragraph, nothing in this Agreement shall be construed as preventing the Attorneys General from reopening this matter in the event of a suspected violation of this Agreement. Nothing in this Agreement serves to waive, release, or otherwise affect any claims or potential claims of individuals or classes of individuals not party to this Agreement, even if one or more of the Attorneys General could have brought those claims on their behalf.

27. Notwithstanding Paragraph 26, the Attorneys General reserve the right to take further investigative or enforcement action against any Affected Franchisee that does not sign the proposed amendment described in Paragraph 14, or fails to post the proposed notice described in Paragraph 15.

28. Nothing in this Agreement shall be construed as relieving Five Guys of a duty to comply with all applicable federal, state and local laws, regulations, rules, and permits.

29. This Agreement contains the complete agreement between the Attorneys General and Five Guys related to the conduct at issue. No promises, representations, or warranties other

than those set forth in this Agreement have been made by the Attorneys General or by Five Guys.

This Agreement supersedes all prior communications, discussions, or understandings regarding

No-Poach Provisions between the Attorneys General and Five Guys, whether oral or in writing.

This Agreement can only be modified or supplemented by a written document signed by Five Guys and the applicable Attorney(s) General.

30. The Attorneys General and Five Guys agree and represent that any persons signing this Agreement are authorized by proper authorities to execute this Agreement on their behalf.

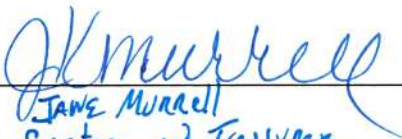
By signing below, Five Guys agrees to comply with all of the terms of this Agreement.

31. Execution of this Agreement does not constitute an approval by the Settling States of any of Five Guys' business acts or practices.

32. Five Guys may petition the Attorneys General of any Settling State to modify or terminate the Agreement on the basis of material changes in law, rule, regulation, judicial or administrative decision or interpretation.

AGREED TO AND APPROVED BY:


FIVE GUYS FRANCHISOR, LLC

Name:   
Title: James Murrell  
Secretary and Treasurer

Five Guys Franchisor, LLC

FOR THE SETTLING STATES:


MASSACHUSETTS

  
Cynthia Mark  
Chief, Fair Labor Division  
Massachusetts Office of the Attorney  
General  
One Ashburton Place  
Boston, MA 02108  
(617) 963-2626  
[cynthia.mark@state.ma.us](mailto:cynthia.mark@state.ma.us)

CALIFORNIA

  
Satoshi Yanai  
Supervising Deputy Attorney General  
Office of the Attorney General  
Worker Rights and Fair Labor Bureau  
300 S. Spring Street, Suite 1702  
Los Angeles, CA 90013  
(213) 269-66416400  
[satoshi.yanai@doj.ca.gov](mailto:satoshi.yanai@doj.ca.gov)

DISTRICT OF COLUMBIA

  
Jane H. Lewis  
Section Chief  
Housing and Community Justice  
Office of the Attorney General  
for the District of Columbia  
441 4th Street NW, Suite 1060S  
Washington, D.C. 20001  
(202) 727-1038  
[Jane.Lewis@dc.gov](mailto:Jane.Lewis@dc.gov)


ILLINOIS

  
Cara Hendrickson  
Public Interest Division Chief  
Office of the Illinois Attorney General  
Workplace Rights Bureau  
100 W. Randolph Street, 11th floor  
Chicago, IL 60601  
[CHendrickson@atg.state.il.us](mailto:CHendrickson@atg.state.il.us)

IOWA

  
Max M. Miller  
Consumer Protection Division  
Office of the Iowa Attorney General  
1305 E. Walnut St.  
Des Moines, IA 50319  
Telephone: (515) 281-5926  
Fax: (515) 281-6771  
[Max.Miller@ag.iowa.gov](mailto:Max.Miller@ag.iowa.gov)

MARYLAND

  
Schonette J. Walker  
Assistant Attorney General  
Deputy Chief, Antitrust Division  
Maryland Office of the Attorney General  
200 Saint Paul Place  
Baltimore, Maryland 21202  
(410) 576-6470  
[swalker@oag.state.md.us](mailto:swalker@oag.state.md.us)

MINNESOTA



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Joseph C. Meyer  
Assistant Attorney General  
Residential Utilities and Antitrust Division  
Office of the Minnesota Attorney General  
Suite 1400  
445 Minnesota Street  
St. Paul, MN 55101-2131  
(651) 757-1433  
[joseph.meyer@ag.state.mn.us](mailto:joseph.meyer@ag.state.mn.us)

NORTH CAROLINA



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Daniel Wilkes  
Assistant Attorney General  
North Carolina Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699  
(919) 716-6400  
[dwilkes@ncdoj.gov](mailto:dwilkes@ncdoj.gov)

NEW JERSEY



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Glenn J. Moramarco  
Assistant Attorney General  
AAG in Charge of Special Litigation  
25 Market Street, PO Box 112  
Trenton, NJ 08625  
609-376-3235  
[Glenn.Moramarco@law.njoag.gov](mailto:Glenn.Moramarco@law.njoag.gov)

OREGON



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Tim Nord, Special Counsel  
Civil Enforcement Division  
Financial Fraud and Consumer Protection  
Section  
Oregon Department of Justice  
1162 Court St NE, Salem, OR 97301  
(503) 934-4400  
[tim.d.nord@doj.state.or.us](mailto:tim.d.nord@doj.state.or.us)

NEW YORK



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ReNika Moore  
Labor Bureau Chief  
New York State  
Office of the Attorney General  
28 Liberty Street  
New York, NY 10005  
(212) 416-6280  
[ReNika.Moore@ag.ny.gov](mailto:ReNika.Moore@ag.ny.gov)

PENNSYLVANIA



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Nancy A. Walker  
Chief Deputy Attorney General  
Fair Labor Section  
Commonwealth of Pennsylvania  
Office of Attorney General  
1600 Arch Street, Suite 300  
Philadelphia, PA 19103  
(215) 560-2704  
[nwalker@attorneygeneral.gov](mailto:nwalker@attorneygeneral.gov)

RHODE ISLAND



Adam D. Roach  
Special Assistant Attorney General  
RI Office of the Attorney General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400  
[aroach@riag.ri.gov](mailto:aroach@riag.ri.gov)

VERMONT



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Emily Chamberlain Adams  
Assistant Attorney General  
Civil Rights Unit  
Vermont Attorney General's Office  
109 State Street  
Montpelier, Vermont 05609  
(802) 828-3177  
[emily.adams@vermont.gov](mailto:emily.adams@vermont.gov)

## EXHIBIT A

## SAMPLE NOTICE TO AFFECTED FRANCHISEES

Dear [Franchisee Name]:

In July 2018, the Attorneys General of California, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia (the "States") requested information from Five Guys regarding our franchise agreements. In particular, the States objected to any "No-Poach Provisions" or policies which restrict the hiring or solicitation of employees between Five Guys and its franchisees, including [Franchisee Name]. These No-Poach Provisions, which are also known as "non-solicitation" or "no hire" provisions, do appear in some Five Guys franchise agreements.

We have cooperated with the Attorneys General and have entered into a Settlement Agreement (attached) without admitting or denying that Five Guys or its franchisees have violated any law or regulation or acted improperly in any respect. We believe the franchise system's interests are best served by resolving the matter without costly and protracted litigation.

Under the Agreement with the States, Five Guys will no longer enforce No-Poach Provisions in any of our existing franchise agreements in the United States. Moreover, Five Guys will not include any such provisions in any future franchise agreements.

Please be advised that should you attempt to enforce any such provision against another franchisee, Five Guys will not intervene or help to enforce it and your actions may be subject to further investigation by the States.

Our Agreement with the States requires that we request from franchisees who have executed franchise agreements containing No-Poach Provisions with locations in any of the States, that they agree to amend their existing franchise agreements to remove the No-Poach Provisions, and to provide notice to their employees of this Agreement through December 31, 2020. Enclosed for your signature is: (1) an amendment to your franchise agreement(s) with Five Guys to remove the No-Poach Provisions, and (2) a notice to your employees provided by the States in English and Spanish.

To the extent that you agree to this amendment to your franchise agreement and post the enclosed employee notice in a location where it can easily be read by your employees, the States have committed to not pursue any suit, or take any investigative or enforcement action against you for conduct relating to the No-Poach Provision of your franchise agreement, up to and including the date you sign the amendment.

Please sign and return the amendment to me as soon as possible. If you decide not to sign the enclosed amendment by [insert date, within 150 days of execution] or fail to post the employee notice through December 31, 2020, the States have indicated that they

reserve the right to investigate you and/or pursue enforcement actions against you relating to the contractual provisions described above.

If you have any questions or concerns, please contact me at [Contact Info].

If you receive any media inquiries, please refer them to [contact].

Sincerely,

[Name, Title]

EXHIBIT B

## UNIVERSAL ADDENDUM TO AGREEMENTS

THIS UNIVERSAL ADDENDUM TO AGREEMENTS (this “**Addendum**”) is dated as of \_\_\_\_\_, 2019 (the “**Effective Date**”), and hereby modifies, amends, and supplements that certain Development Agreement dated as of \_\_\_\_\_, 20\_\_ (as amended, supplemented, or otherwise modified from time to time, the “**Development Agreement**”) by and between FIVE GUYS FRANCHISOR, LLC, a Delaware limited liability company (the “**Franchisor**”), and \_\_\_\_\_, an individual residing in the State of \_\_\_\_\_ (the “**Developer**”), and each of those franchise agreements (collectively, the “**Franchise Agreements**”) signed in connection with the Development Agreement. All capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Development Agreement and the Franchise Agreements referenced below.

### **WITNESSETH:**

WHEREAS, the Franchisor and the Developer are parties to the Development Agreement for purposes of establishing and operating a certain number of FIVE GUYS® restaurants in the Territory described therein;

WHEREAS, the Developer (on behalf of himself and each of the franchisees under the Franchise Agreements (together, the “**Franchisees**”) and the Franchisor intend to amend certain provisions of the Development Agreement and the Franchise Agreements, all in accordance with the terms set forth in this Addendum; and

WHEREAS, the Developer represents and warrants that he is duly authorized to sign this Addendum on behalf of the Franchisees under the Franchise Agreements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

1. As of the Effective Date of this Addendum, the portions of the Franchise Agreements identified below which restrict your ability to employ, or seek to employ, or otherwise induce any person who is employed by the Franchisor, or any of its affiliates or by any other Five Guys® franchisee or developer of the Franchisor are hereby deleted from each Franchise Agreement, and are of no further force or effect. Likewise, any restriction on our ability to recruit or hire any employee of yours or your Affiliates is hereby deleted from each Franchise Agreement, and is of no further force or effect. Specifically, Sections [VI.C(3)] and [IX.D(2)] of the Development Agreement and Sections [VI.F] and [X.C(2)(b)] of each Franchise Agreement are hereby deleted in their entirety and shall have no force or effect.

2. Except as otherwise provided above, all of the terms and conditions of the Development Agreement and the Franchise Agreements shall continue in full force and effect, and the representations, warranties, and covenants contained in the Development Agreement and the Franchise Agreements shall be read to give effect to the rights that are granted under this Addendum. In the event of any conflict or ambiguity between the terms of this Addendum and the Development Agreement and /or the Franchise Agreements, the terms of this Addendum shall control.

**IN WITNESS WHEREOF.** the parties hereto have executed this Addendum as of the Effective Date written above.

**WITNESS:**

**By:** \_\_\_\_\_

**FRANCHISOR:**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** Authorized Signatory

**WITNESS:**

**By:** \_\_\_\_\_

**DEVELOPER:**

**By:** \_\_\_\_\_

EXHIBIT C

EMPLOYEE NOTICE  
(post through December 31, 2020)

In July 2018, the Attorney General of your state asked Five Guys to stop using or enforcing No-Poach Provisions in its Franchise Agreements. The Attorney General believes that No-Poach Provisions may have prevented some employees from getting a job at another Five Guys location.

Five Guys does not believe that it acted improperly in any way, and denies that it violated any law. However, Five Guys cooperated with the Attorney General and agreed to stop using or enforcing these provisions.

You are allowed to be recruited or hired by Five Guys or another Five Guys franchisee in the future, if you so desire.

If you have any questions or concerns, please contact Five Guys Franchisor, LLC and your state Attorney General's Office [include list of phone numbers or Email].

AVISO DE EMPLEADO  
(publique hasta el 31 de diciembre de 2020)

En julio de 2018, el Fiscal General de su estado solicitó a Five Guys que deje de usar o hacer cumplir provisiones de no-Pochar en sus acuerdos de franquicia. El Fiscal General cree que no-Pochar provisiones pueden haber prevenido a algunos empleados de conseguir un trabajo en otra locación de Five Guys.

Five Guys no cree que actuó incorrectamente de ninguna manera, y niega que haya violado cualquier ley. Five Guys cooperó con el Fiscal General y acordó a dejar de usar o hacer cumplir estas provisiones.

Se le permite ser reclutado o contratado por Five Guys u otro Five Guys franquiciado en el futuro, si así lo desea.

Si tiene cualquier pregunta o preocupaciones, por favor contacte a Five Guys y a la Oficina del Fiscal General de su estado [include list of phone numbers or Email].

## **SETTLEMENT AGREEMENT**

### **BETWEEN**

**THE STATES OF MASSACHUSETTS,  
CALIFORNIA, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW  
YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND,  
VERMONT, AND THE DISTRICT OF COLUMBIA**

### **AND**

**LITTLE CAESAR ENTERPRISES, INC.**

### **PARTIES**

1. The States of Massachusetts, California, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Vermont, and the District of Columbia (the “Settling States”), by and through their Attorneys General (collectively, “the Attorneys General”), are charged with enforcement of, among other things, their respective state’s consumer protection and antitrust laws, and other related statutes and regulations.

2. Little Caesar Enterprises, Inc. (“Little Caesar”) is a Michigan corporation with its principal offices or place of business in Detroit, Michigan. Little Caesar is owned by Ilitch Holdings, Inc., a holding company headquartered in Detroit, MI. Little Caesar is a franchisor, and its corporate and franchisee-operated locations are in the business of offering pizza, among other food products, for sale to consumers.

### **DEFINITIONS**

3. For purposes of this Settlement Agreement, “No-Poach Provisions” refers to any and all language contained within franchise or license agreements or any other documents which

restricts, limits or prevents any Little Caesar franchisee or Little Caesar-operated restaurant from hiring, recruiting or soliciting employees of Little Caesar and/or any other Little Caesar franchisee for employment. Such language includes, but is not limited to, any “no-solicitation,” “no-switching,” and/or “no-hire” provisions.

4. “Little Caesar” shall mean Little Caesar Enterprises, Inc. and shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, controlled subsidiaries, and predecessor franchisor entities.

#### **THE INVESTIGATION BY THE ATTORNEYS GENERAL**

5. The Attorneys General undertook an investigation pertaining to certain No-Poach Provisions contained in Little Caesar’s franchise agreements or any other document which restricts franchisees from hiring or soliciting employees of Little Caesar and/or other Little Caesar franchisees for employment. As a result of the investigation, the Attorneys General determined:

- a. Little Caesar has independently-owned franchise locations in each of the Settling States;
- b. Until on or about August 2018, Little Caesar included No-Poach Provisions applicable to certain managerial-level employees in its franchise agreements; and
- c. Little Caesar’s use of No-Poach Provisions in its franchise agreements may have limited managers’ job opportunities, restricted their earning potential and upward job mobility, and deprived other franchisees of the opportunity

to hire managers with requisite skills and experience. The economic consequences of these restrictions may be significant.

6. The Attorneys General allege that this course of conduct may constitute a violation of the Settling States' antitrust laws. The Attorneys General further allege that these methods, acts, or practices may constitute unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Settling States' consumer protection laws, and may violate other laws in some or all of the Settling States governing the free exercise of the right to contract for employment.

7. Little Caesar expressly denies that its use of the above-described No-Poach Provisions violated the Settling States' laws and denies that it took any action to enforce these provisions. Little Caesar also denies the allegations contained in Paragraphs 5.c and 6 above and denies that its No-Poach Provisions had any adverse effect on competition or on wages earned by its own or its franchisees' managerial-level employees.

8. Little Caesar enters into this Agreement for the purpose of resolving this investigation only, and this Agreement does not create any rights for any third party. Conversely, nothing in this Agreement shall preclude any private claims. However, no party to this Agreement intends for it to have any preclusive effect or work any collateral estoppel as to any matter addressed herein.

9. This Agreement is made without trial or adjudication of any issue of fact or law and without initiation of any legal proceedings against Little Caesar or any of its franchisees. Without

admitting to any violation of law, the parties have voluntarily and knowingly entered into this Agreement in order to avoid the time, expense, disruption, and uncertainty of litigation.

10. The Attorneys General have conferred in good faith with Little Caesar and its attorneys, and the parties have agreed to resolve the allegations through this Agreement.

### **ASSURANCES**

11. Little Caesar agrees that it will not include No-Poach Provisions in any of its franchise agreements in the United States signed after the execution date of this Agreement.

12. Little Caesar agrees it will not enforce any No-Poach Provision in any of its existing franchise agreements in the United States and will not seek to intervene in any action brought by the Attorney General of any of the Settling States against a current or former franchisee that enforces or attempts to enforce an existing No-Poach Provision. Little Caesar may defend itself and its practices in any action in which it is named as a party.

13. Within 30 days of execution of this Agreement, Little Caesar will send a letter to all of its current franchisees with restaurants located in the Settling States, stating that Little Caesar, in accordance with an agreement with the Attorney General of the State in which the restaurant is located, is requesting that the No-Poach Provisions be removed from existing franchise agreements. The letter that Little Caesar will send to these franchisees will be substantially in the form of the letter attached hereto as Exhibit A. That letter will include the proposed amendment that Little Caesar is requesting that each of its franchisees in the Settling States sign, which will remove the No-Poach Provisions from the franchise agreements.

14. The proposed amendment that will be included with each letter will be substantially in the form of the amendment attached hereto as Exhibit B.

15. The letter to franchisees will also include a request to post, through December 31, 2020, a notice at the workplace in a location where it can easily be read to inform employees of this Agreement. A template of such notice in English and Spanish is attached hereto as Exhibit C. Little Caesar will post this notice through December 31, 2020 in the restaurants it operates in the Settling States.

16. If, after the 30-day period set forth in Paragraph 13, and before the deadline specified in Paragraph 19, Little Caesar becomes aware of a franchisee with a restaurant located in one of the Settling States attempting to enforce No-Poach Provisions, and Little Caesar is unable to persuade such franchisee to desist from enforcing or attempting to enforce such provision, Little Caesar will notify the Attorney General of the state in which the store is located and the Massachusetts Attorney General within thirty (30) days of learning of the attempted enforcement. Notice shall be provided by both United States Postal Service and email to the appropriate Settling States' signatory to this Agreement.

17. In addition to sending the letter to its current franchisees in the Settling States pursuant to Paragraph 13 above, Little Caesar will respond promptly to any inquiries from such franchisees regarding the request to amend the terms of the franchise agreement and will encourage its current franchisees in the Settling States to sign the proposed amendment. Within 180 days of execution of this Agreement, Little Caesar will provide: (a) a list of any current franchisees with restaurants in the Settling States that have not executed the proposed amendment, (b) a list of any

current franchisees with restaurants in the Settling States that have executed the proposed amendment; and (c) a copy of each executed amendments. Little Caesar will provide these materials to each the respective Attorney General of each Settling State and a copy to the Massachusetts Attorney General. However, Little Caesar is under no obligation to offer its franchisees any consideration – monetary or otherwise – in order to induce them to sign the proposed amendment or take any adverse action against such franchisees if they refuse to do so. A decision by a franchisee not to amend its franchise agreement, or not to do so within 180 days of this Agreement, shall not mean that Little Caesar has not complied with its obligations under this Agreement.

18. If Little Caesar learns that a current franchisee in a Settling State intends in good faith to sign the proposed amendment but is unable to do so within the time period specified in Paragraph 17, Little Caesar will notify the respective Attorney General of the Settling State in which the franchisee operates, and the Massachusetts Attorney General, to seek a mutually agreeable extension. During any such extension, the Attorneys General will not take further investigative or enforcement action against the franchisee for the use of No-Poach Provisions.

19. Within 180 days of execution of this Agreement, Little Caesar will submit a declaration to the Attorneys General, signed under penalty of perjury, stating whether all provisions of this Agreement have been satisfied by Little Caesar.

### **MISCELLANEOUS PROVISIONS**

20. This Agreement shall be governed by and interpreted in accordance with the respective laws of the Settling State that is seeking to enforce the Agreement against Little Caesar or against which Little Caesar is seeking enforcement.

21. Little Caesar is represented by and has consulted with counsel in connection with the decision to enter into this Agreement.

22. This Agreement shall be binding upon Little Caesar, and any company or entity through which it does business, or which is under its control, or any of those companies' or entities' predecessors or successors in interest, parent corporations, holding companies, subdivisions, subsidiaries, affiliated entities, officers, directors, trustees, partners, agents, servants, employees, and contract workers, to the extent that those persons or entities are involved in the operation of the Little Caesar restaurant system in the United States.

23. This Agreement shall have the same effect as an Assurance of Discontinuance, Assurance of Voluntary Compliance, or a Stipulated Judgment, and it may be filed in court pursuant to the respective laws of each Settling State.<sup>1</sup>

24. In the event that one or more of the Settling States contends that Little Caesar has breached this Agreement, then:

a. The Settling State will provide written notice of the alleged breach to Little Caesar by both United States Postal Service first class mail and email to the addresses below:

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<sup>1</sup> With respect to California, this Agreement will only become effective once it has been entered as a stipulated judgment pursuant to California Code of Civil Procedure section 664.6.

Little Caesar Enterprises, Inc.  
2211 Woodward Avenue  
Detroit, MI 48201-3400  
Attn: Legal Department  
Kimberly.Riccobono@LCEcorp.com

b. Little Caesar will have forty-five (45) days following receipt of the written notice to cure any alleged breach.

25. If a court of competent jurisdiction determines that Little Caesar has materially breached this Agreement, then:

a. For each material breach of this Agreement that results in a refusal to hire, Little Caesar shall pay the Settling States an aggregate amount up to \$100,000, determined at the Settling States' discretion, unless Little Caesar establishes that (i) the breach was unintentional and (ii) that Little Caesar cured the breach within forty-five (45) days of receipt of written notice from the Settling State or, alternatively, that the Settling State failed to provide adequate notice as required by Paragraph 24.

b. For each material breach of this Agreement that does not result in a refusal to hire, Little Caesar shall pay the Settling States an aggregate amount up to \$10,000, determined at the Settling States discretion, unless Little Caesar establishes that (i) the breach was unintentional and (ii) Little Caesar cured the breach within forty-five (45) days of receipt of written notice from the Settling State, or, alternatively, that the Settling State failed to provide adequate notice as required by Paragraph 24; and

c. In the event that a payment is due under this Paragraph, Little Caesar shall also pay the reasonable fees and costs incurred by the Settling States in enforcing the terms of this

Agreement where such enforcement involves litigation, including without limitation reasonable attorneys' fees, expenses, and the costs of investigation and litigation, as determined by the court.

26. The Attorneys General agree not to proceed with or institute any civil or criminal action or any other enforcement action under their respective state's consumer protection and antitrust laws, and other related statutes and regulations against Little Caesar or any companies through which Little Caesar does business or which are under its direct or indirect control by any means, for the use of No-Poach Provisions prior to the execution of this Agreement. The Attorneys General further agree not to proceed with or institute any civil action or other proceeding under their respective state's laws, statutes, and regulations against any of Little Caesar's current franchisees, for the use of No-Poach Provision prior to the execution of this agreement, to the extent such franchisee timely executes the proposed amendment described in Paragraph 14, and posts the proposed notice as described in Paragraph 15. Notwithstanding this paragraph, nothing in this Agreement shall be construed as preventing the Attorneys General from investigating Little Caesar's conduct in the event of a suspected violation of this Agreement. Nothing in this Agreement serves to waive, release, or otherwise affect any claims or potential claims of individuals or classes of individuals not party to this Agreement, even if one or more of the Attorneys General could have brought those claims on their behalf.

27. Notwithstanding Paragraph 26, the Attorneys General reserve the right to take further investigative or enforcement action against any current franchisee in any Settling State that does not sign the proposed amendment described in Paragraph 14 within the time provided by this Agreement or any agreed extension, or fails to post the proposed notice described in Paragraph 15.

Neither the failure of any franchisee to sign the proposed amendment nor the failure of any franchisee to post the proposed notice shall constitute a breach by Little Caesar.

28. Nothing in this Agreement shall be construed as relieving Little Caesar of a duty to comply with all applicable federal, state and local laws, regulations, rules, and permits. The Settling States are not required to provide notice in advance of taking any enforcement action if necessary to protect the health, safety or welfare of the public.

29. This Agreement contains the complete agreement between the Attorneys General and Little Caesar related to the conduct at issue. No promises, representations, or warranties other than those set forth in this Agreement have been made by the Attorneys General or by Little Caesar. This Agreement supersedes all prior communications, discussions, or understandings regarding No-Poach Provisions between the Attorneys General and Little Caesar, whether oral or in writing. This Agreement can only be modified or supplemented by a written document signed by Little Caesar and the Attorney General of the Settling State for which a modification would be effective.

30. The Attorneys General and Little Caesar agree and represent that any persons signing this Agreement are authorized by proper authorities to execute this Agreement on their behalf. By signing below, the parties agree to comply with all of the terms of this Agreement.

31. Execution of this Agreement does not constitute an approval by the Settling States of any of Little Caesar's business acts or practices.

32. Little Caesar may petition the Attorneys General of any Settling State to modify or terminate the Agreement on the basis of material changes in fact, law, rule, regulation, judicial or administrative decision or interpretation.

AGREED TO AND APPROVED BY:

LITTLE CAESAR ENTERPRISES, INC.



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Erin Martin  
Vice President and General Counsel  
Little Caesar Enterprises, Inc.

FOR THE SETTLING STATES:

MASSACHUSETTS



Cynthia Mark  
Chief, Fair Labor Division  
Massachusetts Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
(617) 963-2626  
[cynthia.mark@state.ma.us](mailto:cynthia.mark@state.ma.us)

CALIFORNIA




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DISTRICT OF COLUMBIA



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Housing and Community Justice  
Office of the Attorney General  
for the District of Columbia  
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ILLINOIS

BY: 

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IOWA



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MINNESOTA



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NEW JERSEY



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Glenn J. Moramarco  
Assistant Attorney General  
AAG in Charge of Special Litigation  
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NEW YORK



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New York State  
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NORTH CAROLINA



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Daniel Wilkes  
Assistant Attorney General  
North Carolina Department of Justice  
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[dwilkes@ncdoj.gov](mailto:dwilkes@ncdoj.gov)

OREGON



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Tim Nord, Special Counsel  
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Financial Fraud and Consumer Protection  
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PENNSYLVANIA



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RHODE ISLAND



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[aroach@riag.ri.gov](mailto:aroach@riag.ri.gov)

VERMONT



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Emily Chamberlain Adams  
Assistant Attorney General, Civil Rights Unit  
Vermont Attorney General's Office  
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## EXHIBIT A

## SAMPLE NOTICE TO FRANCHISEES

Dear [Franchisee Name]:

In July 2018, the Attorneys General of California, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia (the "States") requested information from Little Caesar regarding our franchise agreements. In particular, the States objected to franchise agreement provisions known as "No-Poach Provisions" that restrict the hiring or solicitation of managers between Little Caesars and/or its franchisees. Such provisions appear in some Little Caesar franchise agreements.

We believe the franchise system's interests are best served by resolving the matter without costly and protracted litigation, and so have entered into a Settlement Agreement (attached), while denying that Little Caesar or its franchisees have violated any law or regulation or acted improperly in any respect.

Under the Settlement Agreement, Little Caesar will not enforce provisions in any of our existing franchise agreements in the United States that restrict a franchisee from hiring or soliciting a manager from another Little Caesar location. Moreover, Little Caesar will not include any such provisions in any future franchise agreements.

Please be advised that should you attempt to enforce any such provision against another franchisee, Little Caesar will not intervene or help to enforce it and your actions may be subject to further investigation or enforcement by the States.

**PLEASE NOTE:** The Settlement Agreement requires that we ask you, as a franchisee with a location in at least one of the States, to amend your existing franchise agreements to remove the No-Poach Provisions, and to provide notice to your employees of this Agreement. Enclosed for your signature is: an amendment to your franchise agreement(s) with Little Caesar to remove the No-Poach Provision. Also enclosed is a notice to your employees to be posted in your restaurants provided by the States in English and Spanish.

Please review the amendment with your attorney. To the extent that you agree to this amendment to your franchise agreement and post the enclosed employee notice through December 31, 2020 in a location where it can easily be read by your employees, the States have committed to not pursue any suit, or take any investigative or enforcement action against you for conduct relating to the No-Poach Provision of your franchise agreement, up to and including the date you sign the amendment.

Please sign and return the amendment to Kim Riccobono at [kim.riccobono@lcecorp.com](mailto:kim.riccobono@lcecorp.com) as soon as possible but in no event later than [date]. If you decide not to sign the enclosed amendment by [date] or fail to post the employee notice through December 31, 2020, the States have indicated that they will reserve the right to investigate you and/or pursue enforcement actions against you relating to the contractual provisions described above. Thus, while you should consult

with your attorney, we encourage you to sign the proposed amendment in order to avoid potential enforcement action by the States.

If you have any questions or concerns, please contact Kim Riccobono at (313) 471-6275.

If you receive any media inquiries, please refer them to Kim Riccobono, as well.

Sincerely,

Erin Martin  
Vice President and General Counsel

## EXHIBIT B

**AMENDMENT TO  
LITTLE CAESARS® FRANCHISE AGREEMENT**

The Little Caesar Enterprises, Inc. ("Little Caesar") Franchise Agreement(s) between Little Caesar ("We") and the undersigned franchisee ("You") listed in Exhibit A hereto (as amended, the "Franchise Agreement(s)") shall be amended in accordance with the following terms.

1. Background. We and You are parties to each Franchise Agreement and You operate one or more franchised restaurants in California, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, or the District of Columbia under the Franchise Agreement(s). We have determined that it is in the best interests of the franchise system to not enforce Section 15.2.3. The purpose of this Amendment to your Franchise Agreement(s) is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Franchise Agreement(s).

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, You and We agree that Section 15.2.3 is hereby deleted from each Franchise Agreement, as shown in Appendix A attached hereto, and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, each Franchise Agreement. If there is an inconsistency between this Amendment and any Franchise Agreement, the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Agreement effective as of \_\_\_\_\_, 2019 (the "Effective Date").

**LITTLE CAESAR ENTERPRISES, INC.**      **FRANCHISEE (Franchise #\_\_\_\_\_)**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C

EMPLOYEE NOTICE  
(post through December 31, 2020)

In July 2018, the Attorney General of your state asked Little Caesar to stop using or enforcing No-Poach Provisions in its Franchise Agreements. The Attorney General believes that No-Poach Provisions may have prevented some employees from getting a job at another Little Caesar's location.

Little Caesar does not believe that it acted improperly in any way, and denies that it violated any law. Little Caesar cooperated with the Attorney General and agreed to stop using or enforcing these provisions.

You are allowed to be recruited or hired by another Little Caesar franchisee, if you so desire.

If you have any questions or concerns, please contact Little Caesar and your state Attorney General's Office.

AVISO A LOS EMPLEADOS  
(publicar hasta el 31 de diciembre de 2020)

En julio del 2018, el Fiscal General de su estado le pidió a Little Caesar que dejara de usar o hacer cumplir las cláusulas en contra del reclutamiento y contrato de talento en sus acuerdos de franquicia. El Fiscal General cree que las cláusulas en contra del reclutamiento y contrato de talento pueden haber impedido que algunos empleados obtengan trabajo en otra locación de Little Caesar.

Little Caesar no cree que haya actuado incorrectamente de ninguna manera, y niega haber violado ninguna ley. Little Caesar cooperó con el Fiscal General y acordó dejar de usar o hacer cumplir estas cláusulas.

Si lo desea, puede ser reclutado o contratado por otro franquiciado de Little Caesar.

Si tiene cualquier pregunta o duda, por favor comuníquese con Little Caesar y a la Oficina del Fiscal General de su estado.

Kimberly Riccobono  
Legal Services Manager  
Little Caesar Enterprises, Inc.  
(313) 471-6275

[STATE AG CONTACT INFO]