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BASICS TRACK: FRANCHISE MERGERS AND ACQUISITIONS

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1. Introduction

The 1980's saw a wave of mergers and acquisitions (M&As) that were primarily financially motivated, and in the rollups of the 1990's, acquirer's stock was used as acquisition currency to consolidate fragmented industries (and in many cases the expected economics of scale did not come to pass). The more recent mergers and acquisitions of franchise systems have been motivated more so by strategic considerations. Synergies between the acquirer and acquiree of the two or more merging companies were expected to lead to efficiencies, competitive benefits, or improved operating margins. Private equity firms have become more strategic in the assembly of their portfolios and the expected synergies between portfolio companies.

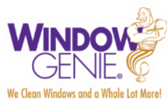
Franchisors have been the center of attention in the midst of this new and more strategic wave of M&A activity, on both a large and medium scale. The attractiveness of established consumer brands, steady cash flow, predictable and durable revenue streams, a dedicated distribution channel, value driven menus of products and services, strategic real estate locations, strong and experienced management teams, audited financial statements, strong internal and quality controls, and other features are all character traits that make franchisors attractive to nonfranchisor strategic buyers, private equity firms, and buyout funds for acquisition, investment, or recapitalization purposes.

In the period 2010 - 2016, dozens of significant transactions involving franchise systems and private equity funds took place, and the pace is not expected to slow down any time soon. In fact, the characteristics of most franchise systems will only make them more attractive candidates inasmuch as the overall capital markets have slowed down and become focused on quality over quantity. A wide variety of industries and transaction sizes have been represented in which franchise systems were bought either by other franchisors or by private equity funds.

GPS Hospitality acquired 194 Burger Kings, nearly double the franchise operator's existing 230 locations.

Restaurant Brands International, owner of Burger King, is acquiring Popeye's Louisiana Kitchen for $79 a share—a deal valued at $1.8 billion. Popeye's, headquartered in Atlanta, has over 2,600 restaurants around the world.

7-11 acquired Tedeschi Food Shops' approximately 180 convenience stores, continuing its growth as one of the world's largest convenience retailers.



The Dwyer Group, a franchise group in the maintenance and repair industry, acquired Window Genie, which has over 100 franchise partners operating in 29 states.

CenterOak Partners LLC, a Dallas-based private equity fund, acquired Wetzel's Pretzels, which has over 300 company-owned and franchised locations.

Jimmy John's, a rapidly growing fast-casual restaurant, sold a majority stake to Roark Capital Group, a private-equity fund, which also has investments in Cinnabon, Auntie Anne's Pretzels, and Arby's.

Driven Brands, a portfolio company of Roark Capital Group, acquired Express Lube and Lube Stop, growing its Quick Lube division.

Fazoli's Group, Inc., a Lexington-based fast-casual Italian restaurant, franchises and operates 213 restaurants nationwide. Fazoli's was acquired by Sentinel Capital Partners, a private equity firm.

Palm Beach Tan, operating over 460 corporate and franchise-owned locations, recently acquired Tan-N-Go Inc., a Memphis, TN based indoor tanning provider.

Senior Helpers® operates over 285 franchise locations across the U.S., Canada, and Australia, and was recently acquired by Altaris Capital Partners, LLC, a national investment firm that focuses exclusively on the healthcare industry.

Stone-Goff Partners, a private equity investment firm, acquired a controlling interest in The Greene Turtle Sports Bar & Grille, a casual dining restaurant with 41 company-owned and franchised locations in the U.S.

Club Pilates, a Pilates franchise with 35 studios across the U.S. and Australia, was acquired by LAG Fit, Inc., a franchise development firm.

Some franchisors have turned to refranchising or retro-franchising (e.g. turning company-owned units into franchises, which include a sale of the operating assets) in order to raise new cash and to manage operating expenses and capital expenditures. Well-funded multi-unit franchisees were able to add units at attractive terms in systems such as Pizza Hut®. A more recent trend is that multi-unit operators themselves becoming targets for acquisition by private equity firms. Until recently, private equity funds were less interested in franchisees (multi-unit, masters or otherwise). Franchisees were seen as having less brand control and less overall value because of this. However, the views of private equity firms has shifted because franchisees have a commodity that is being valued, cash flow. While the franchisor controls the brand and receives fees based on the terms in the franchise agreement, the franchisee is the conduit through which the cash flows. Multi-unit operators can own many franchise units, each generating revenue that can be passed on to the owners in a variety of ways.

Finally, many franchisors have engaged in recapitalizations and restructurings transactions, as well as management buyouts, as a form of (or alternative to) M&A transactions. The same characteristics that make franchise systems attractive M&A candidates (e.g., strong brand, unit diversification, market protection, predictable and durable cash flows, etc.) make them equally attractive to providers of transactional equity and debt capital. Older and more mature franchise concepts that may have been launched 20 or 30 years ago are looking at these types of financing transactions very carefully as they prepare to transition ownership to the next generation or to select management groups as an alternative to traditional M&A.

Franchisors are just as susceptible as nonfranchise businesses to the pressures of competition, shifts in demand and demographics, and the need to respond to changes in law or technology. Accordingly, mergers or acquisitions of competing or complementary franchise systems are one viable strategy for responding to such pressures. More particularly, a franchise system may look to engage in M&A for one of the following reasons:

- The desire to add new products or services to existing lines without the expense and uncertainty of internal research and development.
- The desire to expand into a new geographic market or customer base without the expense of attracting new franchisees into these locations or of developing a new advertising and marketing program.
- The need to increase size to effectively compete with larger companies or to eliminate the threat of a smaller competitor.
- The desire for market efficiencies through the acquisition of suppliers (backward integration) or existing franchisees or distributors (forward integration).
- The need to strengthen marketing capabilities or improve the quality of management personnel.
- The desire to reduce competition in the marketplace or to expand its market share.

Private equity funds interest in buying franchise systems comes from the small capital investment combined with significant growth potential of the portfolio and recognized consumer brands, the fact that there is already a business system in place that has been tested and is successfully operating, there is reliable cash flow, and the ability to liquidate the asset always exists. Beyond these benefits, private equity firms can easily purchase numerous, even related, franchise systems and aggregate them all under one umbrella (for example Restaurant Brands International's acquisition of Burger King, Tim Hortons and now potentially Popeye's) provides potential for increased efficiency and ultimately increased revenues.

A number of complex issues are involved in the merger or acquisition of any company, including both legal and business considerations. This is especially true for franchise systems. Franchise related mergers and acquisitions must address the potential issues relating to taxes, securities regulation, labor laws, joint employer concerns, employee benefits, antitrust, environmental regulation, corporate governance, bankruptcy, and antitrust compliance. In addition, they must understand the nature of the assets of the franchise system being acquired and the unique relationship between the franchisor and its franchisees. Financial or strategic buyers considering their first acquisition must understand that the transaction is a *process, not an event*. The management of the process, the quality of the advisors, and a clear upfront understanding of the transactional objectives will all go a long way to ensuring that the completed deal is ultimately a success for the parties, and the overall system. A key component of the process will be an analysis of how the proposed transaction may affect the franchisor-franchisee relationship, including the potential dilution of its brands, the overlap of its territorial rights, and potential confusion in the product and service mixes offered to consumers.

2. Analysis of Target Companies

Buyers must begin the acquisition process with a plan identifying the specific objectives to be accomplished by the transaction and the criteria to be applied in analyzing a potential target company operating in the targeted industry. Once acquisition objectives have been identified, the next logical step is to narrow the field of candidates. Set out below are some of the questions to be asked together with some of the qualities that a viable acquisition target might possess.

- The target operates in an industry that demonstrates growth potential.
- Do the businesses have a shared vision?
- What is the reputation of the target?
- The target has taken steps necessary to protect any proprietary aspects of its products and services.
- The target has developed a well-defined and established market position.
- The target possesses "strong" franchise agreements with its franchisees with minimal amendments or "special exceptions."
- The target has good relationships with its franchisees, strong customer satisfaction, and brand loyalty to its core products and services offered by its franchisees.
- The target is involved in a minimal amount of litigation (especially if the litigation is with key customers, distributors, franchisees, or suppliers).

- The target is in a position to readily obtain key third-party consents from lessors, bankers, creditors, suppliers, and investors (as required). (The failure to obtain necessary consents to the assignment of key contracts or to clear encumbrances on title to material assets may seriously impede the completion of the transaction.)

- The target is in a position to sell so that negotiations focus on the terms of the sale *not* on whether to sell in the first place.

In addition to these general business issues, the following issues should be examined when examining the potential acquisition of a franchise system.

- The strength and registration status of the target's trademarks and other intellectual property.

- The quality of the target's agreements and relationships with its franchisees, and whether the agreements are designed to address best practices around concerns such as joint employer claims.

- The status of any litigation or regulatory inquiries involving the target.

- The quality of the target franchise sales staff.

- The quality of the franchisee relationships, including the regularity of the franchisor's cash flow from royalty obligations.

- The strength of the target franchisor's training, operations, and field support programs; manuals; and personnel.

- The existence of any franchisee association and its relationship with the franchisor.

- The strength and performance of the target's company-owned units (as applicable).

Sometimes, instead of the acquirer affirmatively seeking acquisition targets, the process is reversed, and the target, rather than the acquirer, solicits offers to be acquired. Such an acquisition candidate may offer an excellent opportunity for the acquirer, although the target's operations and financial condition should be closely inspected for any liability or potential pitfall that may be hidden behind the good intentions of the sellers.

Regardless of who approaches whom, the inspection of a potential target will be necessary. Preliminary due diligence may be undertaken before any offer is made, and more thorough due diligence certainly has to be completed by the acquirer's in-house and outside business and legal advisors before completing the deal.

3. Due Diligence

Before conducting a thorough due diligence review of an acquisition candidate, the buyer should to conduct a preliminary strategic and operational analysis. In most cases, the principals of each of the companies will meet to discuss the possible transaction and frame out post-closing integration issues and challenges. The key areas of inquiry at this stage are as follows.

- The financial performance to date and the projected performance of the target.
- The strength of the target's management team.
- The target's intellectual property.
- The condition of the target franchise system, including an understanding of the terms of the target's existing franchise agreements (of whatever structure).
- Any potential liabilities of the target that may be transferred to the franchisor as a successor company.
- The identification of any legal or business impediments to the transaction, such as regulatory restrictions or adverse tax consequences.
- Territorial overlap issues, competitive issues between the two franchise systems, brand dilution, customer confusion, effect on third party vendors, and franchisee mentality.

In addition to a direct response from the target's management, information may also be obtained from outside sources such as trade associations, customers, and suppliers of the target; industry publications; franchise regulatory agencies; chambers of commerce; securities law filings (if the company is publicly traded on a stock exchange or through the NASDAQ stock markets); or private data sources, such as Dun & Bradstreet, Standard & Poor's, and Moody's. Some of this information may be readily available on the Internet through sites such as FDD Exchange or Hoover's reports.

Once the two companies have agreed to move forward, a wide variety of legal documents and records, as applicable, should be carefully reviewed and analyzed by the acquiring entity and its legal counsel. The purpose of due diligence is to help answer two very basic questions: (1) Is our analysis of the target valid? (2) What risks will we assume if we decide to move forward.

The following list is illustrative of some of the questions that the acquiring franchisor (or private equity fund/sponsor) and its legal and accounting representatives will look to answer as part of the due diligence process.

- What approvals are required to effect the transaction (e.g., director and stockholder approval, governmental consents, lenders' and lessors' consents, etc.)?

- Does the transaction raise any antitrust problems? Will filing be necessary under the premerger notification provisions of the Hart-Scott-Rodino Act?

- Are there any federal or state securities registration or reporting laws to comply with?

- What are the potential tax consequences to the buyer, seller, and their respective stockholders as a result of the transaction?

- What are the buyer's potential post-closing risks and obligations? To what extent should the seller be held liable for such potential liability? What steps, if any can be taken to reduce these potential risks or liabilities? What will it cost to implement these steps?

- Are there any impediments to the transfer of key tangible and intangible assets of the target company, such as real estate and intellectual or other property?

- Are there any issues relating to environmental and hazardous waste laws, such as the Comprehensive Environmental Response Compensation and Liability Act (CERCLA e.g., the Superfund law)?

- What are the obligations and responsibilities of buyer and seller under applicable federal and state labor and employment laws? For example, will the buyer be subject to successor liability under federal labor laws and as a result be obligated to recognize the presence of organized labor and therefore to negotiate existing collective bargaining agreements?

- To what extent will employment, consulting, confidentiality, or non-competition agreements need to be created or modified in connection with the proposed transaction?

- What are the terms of the target's agreements with its existing franchisees? Are these agreements assignable? Do they contain clauses giving the franchisor discretion to change the system or ownership? Could any of these terms cause problems for the acquiring franchisor at a later date?

- Is the target currently involved in litigation with franchisees, creditors, competitors, or suppliers? Is there threatened litigation or potential litigation? What is the risk of exposure to the acquiring franchisor?

- Have the target’s registration and disclosure documents been properly filed and updated?

Some questions that will be analyzed by the acquirer’s business and accounting advisors are:

- Does the target franchisor fit into the long-range growth plans of the buyer?
- What are the target franchisor’s strong points and weaknesses? How does management of the acquiring franchisor plan to eliminate those weaknesses?
- What are the strengths of the best franchisees in the system, and what is the franchisor doing to replicate that success?
- Has the buyer’s management team developed a comprehensive plan to integrate the resources of the target?
- What is the target franchise systems ratio of company-owned outlets to franchisees?
- Are the target’s products and services competitive in terms of price, quality, style and marketability?
- Does the target franchisor manufacture its own products? What proportions are purchased from outside sellers?
- What is the target’s past and current financial condition? What about future projections? Are they realistic?
- What is the target franchisor’s sales history? Has there been a steady flow of franchise sales and royalty payments?
- What is the target franchisor’s attrition rate? Have there been many recent terminations or transfers? Have any of these been contested by franchisees as lacking good cause?
- What involvement does the target have with the personnel decisions of its franchisees?
- How do employees of the target’s franchisees get trained? What materials are distributed?
- What interaction does the target have with employees of the franchisees?

- How do any required systems interact with the day to day operations of the franchisee? For example, do the employees clock in and out on the system or is the schedule done through the system?

4. The Role of the Franchisee

Unlike other types of growing companies involved in mergers and acquisitions, franchisors have existing contractual vertical distribution systems in place through their franchisees. The interests of these franchisees ought to be taken into account when the franchisor's counsel analyzes the legal consequences and potential costs of the proposed merger or acquisition. These franchisees are clearly interested parties whose contractual and other legal and equitable rights must be considered, *however*, there is no statutory or legal basis for disclosing the intent to engage in a merger or acquisition, nor is there typically a contractual requirement to obtain their approval. Nevertheless, good franchisee relations best practice would dictate their involvement or inclusion in some fashion especially as a matter of pre-closing due diligence. The cooperation level of the franchisee networks of both buyer and seller can either greatly facilitate the transaction or virtually kill the deal, depending on how this communication problem is handled.

A strategic or financial buyer must always bear in mind that, first and foremost, franchising at its core is about *relationships*. The franchisor and franchisee knowingly and voluntarily enter into a long-term interdependent relationship. Just like in any other relationship, communication can be the key to the relationship staying healthy or the relationship getting stale and sour. The acquirer can use this opportunity to start a lasting relationship with open lines of communication with franchisees of the potential target and protect the key assets (e.g., a sense of strategic interdependent relationships which it is anyway).

If one franchisor acquires another in a competitive or parallel line of business, careful merger planning and negotiation will be necessary to ensure a smooth integration of the target's franchise system into the buyer's existing operations (assuming that only one system will survive after the transaction) and to avoid potential litigation or costly settlement with affected franchisees of either system. In addition, if conversion or change is planned as a result of the merger or acquisition, franchisors should expect to involve franchisees, at least to a certain extent, in the decision-making process. The acquiring franchisor should not automatically assume that franchisees in the acquired system will be willing to convert to the buyer's existing system. When change or conversion is contemplated, some attrition and/or franchisee resistance should be expected in both systems, and the impact and costs of this attrition and resistance will typically be reflected in the purchase price of the target franchisor.

On one hand, the franchisee is typically neither a shareholder, creditor, investor, officer, nor director of the franchisor and would technically be governed only by the terms of franchise agreements, which usually gives broad latitude to the franchisor to assign rights or modify the

franchise system. Yet to ignore the fact that the franchisee is clearly an interested and affected party in any change in the franchisor's organizational structure or system is unrealistic and could result in very costly litigation that might even outweigh any anticipated benefits to the proposed merger or acquisition. A game plan must be put in place and clearly communicated to help them adapt and evolve to the impact that the transaction will have on their operations.

5. Special Issues Relating to Merging Franchise Systems

A number of potential issues for dispute between the acquiring or acquired franchise systems and its franchisees may arise as a result of a merger or acquisition. Whether they arise will, of course, depend on a variety of factors including the similarity of the businesses of the merging systems, the territories in which they operate, the terms of the contracts with existing franchisees in each system, the size and market power of each system, the competitors (or lack of them) for each of the systems, and, most importantly, the plans of the surviving company. Because franchisors have an implied obligation to act in good faith and in a commercially reasonable manner (a covenant recognized by many state courts in their interpretation of the franchise relationship), both franchisors should pay special attention to the following issues.

- What is the extent of any territorial exclusivity granted to the franchisees of each system? Is exclusivity given only for a certain trademark or line of business? Is territorial exclusivity conditional on the performance of the franchisees? Will substantially similar franchisees violate this exclusivity?

- Will all existing franchisees of both systems be maintained, or will a consolidated distribution system result in the termination of some franchisees?

- Will franchisees be required or requested to convert to a new business format? Who will pay the costs of building conversion, new training, products and services? Will the franchisor finance all or part of the conversion costs?

- Will existing franchisees of each system be forced to add the products and services of the other? Will this present tying or full-line forcing problems?

- Does the acquiring franchisor have sufficient support staff to adequately service the new franchisees, or will the acquiring company's existing franchisees be ignored in order to develop and market the new acquisitions? What rights do the existing franchisees have to challenge this lack of attention?

- Will a new, third type of system, combining the products and services of the acquiring and acquired franchisors, be offered to prospective franchisees of the surviving entity? Will existing franchisees of either system be eligible to convert to the new system?

- Can the acquiring franchisor legitimately enforce an in-term covenant against competition when the franchisor itself has acquired and is operating what is arguably a competitive system?

- Do the franchisees of either franchisor have a franchisee association or franchise advisory council? Must these groups be consulted? What duty does the franchisor have to involve these groups in merger planning? What about regional and multiple franchisees holding development rights?

- Does either franchisor have company-owned outlets in its distribution system? What will be the status of these outlets after the merger or acquisition?

- To what extent will royalty payments, renewal fees, costs of inventory, performance quotas, and advertising contributions be affected by the contemplated merger or acquisition? On what grounds could franchisees challenge these changes as unreasonable, breaches of contract, or violations of antitrust laws? How and when will these changes be phrased into the system? Will the franchisees be given a chance to opt in or opt out (mandatory versus optional changes)?

- Will the proposed transaction result in the termination of some of the franchisees of either system due to oversaturation of the market, territorial overlap, or underperformance? What legal and statutory rights of the franchisee are triggered?

6. The Consequences of Inadequate Planning and Due Diligence

The consequences of inadequate pretransaction planning and investigation to both the acquirer and the target in a transaction combining two or more franchise systems can be financially devastating, often resulting in years of litigation while the franchise systems suffer. In one example, the owners of a franchise system that was to be sold failed to inform the buyer of serious disagreements with its franchisees. The relationship between the seller and the franchisees had deteriorated to the point that the franchisees had retained a lawyer to represent them at a meeting with the franchisor. Fortunately, the buyer learned of the meeting and the problems and decided to delay the transaction pending the seller's ability to work the problem out with the franchisees.

The difficult legal and strategic issues that are triggered in a merger of franchise systems can either be resolved - and litigation avoided - with careful pretransaction planning and investigation, or cause the deal to fail. Among the critical steps toward a successful transaction, communication with the franchisees of both systems is of paramount importance.

7. The Documentation

Once due diligence has been completed, valuations and appraisals conducted, terms and price initially negotiated and financing arranged, the acquisition team must work carefully with legal counsel to structure and prepare the definitive legal documentation to memorialize the transaction. The drafting and negotiation of these documents will usually focus on the past history of the seller, the present condition of the business, and a description of the rules of the game for the future. Part of this involves describing the nature and scope of the seller's representations and warranties, the terms of the seller's indemnification of the buyer, the conditions precedent to the closing of the transaction, the responsibilities of the parties during the time period between execution of the purchase agreement and actual closing, the terms and structure of payment, the scope of post-closing covenants of competition, the deferred or contingent compensation components, and any predetermined remedies for breach of the contract.

(a) Allocation of Risk

The purchase agreement is partly a tool for allocating risk. The buyer will want to hold the seller accountable for any post-closing claim or liability relating to situations that occurred while the seller owned the company *or* that occurred as a result of a misrepresentation or material omission by the seller. The seller, on the other hand, wants to bring as much finality to the transaction as possible to allow some degree of comfort that its obligations have ended. When both parties are represented by skilled negotiator's, a middle ground is reached, both in general and on specific issues of actual or potential liability. The buyer's counsel will want to draft changes, covenants, representations and warranties that are strong and absolute to protect its interests as a buyer. The representations and warranties will, among other things, speak to condition of the franchise system and its assets together with the veracity of information provided by the seller. The seller's counsel will seek to insert specific qualifications to those representations and warranties based on materiality, time periods, capped monetary amounts, knowledge requirements The battleground will be the indemnification provisions and any exceptions, carve-outs, "baskets" or other mechanisms that are created to dilute the above provisions.

(b) Scope of the Assets

Typically the buyer will want to specify a laundry list of categories of assets to be purchased, but the seller will want to modify the list by using words like "exclusively" or "primarily." The seller may want to exclude all or most of the cash on hand from the schedule of assets to be transferred. In some cases, the seller may want to license some of the technology rights in lieu of an outright sale or, at the very least, obtain a license back of what has been sold.

(c) Security for the Seller's Takeback Note

When the seller is taking back a note from the buyer for all or part of the consideration, the issue of security for the note arises. Naturally, the seller will want noncontingent personal and corporate guaranties from the buyer and from anyone else whom it can manage to include. The buyer will be reluctant to offer such far-reaching security. Several creative compromises have been reached between parties, including partial or limited guarantees, the acceleration of the note based on post-closing performance, the right to repurchase the assets in the event of a default, the issuance of warrants or preferred stock in the event of default, commercial lender-like covenants to prevent the buyer from getting into a position where it is unable to pay the note (such as dividend restrictions, limitations on excessive salaries, etc.), or contingent consulting agreements in the event of default.

(d) Who's on the Line for the Financial Statements?

The financial statements provided by the seller to the buyer in connection with the due diligence and prior to closing are often a hotly contested item. The timing and scope of the financial statements, as well as the standard to which they will be held, are at issue. The buyer and its team may prefer a hot-off-the-press and recently completed audited set of financials from a Big 5 accounting firm, and the seller will want to serve up a best-efforts unaudited and uncertified guesstimate. Somewhere between the two extremes is where most deals wind up, with verbiage such as "of a nature customarily reflected," "prepared in substantial accordance with GAAP," and "fairly present the financial condition." The scope of the liabilities included on the statements, in addition to who will bear responsibility for unknown or undisclosed liabilities, will also be negotiated in the context of the financial statements.

(e) Market Conditions at the Time of the Transaction

It is critical to understand that there is a wide variety of terms and conditions in the purchase agreement that may vary depending on the state of the overall economy. What terms may be "fair and reasonable" or "market" will be driven both by the specifics of the transaction and by whether the marketplace at the time of the deal is viewed as being more heavily weighted in favor of sellers, such as in 2006 and 2007, or in favor of qualified and cash-flush buyers, such as in 2008, 2009, and even in the current market.

Market conditions can affect EBITDA multiples, but they can also determine purchase agreement terms such as the scope of the indemnification, the amount to be withheld in escrow for unknown liabilities (the holdback), limitations on specific types of postclosing liabilities (the basket), limitations on the amount of damages suffered by the buyer that can be recovered by making claims against the seller (the cap), the amount of equity to be retained by the seller (or its

team) (the rollover), the extent of the conditional or contingent consideration (the earn-out), and a variety of other provisions.

In a buyer's market, the terms that allocate risk will be much more heavily weighted in favor of the buyer, translating into larger holdbacks, more earn-outs, lower or "dollar-one" baskets, longer indemnity survival periods, and higher caps relative to the overall purchase price. In a seller's market, it is typical to experience the converse of these terms unless there are significant risks uncovered during due diligence or a significant disparity in the bargaining power of the parties.

(f) The Existence and Scope of the Noncompete

It is only natural for the buyer to expect the seller will agree to stay out of the business being sold for some reasonable amount of time. Depending on the seller's stage of life and postclosing plans, which may include actual retirement, the parties are likely to argue over the scope, duration and geographic focus of the covenant against noncompetition. The allocation of the purchase price to a noncompete covenant raises certain tax issues that must be analyzed, and these covenants may have only limited enforceability under applicable state laws if their scope or duration is deemed to be unreasonable or excessive.

8. Post-Closing Challenges - The Roles of the Buyer and Seller

The closing of a merger or acquisition commonly brings a sigh of relief to the buyer, seller, and their respective teams of advisors. But the term "closing" can be misleading in that it suggests a sense of finality, when in truth, particularly for the buyer and its integration team, the hard work has just begun. After a deal has been closed numerous challenges await the buyer and seller of a transaction. However, if the parties and recognize these challenges ahead of time, they can each be prepared for the role that they must play in the transition process.

Recent studies by Deloitte, McKinsey and many others suggest that as many as 70% of M&A transactions fail to meet their pre-transaction synergy and strategy goals. That number is unacceptable for transactions which of course are designed to be accretive, not dilutive, of shareholder value.

Once a deal closes, the seller is also rarely finished with the transaction. There are obstacles that face a seller just like those that face the buyer. In some instances a seller may remain with the franchise system in a consulting capacity. In a scenario like this the seller may find it difficult to step back and allow the buyer to take control of management of the new entity and emotions and ego give way to meddling and even sabotage. A seller may unwillingly undermine the buyer's efforts or contradict authority. This is not to say that a buyer should not permit a seller to remain in some capacity, but rather, the seller must acknowledge and accept the new role it plays in the entity.

An often overlooked issue that can arise post-closing is with information technology. We live in a digital age and social media driven industry where companies use software platforms to store and transmit information. This could include payroll records, client contacts, inventory lists and social media sites. However, there are so many software platforms available that it is likely the buyer and seller may use entirely different and incompatible systems. If information systems used by the buyer and seller are not readily compatible there could be a significant amount of time and resources spent migrating the two systems. This can cause substantial cost which should be considered and accounted for prior to the closing. Issues may also arise because of obsolete information systems. Besides software platforms, companies should consider even something as innocuous as the email systems used. Not all email servers are created equal, it can take significant time and effort by sophisticated technical staff to integrate a Lotus Notes email system with that of a Microsoft Exchange email system.

Many mergers fail because the parties, both buyer and seller, never put a strategy for integration of the two cultures into place. While the two company cultures may be compatible this does not mean the two companies are an exact match. The buyer must be careful not to "force feed" a quest for "sameness." Each company had its own culture and trying to force these two separate entities to be the same is rarely feasible. This is particularly an issue for founders.

Regardless of the approach the buyer and seller take towards their respective roles post-closing, they must each remember that the most important thing they can do is to have a well thought out plan prior to the closing even occurring. The key of any transaction is to understand that the planning process for post-merger integration begins well before the closing and to never take your eye off the strategic shareholder value ball.

EXHIBIT 1

Acquisition Communication Plan
Prepared by the Dwyer Group
(Spring 2017)

Four Weeks+ Out

- ☐ Write email from Company CEO to Company associates announcing acquisition
- ☐ Write email from Company CEO to Company franchisees announcing acquisition
- ☐ Write welcome video script about the acquisition for Company CEO to send to acquired company's (AC) associates
- ☐ Write video script for president of acquired company to send to acquired company's franchisees
- ☐ Write welcome video script for Company CEO to send to acquired company's franchisees
- ☐ Write video script for CEO to send to acquired company's franchisees
- ☐ Write an article to go into Company associates e-newsletters
- ☐ Write press release announcing acquisition
- ☐ Request a graphic to be made with all brands as a header for email communications
- ☐ Update Dwyer Group Fact Sheet and FAQ's
- ☐ Create a Fact Sheet and FAQ's for acquired company
- ☐ Create talking points for Company associates to use with franchisees
- ☐ Create talking points for acquired company's associates to use with franchisees
- ☐ Get approval on video script
- ☐ Send weekly update to all involved parties
- ☐ Create a power point presentation for companies to use in acquisition announcement (if needed)
- ☐ Create script for ringless voicemails – President of AC/CEO of Company

Three Weeks Out

- ☐ Get approvals on all emails and talking points
- ☐ Film CEO videos – Company associates, Company franchisees, AC associates, AC franchisees
- ☐ Film AC President videos – AC associates, AC franchisees
- ☐ Create an email or online form for questions regarding the acquisition to be sent in
- ☐ Create an announcement to be placed on FranConnect and AC's internal franchisee communication platform (if available.)
- ☐ Create social media posts for Company brands
- ☐ Create social media posts for AC pages
- ☐ Request updates to Company website – Leadership pages, addition of AC information and logo
- ☐ Review AC website and create a list of updates needed to incorporate
- ☐ Send weekly update to all involved parties

Two Weeks Out

- ☐ Gather creative pieces – newsletter header with all brands, social media graphics
- ☐ Final approval on all communication pieces (emails, articles, social posts, FranConnect post, website updates, fact sheets, etc.)
- ☐ Finalize vehicle for receiving feedback and questions – inbox, online form, a person, etc.
- ☐ Finalize videos and prepare for distribution to targeted audiences
- ☐ Create an email template to be used for all acquisition communications incorporating all logos around Dwyer Group
- ☐ Finalize approval of press release and build out media list
- ☐ Decide on concrete announcement date
- ☐ Prepare press release for distribution on news wire service
- ☐ Send daily update to all parties involved

One Week Out

- ☐ Upload videos to YouTube private channel – do not publish
- ☐ Make any last-minute adjustments and ensure all items are prepared for distribution on announcement day
- ☐ Pitch the release to local business media one day prior
- ☐ Prep staff to field franchisee phone calls on day of announcement

Day of Acquisition Announcement

- ☐ Send video emails to all targeted audiences
- ☐ Send content emails to targeted audiences
- ☐ Send press release out on the wire
- ☐ Post announcement to FranConnect/Intranet
- ☐ Send Fact Sheet and FAQ's to all associates and franchisees of AC
- ☐ Update Company website with press release
- ☐ Post announcement with graphics to Company brand and company pages
- ☐ Post announcement to AC's social pages
- ☐ Send Live RICH books to all AC associates and franchisees
- ☐ AC's staff should be fielding phone calls from franchisees
- ☐ Leadership of AC should call key franchisees (if not all) to review the announcement
- ☐ All brokers/vendors/agencies of AC should be contacted to alert them of the acquisition
- ☐ Website updates for AC website(s) should begin

EXHIBIT 2

Sample Letter of Intent

CONFIDENTIAL

June 1, 2017

Via FedEx

[Name]
[Title]
[Address]

[FranBuyerCo], a Delaware corporation, (together with its affiliates, the "Purchaser"), submits this letter of intent (this "Letter") to [FranSellerCo], a Delaware corporation, (the "Seller"), with regard to the purchase and sale of all of the stock of [Target Company], a Delaware corporation (the "Company," and such purchase, the "Proposed Transaction") in the breakfast and pancake franchise business. This Letter is intended to reflect the general intent of the parties and confirm certain understandings regarding the business terms which will form the basis of a definitive agreement or agreements (the "Definitive Agreements") for the Proposed Transaction.

1. Purchase of Stock. Purchaser shall purchase from Seller one hundred percent (100%) of the issued and outstanding shares of stock of the Company, free and clear of all liens, mortgages, security interests, claims, charges and encumbrances.

2. Purchase Price. Purchaser has calculated the purchase price for the Proposed Transaction ("Purchase Price") on the basis of preliminary financial information provided by Seller and on the representation that at least [90%] of the company's [180] franchisees are in good standing. Based on such information, Purchaser anticipates that the Purchase Price for the Assets would be [$Purchase Price], in the aggregate, subject to adjustment as set forth below, and payable as follows:

(a) A cash payment to Seller in the amount of [$AMOUNT] to be paid at closing; and

(b) A Purchaser promissory note to Seller in the amount of [$AMOUNT] delivered at closing.

3. **Conditions**. Purchaser's obligation to close the Proposed Transaction will be subject to customary conditions, including:

(a) Purchaser's receipt of cash proceeds from the financing transactions contemplated by the commitment letters attached to this Letter in an amount necessary to finance the Proposed Transaction, pay related fees and expenses and provide adequate ongoing working capital and on the terms and conditions explicitly set forth in such commitment letters and such others terms and conditions satisfactory to Purchaser;

(b) the receipt of any regulatory approvals and third party consents, on terms satisfactory to Purchaser;

(c) Seller entering into restrictive covenants, in a form acceptable to Purchaser, agreeing not to: (i) compete with the Company for [Number of Years] following the closing, and (ii) hire or solicit any employee of the Company or encourage any such employee to leave such employment for a period of [Number of Years] following the closing;

(d) the Parties' execution of the Definitive Agreements and the ancillary agreements;

(e) there being no material adverse change in the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company;

(f) the Company maintains its registration in each state it is currently registered in;

(g) satisfactory review, by Purchaser, of the Company's current franchise agreements;

(h) proof of appropriate disclosure to all current franchisees and prospective franchisees; and

(i) such other conditions as are customary in transactions of this type.

4. **Definitive Agreements**. The Definitive Agreements shall be prepared by attorneys for Purchaser and will include the terms and provisions set out in this Letter and other customary representations, warranties and indemnities. The Definitive Agreements will also contain other provisions and covenants not inconsistent with the terms in this Letter as the parties may mutually agree or as may be necessary as a result of Purchaser's due diligence investigation of the Company and the Seller.

5. **Confidentiality**. The parties hereby agree that unless consented to in writing by each party, no press release or other public disclosure concerning the Proposed Transaction or this Letter or the fact that the parties hereto are exploring a Proposed Transaction shall be made, and each party agrees to use its best efforts to prevent disclosure of the Proposed Transaction and the

terms hereof other than (i) to directors and officers of the parties, and employees, advisors and affiliates of the parties who are involved with the Proposed Transaction, all of which shall be instructed to comply with the confidentiality provisions hereof and (ii) as required by applicable law or in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction (with notice to the other party).

6. **Due Diligence Review**. Seller shall continue to afford Purchaser and Purchaser's advisors access to and the opportunity to review, without limitation, the Company's books and records, financial statements, and similar data relating to the Company's operations and business prospects, as well as the facilities, key employees, customers and suppliers of the Business. The entering into any Definitive Agreements to consummate the Proposed Transaction shall be subject to the satisfactory completion by Purchaser of its due diligence review of the Company and its operations.

7. **Representations and Warranties of Seller**. Seller hereby represents and warrants to Purchaser as follows: (i) there is no other agreement, written or oral, currently in effect regarding the purchase and sale of the Company (or any of its assets); (ii) the execution of this Letter by Seller will not violate any other agreement, written or oral, to which Seller is a party or is otherwise bound; and (iii) the execution of this Letter by Seller will not violate any duty, express or implied, owed by Seller to any other party.

8. **Exclusivity**. In consideration of the expenses that Purchaser has incurred and will incur in connection with the Proposed Transaction, Seller agrees that until such time as this Letter has terminated in accordance with the provisions of Section 11 below (such period, the "**Exclusivity Period**"), neither Seller nor any of its representatives, officers, employees, directors, agents, stockholders, subsidiaries (including, without limitation, the Company) or affiliates (the "**Seller Group**") shall initiate, solicit, entertain, negotiate, accept or discuss, directly or indirectly, any proposal or offer from any person or group of persons other than Purchaser (an "**Acquisition Proposal**") to acquire all or any portion of the capital Stock of the Company or any portion of the Company's business or assets, whether by merger, purchase of stock, purchase of assets, tender offer or otherwise, or provide any non-public information to any third party in connection with an Acquisition Proposal or enter into any agreement, arrangement or understanding requiring it to abandon, terminate or fail to consummate the Proposed Transaction with Purchaser. Seller agrees to immediately notify Purchaser if any member of the Seller Group receives any indications of interest, requests for information or offers in respect of an Acquisition Proposal, and will communicate to Purchaser in reasonable detail the terms of any such indication, request or offer, and will provide Purchaser with copies of all written communications relating to any such indication, request or offer. Immediately upon execution of this Letter, Seller shall, and shall cause the Seller Group to, terminate any and all existing discussions or negotiations with any person or group of persons other than Purchaser regarding an Acquisition Proposal. Seller represents that no member of the Seller Group is party to or bound by any agreement with respect to an Acquisition Proposal other than under this Letter.

In the event that Seller breaches this Section 8 in any material respect, then Seller shall, promptly upon request by Purchaser, reimburse all of Purchaser's costs and expenses (whether incurred before or after the date of this Letter) relating to or in connection with the transactions contemplated hereby and Purchaser's due diligence investigation of Seller and the Company, including, without limitation, the reasonable fees and expenses of Purchaser's financial, legal and accounting advisors and other outside consultants.

Seller agrees that irreparable damage to Purchaser would occur in the event that the provisions of this Section 8 were not performed in accordance with their specific terms or otherwise were breached. Accordingly, Seller agrees that Purchaser shall be entitled to equitable relief to enjoin and prevent breaches of such provisions and to specifically enforce the terms of such provisions, without posting any bond or other security.

9. **Governing Law**. This Letter shall be governed by and construed and enforced in accordance with the laws of the [State of Delaware] without regard to any choice or conflict of law provision or rule (whether of the [State of Delaware] or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the [State of Delaware].

10. **Expenses**. Except as set forth in Section 8, Seller and Purchaser will each pay their own transaction expenses, including the fees and expenses of investment bankers and other advisors, incurred in connection with the Proposed Transaction.

11. **Termination**. This Letter will automatically terminate and, except as set forth in Section 12, be of no further force and effect upon the earliest to occur of (i) the execution of the Definitive Agreements, (ii) the mutual written agreement of Purchaser and Seller, and (iii) September 1, 2017 (or such later date as Seller and Purchaser mutually agree in writing).

12. **Survival**. Upon termination of this Letter, the parties will have no further obligations under this Letter, except Sections 5, 9, 10, 12, 17, 15 and 17 will survive such termination. The termination of this Letter shall not affect any rights any party hereto has with respect to the breach of this Letter by another party hereto prior to such termination.

13. **Conduct of Business**. So long as this Letter is in effect, Seller shall cause the Company to (i) conduct its business only in the ordinary course of business and in substantially the same manner as previously conducted; (ii) use its commercially reasonable efforts to preserve intact its current business organization, keep available the services of its officers and employees and maintain its relations and good will with suppliers, customers, employees, agents and others with relationships with the Company; and (iii) pay its debts and taxes when due (subject to good faith disputes over such debts and taxes).

14. **No Third Party Beneficiaries**. Except as specifically set forth herein, nothing herein is intended or shall be construed to confer upon any person or entity other than the parties hereto

and their respective successors and permitted assigns any rights or remedies under or by reason of this Letter.

15. **Headings**. The headings of the various Sections of this Letter have been inserted for reference only and shall not affect in any way the meaning or interpretation of this Letter.

16. **Counterparts**. This Letter may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Letter and all of which, when taken together, will be deemed to constitute one and the same agreement. Delivery of an executed counterpart of this Letter, by facsimile, by electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Letter.

17. **No Liability**. The terms contained in this Letter are general in nature. With the exception of Sections 5 through 17, which each of the parties acknowledges will be binding on it (the "Binding Provisions"), this Letter is not a binding agreement, but merely an effort to outline the general terms and conditions under which Purchaser and Seller can work towards mutually acceptable Definitive Agreements. This Letter is written with the understanding that all negotiations hereinafter will be on the basis that no party to the negotiations will be bound by any agreement, action or representation (except the Binding Provisions) until negotiations have been concluded and Definitive Agreements have been executed covering all matters relevant to the Proposed Transaction. The expenditure of funds by any party or the undertaking of any action to implement any agreement will not be regarded as partial performance of a binding agreement or entitle the party expending funds or taking action to any right to assert reimbursement for damages. This Letter is intended to be an expression of the willingness of Purchaser and Seller to continue to negotiate to finalize the Definitive Agreements, but (except for the Binding Provisions) is no more than an expression of such willingness and no action, representation or promise shall create any liability or obligation whatsoever unless and until the Definitive Agreements have been executed by the parties.

- [*Signature page follows*]

If the foregoing terms are acceptable to you as the basis for the Proposed Transaction, please confirm the same by executing a copy of this Letter where indicated below and forwarding it to us.

Very truly yours,

[FRANBUYERCO], a Delaware corporation

By: ____
[Name of Representative], [Title]

AGREED AND ACCEPTED
this ____ day of _________ 2017

[FRANSELLERCO]

By: _____________________________

Name: ___________________________

Title: ____________________________

EXHIBIT 3

A Sampling of Private Equity Funds Interested in Franchising

1. **Oak Hill Capital Partners**
2. **TZP Group**
3. **Center Partners**
4. **TSG Consumer Partners**
5. **Roark Capital**
6. **Sentinel Capital**
7. **Levine Leichtman Capital Partners**
8. **Catterton Partners**
9. **Capital Spring**
10. **Brookwood Associates**
11. **Apollo Global Management**
12. **Starboard Capital Partners**
13. **Halifax Group**
14. **Harvest Partners**
15. **The Riverside Company**
16. **Argosy Private Equity**

EXHIBIT 4

Basic Due Diligence Checklist

Due Diligence Checklist

The following is a checklist of documents and information that may be requested by [FranBuyerCo] in connection with its due diligence investigation of a possible purchase of [Target Company]. In the case of documents, you will be expected to provide copies of executed originals, if available.

All references herein to the "Company" refer to [Target Company] and each subsidiary corporation or other business entity in which it holds a controlling interest.

I. Corporate

a. Certificate of Incorporation of the Company.

b. By-Laws of the Company.

c. Minutes of meetings of the stockholders, boards of directors and committees of the boards of directors of the Company conducted since January 1, 2005; and agenda materials or other written material (including budgets, forecasts and financial information) sent to directors in connection with board or committee meetings.

d. All materials sent or furnished to shareholders by the Company during the last three years.

e. Corporate record books, including organizational documents, all agreements relating to prior or future issuances of the Company's capital stock (e.g., stock purchase agreements, subscription agreements and warrants), and all Board of director (including committee) and shareholder meeting minutes.

f. Schedule of ownership of capital stock, including copies of all stock certificates, and a copy of the Company's complete stock ledger.

g. Corporate organization chart and other information identifying each subsidiary, including percentage ownership by the Company and its affiliates for non-wholly owned subsidiaries.

h. Agreements, memoranda, prospectuses or offering circulars relating to offers or sales of securities and loans of the Company (including equity-based securities and warrants).

i. Any registration rights agreements, shareholder agreements, voting trusts, proxy agreements, escrow agreements or similar arrangements, including descriptions of any oral arrangements.

j. Any pledge documents pursuant to which shareholders have pledged the securities of the Company to a third party.

k. Any agreements relating to preemptive rights or other preferential rights of shareholders.

l. Any agreements restricting the sale or other disposition of capital stock.

m. Schedules of all consents, novations, authorizations, waivers and/or approvals required to complete the proposed transaction, whether pursuant to a contract, permit, applicable law or otherwise.

n. Any agreements or plans concerning outstanding or proposed stock options, warrants or rights, including any employee stock ownership plans.

II. Disclosure Documents and Registration Filings

a. All disclosure documents which have been used by the Company during the last three (3) years in any state including, the District of Columbia and Puerto Rico. Provide both a clean copy and a blacklined copy of the changes from year to year.

b. All records relating to filings for registration or exemption from registration in any state.

c. All comment letters or other correspondence received by the Company during any registration or renewal period.

d. All registration or renewal approval letters received by the Company.

e. Copies of all information provided to counsel to assist in the creation or updating of the franchise disclosure documents.

f. Copies of all marketing or advertising materials which have been filed with the states and any responses or acknowledgements of registration received relating to the marketing or advertising.

g. All correspondence with the Federal Trade Commission ("FTC"), any state regulators or any other government agencies relating to the franchise offering documents, marketing or advertising, or any other issue relating to the operation of the Company.

III. Franchise Agreements

a. Executed copies of all current franchise agreements, including any addenda or exhibits to the agreement, whether domestic or international.

b. All franchise agreements used over the last three (3) years. For each provide a clean copy and a blacklined copy indicating changes from year to year.

c. A list of any franchisee or subfranchisee who has signed a non-standard franchise agreement. Include which provisions differ from the standard version.

IV. Franchise System

a. List of all current franchisees or subfranchisees. For each provide (i) name, address and contact number, (ii) effective date of the franchise agreement, (iii) expiration date of franchise agreement, (iv) the territory, and (v) list of all guarantors including contact numbers.

b. For all current franchisees or subfranchisees provide copies of any notice of default or other correspondence sent by the Company during the term of the franchise agreement.

c. List of all franchisees who have either canceled the franchise agreement or been terminated from the system during the last three (3) years. For each provide (i) name, address and last known contact information, (ii) reason for cancellation or termination, and (iii) date of cancellation or termination.

d. List of all prospective franchisees who have contacted the company over the last twelve months. Indicate whether any of these prospective franchisees has been disclosed, if so, provide the receipt for disclosure. Provide any indications of interest that were received by the Company by a prospective franchisee.

e. All system wide correspondence which has been sent by the company since January 1, 20___.

f. Copies of all manuals provided to franchisees for the last three (3) years.

g. Copies of all training materials used or presented to franchisees including a list of where or how the materials have been presented.

h. Copies of all training materials provided to a franchisee to help train the franchisee's employees.

i. Copies of all materials published or made available in any way to franchisee's employees.

j. All materials used to train field support staff.

V. Litigation and Governmental Proceedings and Regulations

a. List of all pending and known to be threatened litigation, copies of active litigation files involving the Company (including letters asserting claims and pleadings), and schedule of insurance available with respect to such actions, indicating whether any insurer has disclaimed coverage. With respect to each action, identify legal counsel representing the Company and an estimate of the probable outcome.

b. List of prior litigation involving the Company since January 1, 2015 and description of disposition, including list of settlements and negotiated waivers of rights.

c. Consent decrees, judgments and other orders of courts or governmental bodies, and settlement agreements involving the Company.

d. Notices, letters, and other written communications involving the Company alleging violations of or requesting compliance with any laws or regulations.

e. Copies of any termination letters, settlement agreements, releases or other agreements entered into by the Company within the last three (3) years.

f. Any notices, letter, and other written communication with the Federal Trade Commission ("FTC") or state attorney generals.

g. Any notices, letter, and other written communication with government agencies (whether state or federal).

h. Description of any litigation relating to the intellectual property rights of the company including, but not limited to, any oppositions that have been filed with the Trademark Trials & Appeals Board, and state or federal court filings.

VI. General Information

a. Press releases of the Company since January 1, 20__.

b. Reports concerning the Company prepared by consultants and financial advisors to the Company.

VII. Intellectual Property

a. Detailed schedule of all registrations and applications for registration for any intellectual property owned by the Company or used in its businesses, such as patents, trademarks, copyrights, domain names, etc.

b. Agreements relating to proprietary rights (patents, trademarks, service marks, trade names, corporate names, copyrights, domain names, software, etc.) of the Company, including royalty agreements and licensing agreements with the Company as licensor or licensee.

c. A sample copy of any patent/invention assignment agreement or agreement involving business conduct that employees are required to sign.

d. Description of possible or potential infringement by third parties on the intellectual property rights of the Company or possible or potential infringement by the Company on intellectual property rights of third parties, including documentation reflecting any proceedings or communications regarding the same.

e. Description of, and contracts pertaining to, the ownership and location of all software code and database designs used by the Company.

f. Description of data processing system (i.e., hardware configuration, system software and major application software, networks, etc.) used by the Company.

g. Description of all information systems consultants used over the last year, including name, company, project and current state of project.

VIII. Environmental

a. Remediation cost estimates concerning the facilities or operations of the Company, including any reports or presentations on environmental matters to the Board of Directors, or any subcommittee thereof, of the Company.

b. To the extent not addressed in Section IV, letters from lawyers, auditors, accountants, and any internal memoranda, regarding all pending or threatened legal or administrative proceedings concerning environmental matters for the most recent three years.

c. Environmental capital expenditures, expenses and reserves (with breakdown by facility and/or matter) for fiscal years ended December 31, 2015 and 2016, and such estimated capital expenditures for fiscal years 2013 through 2017.

d. Information regarding the existence of asbestos-containing materials (***"ACM"***) located at Company facilities, including a description of any required or planned abatement or removal of ACM and estimated costs thereof.

e. A list of all foreign, federal, state or local notices of violations, penalties and other enforcement actions, including consent decrees and any matters involving new source review or new source performance standards, taken against the Company with respect to the violation of any environmental law or permit. This information should include the date of enforcement action, name of the responsible authority, enforcement action taken, and current status of the matter.

f. A description of any releases or spills of hazardous materials from, and any investigation or remediation of contamination at, any currently or formerly owned or operated properties, including any related enforcement actions, third-party claims and cleanup activities.

g. List and description of any notice of potential liability under Superfund or analogous state law by government authorities or private parties. Include the Company's estimated or agreed upon allocation of liability and estimated total cost of cleanup at the site.

h. Copies of any indemnification agreements (and related schedules) entered into by or on behalf of the Company in connection with known or contingent

environmental liabilities arising from the acquisition or disposition of any properties, facilities or leases.

i. Description of any proposed environmental legislation or regulations or existing legislation or regulations not yet effective, including the requirements under the Federal Clean Air Act, that are reasonably likely to have a significant impact on the Company's operations.

j. List of all material environmental permits issued by any environmental agency and all material reports under environmental statutes or rules.

k. Cost estimates for investigation and remediation of environmental contamination at sites where the Company is potentially responsible for remediation and the anticipated schedule of future remediation activities.

IX. Financial Matters

a. Review of Auditor Workpapers

1. Audit and tax workpapers of accountants relating to the fiscal years ended December 31, 2014, December 31, 2015 and December 31, 2016.

b. Financial Statements

1. Detailed internal annual financial statements, broken down by operating segment and/or division, for the fiscal years ended December 31, 2014, 2015 and 2016. This should include budget to actual comparisons, if available, with any related management discussion of results of operations. Provide a breakdown of selling, general and administrative (SG&A) expenses by function.

2. Detailed monthly internal financial statements for the fiscal years ended December 31, 2014, 2015 and 2016, including budget to actual comparisons, with any related management discussion of results.

3. Copies of internal auditor or outside auditor's reports and/or management letters for the fiscal years ended December 31, 2014, 2015 and 2016. Include management's response to above.

4. All material presented or delivered by outside auditor to the audit committee or its equivalent since January 1, 2014.

5. Copies of any debt compliance letters provided by the Company and supporting calculations.

c. Projected Financial Information

1. Budget for the fiscal year ending December 31, 2017, broken down by operating segment and/or division. Provide a breakdown of SG&A expenses by function.

2. Forecasted financial statements and cash flows for the fiscal years ending December 31, 2018, 2019, 2020 and 2021 by operating segment and/or division. Include projected working capital requirements, including short-term borrowings and letters of credit.

3. Copies of any current strategic plans, business plans for external consultants, reports on long range planning, product development, market research, pricing or data processing.

4. Capital spending requirements for the fiscal years ending December 31, 2018, 2019, 2020 and 2021, with list of major capital projects.

d. Tax Information

1. Copy of federal tax returns for 2012, 2013, 2014, 2015 and 2016 (and 2017, to the extent available).

2. List of states and foreign jurisdictions in which Company does business and a copy of returns for each such jurisdiction for 2012, 2013, 2014, 2015 and 2016 (and 2017, to the extent available).

3. Description of any changes in accounting policy for tax purposes for last 10 years, and a copy of any related filing with the IRS.

4. Copies of private letter rulings, closing agreements and similar documents, if any.

5. Status of federal and state tax examinations, and a copy of any revenue agent reports received in prior examinations.

6. Copies of all correspondence with federal, state and foreign taxing authorities for 2012, 2013, 2014, 2015, 2016 and 2017.

7. Tax workpapers (tax provision & tax return) for 2012, 2013, 2014, 2015 and 2016 (and 2017, to the extent available).

8. Copies of any tax sharing or tax indemnity arrangements with any person.

9. Any material agreements evidencing tax arrangements between the Company and any domestic or foreign government.

10. List of any required tax filings that have not been completed on time.

11. Note the status of any current tax examinations being conducted in foreign jurisdictions, if applicable. Note whether any potential foreign tax exposures exist.

12. Description and tax analysis of previous mergers, acquisitions, divestitures, restructurings and other similar transactions.

13. Description of any consolidated, combined or similar group of which the Company has been a part.

e. General

1. Representation letters of management of the Company.

2. Analysis of working capital requirements for the fiscal years ended December 31, 2015, 2016 and 2017, including monthly outstanding loan and letter of credit balances.

3. List of major suppliers of the Company, products purchased and availability of raw materials.

4. List of key vendors which the franchisees are required to make purchases from including a list of the items which are required to be purchased.

5. List of key vendors from which franchisee’s may purchase from including a list of the items which franchisee’s may purchase.

6. List of principal competitors of each of the Company’s principal divisions.

7. Organization chart and brief resumes of key management personnel of the Company; summary of significant employment or other compensation agreements.

8. Schedule of current insurance policies (including liability, casualty, directors’ and officers’ worker’s compensation and life insurance), listing coverages, carriers, limits, policy terms and premiums.

9. Summary of management information systems for operations and accounting, with corresponding dates of implementation and/or major upgrades, and names of providers.

10. Review of current accounting reserves, policies and trends analysis.

f. Other Analysis

1. Amount of accounts receivable and aging and related reserves as of December 31, 2015 and 2016. Provide reconciliation to the general ledger for current period.

2. Amount of inventory and aging and related reserves as of December 31, 2015 and 2016. Provide reconciliation to the general ledger for current period.

3. Estimate of value of any assets or potential liabilities not on the balance sheet.

4. Schedule of any unusual or non-recurring items included in income for the fiscal years ended December 31, 2015 and 2016.

5. Review of current reserves (e.g., inventory, A/R, tax), policies and trends analysis.