

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

**HB3, LLC** )  
6115 McNaughten Center )  
Columbus, Ohio 43232 )

Plaintiff, )

v. )

**FOX'S FOOD LLC** )  
c/o FRG Enterprises LLC )  
165 North Merkle Road )  
Columbus, Ohio 43209, )

and )

**FRG ENTERPRISES, LLC** )  
c/o OLR Agency, Inc. )  
35 North Fourth Street, Suite 100 )  
Columbus, Ohio 43215, )

and )

**SAMMY'S BAGELS, LLC** )  
c/o OLR Agency, Inc. )  
35 North Fourth Street, Suite 100 )  
Columbus, Ohio 43215, )

and )

**JEREMY FOX** )  
165 North Merkle Road )  
Columbus, Ohio 43209, )

and )

**RONALD FOX** )  
165 South Merkle Road )  
Columbus, Ohio 43209, )

and )

**JOHN DOES 1-10** )  
Addresses Unknown )

Defendants. )

CASE NO.

JUDGE

**JURY DEMAND ENDORSED HEREON**

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## **VERIFIED COMPLAINT**

For its Verified Complaint against Defendants Fox's Food LLC ("Fox's Food"), Sammy's Bagels, LLC ("Sammy's"), FRG Enterprises, LLC ("FRG"), Jeremy Fox ("Fox") and Ronald Fox ("Ronald Fox") (collectively, "Defendants"), Plaintiff HB3, LLC ("HB3") hereby states as follows:

### **PARTIES, JURISDICTION AND VENUE**

1. Plaintiff HB3 is an Ohio limited liability company with its principal place of business in Franklin County, Ohio. HB3 operates a retail and wholesale bagel, kosher bakery, and deli business under the "Block's Hot Bagels" and/or "Block's Bagels" name (hereinafter "Block's"). Block's has become known throughout Ohio for its fresh, authentic bagels.

2. Fox's Food is an Ohio limited liability company with its principal place of business in Franklin County, Ohio. During relevant times, beginning in September 2016, Fox's Food has operated first one then two Block's retail locations, in Bexley, Ohio and in Columbus's North Market, under a License and Supply Agreement with HB3 ("Supply Agreement"), attached as Exhibit 1 hereto.

3. FRG is an Ohio limited liability company with its principal place of business in Franklin County, Ohio.

4. Sammy's is an Ohio limited liability company with its principal place of business in Franklin County, Ohio.

5. Fox and Ronald Fox are individuals residing in Franklin County, Ohio.

6. Defendant Fox owned and controlled Defendant Fox's Food at all relevant times.

7. Defendant Ronald Fox guaranteed certain obligations of Fox's Food to HB3.

8. Defendant Fox also owns and controls Defendant Sammy's.
9. Defendant Fox also owns and controls Defendant FRG.
10. This Court has personal jurisdiction over all Defendants.
11. Venue is proper in this Court pursuant to Civ.R. 3(C)(1), (2), (3), and (5), as some of the Defendants reside in Franklin County, some of the Defendants' principal places of business are in Franklin County, Defendants conducted activity giving rise to HB3's claims in Franklin County, and the property and restaurant locations at issue are located in Franklin County, Ohio.

### **FACTS COMMON TO ALL COUNTS**

#### **Block's Bagels and the Supply Agreement**

12. HB3 is owned by Harold Block ("Block").
13. In 1967, Block opened a small bagel shop under the "Block's" name in Columbus, using recipes provided to him by an uncle who had a bakery in New York City. "Block's" has become synonymous with traditional Jewish water bagels in Columbus.
14. Harold Block, now 89, is still actively running the day-to-day business of HB3 where his wife, children and grandchildren have all worked over the years.
15. In 2016, HB3 operated a Block's Hot Bagels production and retail facility at McNaughten Center in Columbus, Ohio (the "McNaughten Store"). HB3 also operated a Block's Bagels location on Broad Street, near Bexley, Ohio at 3415 E Broad Street (the "Original Broad Street Store").
16. At the time, Block was nearing retirement age and considering reducing the amount of time he spent in the business.
17. Defendant Fox was at that time operating a food cart called Short North Bagel and Deli and was buying Block's bagels to service that business.

18. Through conversations among the Blocks, Fox and his father, Defendant Ronald Fox, a plan was made that included HB3 shutting down the Original Broad Street Store and Fox opening up and operating a new Bexley location (the “Bexley Store”) as a licensee.

19. HB3 allowed Fox to use a substantial amount of equipment from the Original Broad Street Store in the Bexley Store. That equipment has never been paid for. The equipment is still in Fox’s possession at the Bexley Store.

20. The list of HB3’s equipment in Fox’s possession is attached as Exhibit 2.

21. Fox formed Defendant Fox’s Food, and HB3 and Fox’s Food entered into the Supply Agreement attached as Exhibit 1 hereto on September 28, 2016.

22. Under the Supply Agreement, Fox’s Food is granted the right to use the “Block’s” name (the “Block’s Name”) and related intellectual property rights (the “License”) in connection with the sale, marketing and distribution of bagels and related baked and deli products at and within a 2-mile radius of the Bexley Store.

23. In exchange, the parties to the Supply Agreement agreed that HB3 is the “exclusive supplier” to Fox’s Food of all bagels and bagel-related products, breads and challahs, desserts, chicken salad, tuna salad, egg salad, and cream cheese (the “Products”), which Products are to be purchased by Fox’s Food at wholesale prices set by HB3.

24. The Supply Agreement also provides for the payment by Fox’s Food to HB3 of a license fee and performance bonus payments.

25. The term of the Supply Agreement is ten years, with nearly four years remaining as of the filing of this Complaint.

26. Under the Supply Agreement, Fox’s Food also had an exclusive option to purchase HB3’s business for an agreed amount, and upon agreed terms (the “Option”).

27. The Option was open for two years following the effective date of the Supply Agreement, during which time Fox's Food could exercise the Option by providing written notice to HB3, along with a proposed asset purchase agreement.

28. Fox's Food did not exercise the Option as required under the Agreement within the two-year period.

29. In connection with the Supply Agreement transaction, HB3, Fox's Food, Fox and Ronald Fox also agreed to enter into supplemental terms (the "Supplemental Agreement"). At the request of Fox, these terms were omitted from the formal Supply Agreement but were nonetheless agreed upon and formed a material inducement to HB3 to enter into the Supply Agreement.

30. Under the Supplemental Agreement, Fox's Food is obligated to pay an ongoing annual license fee for the Bexley Store of \$25,000 for years 3 through 10 (and any extension) of the Supply Agreement.

31. The Supplemental Agreement also memorializes the fact that Fox's Food is in possession of substantial equipment owned by HB3, and that Fox's Food has an obligation to pay to HB3 the fair market price for the equipment.

32. Finally, in addition to other terms, under the Supplemental Agreement, Defendant Ronald Fox guaranteed the payment of the annual license fees and other obligations.

33. In 2019, Fox approached Harold Block's son, Steve Block, of HB3, and proposed expanding the scope of the Supply Agreement to cover a new location at Columbus's North Market. Fox's Food and HB3 reached a further agreement pursuant to which Fox's Food began operating a North Market Block's Bagels location (the "North Market Store"), subject to the terms of the Supply Agreement and Supplemental Agreement. Fox's Food and HB3 agreed that Fox's Food could operate the North Market Store under the Supply Agreement, using the Block's Name, in

exchange for payment of an additional annual license fee of \$12,500.

34. Fox's Food opened the North Market Store in March 2020.

35. Fox has sent repeated communications acknowledging the license fees since agreeing to pay them in 2016 and 2020.

### **Defendants' Failures to Perform their Obligations**

36. Paragraph 5 of the Supply Agreement states as follows:

PERFORMANCE BONUS PAYMENTS: Annually, for the duration of this Agreement, Licensee shall pay Licensor a bonus payment ("Performance Bonus") equal to 5% of the gross revenue in excess of \$500,000, with a ceiling of \$1,000,000, in annual sales generated from the Bexley Store. The first annual payment of the Performance Bonus shall be paid twelve (12) months after the opening of the Bexley Store. Any payment of this Performance Bonus shall be subordinate to any of Licensee's obligation to make rental payments, tenant improvement payments and any payments due on the Huntington Bank Small Business Loan. If Licensee cannot immediately make payment of the Performance Bonus, Licensor and Licensee shall work out an agreement to make such payment over the course of an agreed upon period, so as to not harm Licensee's ability to conduct Business.

37. Fox's Food's gross revenue has exceeded \$1,000,000 in annual sales generated from the Bexley Store in each year of the Supply Agreement.

38. Defendants have failed to pay any Performance Bonuses.

39. Defendants have further failed to demonstrate to HB3 that Fox's Food "cannot immediately make payment of the Performance Bonus" and has failed to propose any payment plan, despite numerous requests from HB3 for financial information and a proposed plan for payment.

40. Defendants have further failed to pay annual license fees for the Bexley Store and the North Market Store.

41. Fox's Food also failed to meet its obligation to look to HB3 as the exclusive provider of the Products, and instead has sourced and sold, under the Block's Name and otherwise, products it procured elsewhere, in violation of the Supply Agreement.

42. Fox's Food has continued to use equipment owned by HB3, including without purchasing the equipment and without compensating HB3 for its rental value.

**Fox's Purchase of Sammy's and Efforts to Get Out of the Supply Agreement**

43. On October 18, 2021, unbeknownst to HB3, Fox formed a new Ohio limited liability company called Sammy's Bagels, LLC.

44. Sammy's was formed in preparation for the purchase by Fox of the assets of Sammy's Foods LLC ("Sammy's Foods"), a direct competitor of HB3, which operated a bagel and deli business in competition with HB3, under the name "Sammy's New York Bagels."

45. Upon information and belief, the purchase by Fox of Sammy's Foods took place in February or March 2022.

46. Upon information and belief, Fox used cash generated by Fox's Food to assist in funding the purchase of Sammy's Foods LLC, instead of paying amounts owed to HB3.

47. As Fox was working toward a deal to purchase Sammy's Foods, Fox began in bad faith to attempt to find a way to terminate the Supply Agreement.

48. First, Fox claimed in December 2021 that HB3 had gratuitously agreed that he could walk away from the Supply Agreement if HB3 and Fox's Food could not reach agreement for Fox's Food to buy HB3 within 90 days. That claim was false, and Fox did not walk away from the Supply Agreement on the basis of any such made up claim.

49. Then, although Fox's Food had a profitable business and was fully able to pay its debts as they came due, Fox claimed through his attorney that he had a "negative equity position" and could terminate the Supply Agreement whenever he wanted.

50. HB3 asked for verification of the claimed financial condition of the company, but Fox did not provide any.

51. Fox's claim that Fox's Food had a negative equity position was false when made, and Fox did not terminate the Supply Agreement on that basis.

### **Fox's Fraudulent Transfer**

52. Understanding he had no valid basis for terminating the Supply Agreement, Fox contrived a transparently fraudulent plan.

53. The plan involved forming a new company, causing Fox's Food to transfer its assets to the new company, operating the Bexley Store and the North Market Store under a new name, and then claiming to HB3 that Fox's Food was no longer a "going concern" (*i.e.*, out of business, *see infra* ¶ 59).

54. To accomplish this obvious sham, Fox formed Defendant FRG in July 2022.

55. If FRG has any members other than Fox, they conspired with Fox to effectuate the fraudulent transfer of assets from Fox's Food to FRG.

56. Fox then used his control of Fox's Food and FRG to cause a purported transfer of all of Fox's Food's assets to FRG on or about September 30, 2022.

57. Upon information and belief, Ronald Fox had knowledge of and participated and/or acquiesced in the purported transfer of Fox's Food's assets to FRG.

58. On October 2, 2022—before notifying anyone at HB3—Fox posted to a Bexley, Ohio, Facebook group that "officially the Blocks Bagels Bexley location and North Market location are closed. Both locations will now be Fox's Bagel and Deli...."

59. On October 3, 2022, counsel for Fox notified counsel for HB3 that "Fox's Foods is no longer a going concern," that Fox had made a "decision ... to sell the existing operating assets of Fox's Foods (sic) LLC," and that the purchaser "will now be operating the Bexley and North Market stores as 'Fox's Bagels and Deli' without any affiliation with HB3."

60. Defendants have not paid HB3 from any proceeds of the purported sale for amounts owed to HB3 for any licensing fee payments, performance bonus payments, or equipment payments.

**FRG is a “Mere Continuation” of Fox’s Food**

61. FRG is a mere continuation of Fox’s Food, intended to carry on the business undertaken by Fox’s Food, with the goal of avoiding Fox’s Food’s obligations to HB3.

62. Fox controls the management and operation of FRG, as he did with Fox’s Food.

63. FRG operates in the same locations in which Fox’s Food operated, using the same equipment (much of which belongs to HB3).

64. FRG employs the same core of employees who were employed by Fox’s Food.

65. FRG opened its operations on the day after Fox’s Food closed.

66. FRG operates the two locations in the same manner as Fox’s Food operated under the Block’s name including nearly identical menus and product offerings.

67. The phone numbers for the two locations remained the same after Fox’s Food closed.

68. FRG sells the same types of products as the Products, but now sources at least some of them from Fox’s competing company, Sammy’s.

69. FRG advertises its Fox’s Bagel & Deli as “[f]ormerly known as Block’s Bagels” and claims that it sells “all of their most popular classic offerings enjoyed for generations at their Bexley location.”

70. The sole purpose of creating FRG was to avoid the obligations of Fox’s Food to HB3.

**The Immediate and Irreparable Harm to HB3 of Defendants’ Purported Abandonment of the Ongoing Supply Agreement**

71. HB3 employs 34 employees in its production and retail operations.

72. The current production operation was built to support two or more locations.

73. In reliance on the promises of Fox and Fox's Food in the Supply Agreement, HB3 decided not to open a new location in the Bexley area after closing the Original Broad Street Store.

74. Defendants' abrupt claim that they are immediately ceasing to make purchases under the Supply Agreement and, instead, are operating the Bexley Store and the North Market Store "without affiliation with HB3" leaves HB3 without any means to restructure its operation to remain viable without the revenue stream from the Supply Agreement.

75. At the time of Defendants' notice to HB3 of its claimed abandonment of the Supply Agreement, HB3 had already purchased \$10,000 in perishable foods in preparation for its continued production of Products to meet its obligations under the Supply Agreement. This food is non-returnable and will be useless within 14 days.

76. Sammy's now provides bagels to FRG.

77. Because Sammy's is controlled by Fox and Fox is a member of Sammy's, Sammy's is aware of the Supply Agreement between HB3 and Fox's Food.

78. If the Supply Agreement is not enforced against FRG, HB3 will be forced to terminate its operation.

**COUNT ONE – VIOLATION OF OHIO UNIFORM FRAUDULENT TRANSFER ACT  
AGAINST FOX, FOX'S FOOD, AND FRG**

79. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

80. HB3 is a creditor of Fox's Food as that term is defined in R.C. 1336.01.

81. Fox's Food and Ronald Fox are debtors as that term is defined in R.C. 1336.01.

82. FRG is an "insider" as that term is defined in R.C. 1336.01.

83. FRG has knowledge of all relevant facts and acted other than in good faith.

84. Fox's intention to cause Fox's Food to transfer all its assets to FRG was concealed from HB3, including through representations of Fox's counsel as recently as September 28, 2022, suggesting that Fox's Food was gathering and would produce requested financial information so that a payment plan could be worked out.

85. HB3 now understands such statements were merely intended to give the false impression that Fox was interested in resolving the outstanding debts, all in an attempt to delay while the sham transaction could take place unabated.

86. Before the transfer of assets to FRG, Fox's Food had been threatened with suit for non-payment of the amounts it owed to HB3.

87. However, in reliance on Fox's representations, HB3 continued to attempt to work cooperatively, and did not take legal action.

88. According to Fox, the transfer was of substantially all of the assets of Fox's Food.

89. The transfer of assets occurred shortly after Fox's Food became obligated to pay another year's performance bonus, and shortly before it was obligated to purchase and pay for additional Products under the Supply Agreement.

90. The transfer of Fox's Food's assets to FRG is fraudulent as to HB3 because the transfer was made with actual intent to hinder, delay, or defraud HB3.

91. Upon information and belief, the transfer of Fox's Food's assets to FRG was made without receiving a reasonably equivalent value in exchange.

92. Upon information and belief, Fox's Food became insolvent as a result of the transfer.

93. HB3 is entitled to avoid the transfer of Fox's Food's assets to FRG to the extent necessary to satisfy HB3's claims.

94. In order to adequately satisfy HB3's claims, and to prevent irreparable harm to HB3, including but not limited to, causing HB3 to go out of business, the Supply Agreement must continue in force and effect, and FRG must be restrained and enjoined from purchasing the Products from any other supplier, including but not limited to Sammy's.

95. Immediate injunctive relief is necessary to prevent Fox from using Fox's Foods and FRG to perpetuate further fraudulent conduct and dissipation of funds and assets.

96. HB3 is entitled to the funds and assets traced to the transferee FRG (and Fox via alter ego, *see infra*) and to avoidance of the transfers at issue.

97. Accordingly, HB3 is entitled to an Order: freezing the funds and assets of Fox, Fox's Food and FRG; attaching the transferred funds and assets and other funds and assets of Fox and FRG, enjoining further disposition by any Defendants of the funds and assets of Fox, Fox's Food and FRG, including but not limited to any proceeds of the transfer; enjoining the abandonment by Fox, Fox's Food and FRG of the Supply Agreement; appointing a receiver to take possession of the funds and assets of Fox, Fox's Foods and FRG, including but not limited to, the assets transferred; and any other relief that the circumstances may require.

**COUNT TWO – BREACH OF CONTRACT AGAINST FOX, RONALD FOX, FOX'S  
FOOD, AND FRG**

98. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

99. The Supply Agreement, including as supplemented by the Supplement Agreement, is a binding and enforceable contract between and among HB3, Fox's Food and Ronald Fox as guarantor.

100. Additionally, as a mere continuation of Fox's Food, FRG is bound by Fox's Food's contractual obligations, including the continuing obligation to look to HB3 as the exclusive supplier of the Products for both the Bexley Store and the North Market Store, and the obligations to pay the unpaid performance bonuses and license fees, and to pay for the equipment owned by HB3 in use by FRG.

101. FRG is also bound by Fox's Food's contractual obligations because the claimed asset sale to FRG is fraudulent in fact.

102. Fox is also bound by the contractual obligations as the alter ego of both Fox's Food and FRG, *see infra*.

103. Fox's Food, FRG and Ronald Fox have breached the agreements by, among other things, failing to pay performance bonuses owed under the Supply Agreement, failing to pay license fees owed under the Supplemental Agreement, failing to pay for the equipment as set forth in the Supplemental Agreement, and purporting to abandon the Supply Agreement.

104. HB3 has performed all of its contractual obligations to Defendants.

105. HB3 has been damaged by Defendants' breaches of contract in the amount of the unpaid past performance bonuses, which currently total \$150,000; unpaid license fees, which currently total \$137,500; unpaid equipment costs, in an amount to be determined at trial, but which are reasonably estimated to total \$150,000; and unpaid interest on those amounts.

106. HB3 will also suffer monetary harm in connection with the purported abandonment of the Supply Agreement, in the amount of lost future profits and lost future performance bonuses, including but not limited to, forcing HB3 out of business.

107. Sales from HB3 to Fox's Food in 2020 and 2021 were more than \$400,000 annually.

108. HB3 will also suffer immediate and irreparable harm in connection with the purported abandonment of the Supply Agreement because it will not be able to continue in operation if the Supply Agreement is not enforced against FRG, resulting in the loss of employment for all of HB3's employees.

**COUNT THREE – ALTER EGO AGAINST FOX**

109. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

110. Fox is liable for the obligations of Fox's Food, FRG and Sammy's.

111. Fox exercises complete control over Fox's Food, FRG and Sammy's, which are mere facades for the operations of the dominant owner, Fox.

112. Fox used his control and domination over Fox's Food and FRG to commit a fraud or a dishonest and unjust act in relation to Fox's Food's creditor, HB3.

113. Fox used his control and domination over Sammy's to cause it to participate in, aid and abet Fox's Food's and FRG's fraud or dishonest and unjust act.

114. Upon information and belief, Fox completely ignored corporate formalities, including but not limited to, permitting the transfer of Fox's Food's assets to FRG for little or no remuneration.

115. If Fox's Food was undercapitalized, it was due to Fox's failure to ensure sufficient funds remained in the company as a result of Fox's distributions of funds to himself and as a result of causing Fox's Food's fraudulent transfer of assets to FRG.

116. Fox transferred all Fox's Food's assets, restaurant equipment (even equipment owned by HB3), fixtures, and furniture to FRG without adequate remuneration.

117. Fox retained the core employees, same phone number, and restaurant location after making the fraudulent conveyance to FRG for inadequate consideration.

118. Fox diverted funds or other property of Fox's Food and FRG to his personal use.

119. Fox caused Fox's Food and FRG to fail to maintain corporate records.

**COUNT FOUR – CONVERSION AGAINST FOX, FOX'S FOOD AND FRG**

120. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

121. HB3 has a right to possession of Fox's Food's assets, which were improperly transferred to FRG as part of the fraudulent conveyance, to be used to pay the existing liabilities owed to HB3 for performance bonus payments and licensing fee payments.

122. HB3 has a right to possession of Fox's Food's equipment (most of which is owned by HB3) that was improperly transferred to FRG as part of the fraudulent conveyance.

123. Fox's Food's and FRG, dominated and controlled by Fox, conspired to transfer Fox's Food's assets and equipment (most of which is owned by HB3) to FRG in exchange for inadequate consideration, depriving HB3 of its rights and possession of the assets.

124. FRG maintains improper possession of Fox's Food's assets and equipment and refuses to pay HB3 for the existing liabilities owed to HB3 for performance bonus payments and licensing fee payments or for the equipment owned by HB3, which conduct is inconsistent with HB3's rights.

125. As a result of the conversion, HB3 has suffered damages and continues to suffer damages.

**COUNT FIVE – TORTIOUS INTERFERENCE AGAINST SAMMY'S AND FOX**

126. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

127. HB3 has valid and enforceable contracts with Fox's Food.

128. Fox (and Sammy's), as owner and operator of Sammy's, Fox's Food, and FRG, knew of the HB3 contracts with Fox's Food.

129. Fox and Sammy's acted intentionally and improperly to cause Fox's Food and now FRG to breach their contract with HB3 and obtain Products from Sammy's instead of HB3 in direct contravention of the HB3/Fox's Food agreements.

130. HB3 has been injured by Fox's and Sammy's continued tortious interference, and if their tortious conduct is permitted to continue, HB3 will be irreparably harmed and forced out of business.

**COUNT SIX – TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION AGAINST ALL DEFENDANTS**

131. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

132. Ohio Civ. R. 65 permits the Court to issue preliminary injunctive relief under the circumstances set forth in this Complaint.

133. HB3 submits the specific facts referenced in this Complaint that justify injunctive relief.

134. Defendants' fraudulent and tortious conduct and breach of contracts jeopardizes HB3's continued operations to the extent that, if Defendants are permitted to continue the tortious conduct and breaches described herein, HB3 will be forced to close its business.

135. HB3 has a substantial likelihood of success on the merits on the claims set forth above.

136. HB3 will sustain irreparable harm if Defendants' wrongful conduct is permitted to continue. Actual damages will be impossible to ascertain and/or adequately redress if HB3 is forced to go out of business as a result of Defendants' continued wrongful conduct. Thus, in addition to any or all other remedies provided by law or otherwise, HB3 is entitled to an injunction, without necessity of posting bond, to prevent the continued wrongful conduct.

137. For these reasons and those more fully described in this Complaint, HB3 is entitled to a preliminary injunction to prevent irreparable harm and preserve the status quo.

**COUNT SEVEN – DECLARATORY JUDGMENT AGAINST FOX, FOX’S FOOD, FRG, AND RONALD FOX**

138. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

139. HB3 has contractual rights as part of the Supply Agreement and the Supplemental Agreement, including but not limited to, the right to continued licensing fee payments, performance bonus payments, and continued supply contract payments for all Products.

140. It is anticipated that Defendants Fox, Fox’s Food, FRG and Ronald Fox will dispute the agreements and the requirements expressed therein.

141. HB3 seeks a declaration of rights, duties, and liabilities of Defendants Fox, Fox’s Food, FRG and Ronald Fox under the Supply Agreement and Supplemental Agreement, which the Court may issue under Ohio law.

142. As a result of the foregoing, a justiciable controversy exists between HB3 and Defendants Fox, Fox’s Food, FRG and Ronald Fox regarding their respective rights, if any, that each party has under the agreements.

143. For these reasons and those more fully described in this Complaint, HB3 is entitled to a declaratory judgment declaring HB3’s right to continued licensing fee payments, performance bonus payments, and continued supply contract payments for all Products.

**COUNT EIGHT – FRAUD AGAINST FOX, FOX’S FOOD, AND RONALD FOX**

144. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

145. HB3 refused to enter the Supply Agreement with and permit the use of the Block's Name by Fox and Fox's Food in 2016 with respect to the Bexley Store without (1) Fox, Fox's Food, and Ronald Fox agreeing to pay an annual license fee of \$25,000 for years three through 10, and (2) a personal guarantee from Ronald Fox that the license fee for the Bexley Store would be paid.

146. HB3 refused to extend the Supply Agreement with Fox and Fox's Food in 2019, with respect to the North Market Store, without Fox and Fox's Food agreeing to pay an annual license fee of \$12,500 and an acknowledgement and affirmance that the terms of the 2016 Supplemental Agreement would be honored, *i.e.*, annual licensing fees would be paid by Fox's Food and that payment would be fully guaranteed by Ronald Fox.

147. Fox, Fox's Food and Ronald Fox made repeated representations that they would pay the annual licensing fees and that Ronald Fox would personally guarantee those fees were paid as part of the transaction in 2016 and the transaction related to the North Market Store in 2019.

148. Those representations were material to the parties' agreements as HB3 refused to enter the agreements without licensing fees and a personal guarantee.

149. Fox's, Fox's Food's, and Ronald Fox's representations were false and intentionally made to mislead HB3 into relying on the false statements and entering agreements with the defendants.

150. HB3 reasonably relied upon the false statements regarding licensing fees and a personal guarantee.

151. Fox, Fox's Food, and Ronald Fox have failed to pay the licensing fees and now refuse to acknowledge the agreement on licensing fees despite the fact that Fox has, several times over the years, acknowledged the existence of the licensing fees.

152. Fox's, Fox's Food's, and Ronald Fox's intentional misrepresentations have caused harm to HB3.

**COUNT NINE – UNJUST ENRICHMENT AGAINST FOX, FOX'S FOOD AND FRG**

153. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

154. Fox, Fox's Food and FRG received benefits from HB3, including but not limited to, the use of Block's Name since 2016, the goodwill and business revenue that resulted from use of the Block's Name, and Block's equipment as detailed in Exhibit 2.

155. HB3 owns the Block's name, the good will that accompanies the name, and the equipment being used by Fox, Fox's Food and FRG and despite repeated representations to the contrary, Fox, Fox's Food and FRG now refuse to pay for use of HB3's property.

156. Under such circumstances, it would be unjust for the defendants to retain the benefit without commensurate compensation.

**COUNT TEN – CIVIL CONSPIRACY AGAINST FOX, FOX'S FOOD, FRG, SAMMY'S AND JOHN DOES 1-10**

157. HB3 realleges herein the allegations contained in each of the preceding paragraphs.

158. Upon information and belief, aware of Fox Food's obligation to HB3 under the Supply and Supplemental Agreements, Fox and John Does 1-10, using Fox's domination and control over Fox Food's, FRG, and Sammy's, acting in concert with those entities and with each

other, conspired to develop a plan for transferring the funds and assets of Fox's Food to others to avoid Fox's Food's obligations to HB3.

159. Upon information and belief, the plan they came up with involved, secretly and without HB3's knowledge, having Fox's Food's funds and assets transferred to FRG (and others), a company Fox created just a few months ago, while Fox's Foods continued to pretend to deal in good faith with HB3 regarding Fox's Food's obligations owed to HB3.

160. Upon receipt of Fox's Food's funds and assets, FRG, through the domination and control of Fox and John Does 1-10 (and others), further fraudulently dissipated Fox's Food's funds and assets by paying funds to its creditors for product Fox's Foods was contractual obligated to purchase from HB3.

161. One of those creditors/transferees of the fraudulent transferred funds and assets is Sammy's, which is a company Fox recently created, which Fox used to purchase Sammy's Foods, a direct competitor to HB3, all unbeknownst and hidden from HB3.

162. The fraudulent transfers, orchestrated by Fox and John Does 1-10, using Fox's Food, FRG and Sammy's, were made with the express intention of avoiding the obligations owed to Fox's Food's creditors, including but not limited to, HB3.

163. The fraudulent transfers each constitute a tort under Ohio law.

164. As a result of these fraudulent transfers, orchestrated by Fox and John Does 1-10, using Fox's Food, FRG and Sammy's, HB3 has suffered damages, including prejudgment interest.

**WHEREFORE**, Plaintiff HB3, LLC respectfully demands the following:

(A) Under the First Cause of Action, judgment against the Defendants Fox, Fox's Food, and FRG for compensatory and punitive damages in an amount in excess of \$25,000.00, to be determined at trial, plus attorney's fees, interest, and costs; attachment

of the Fox Food's assets transferred to FRG and other assets of FRG; an injunction: attaching the transferred funds and assets and other funds and assets of Fox and FRG, enjoining further disposition by any Defendants of the funds and assets of Fox, Fox's Food and FRG, including but not limited to any proceeds of the transfer; enjoining the abandonment by Fox, Fox's Food and FRG of the Supply Agreement; and appointing a receiver to take possession of the funds and assets of Fox, Fox's Foods and FRG, including but not limited to, the assets transferred; and any other relief that the deems just and proper.

(B) Under the Second Cause of Action, judgment against the Defendants Fox, Ronald Fox, Fox's Food, and FRG for compensatory damages in an amount in excess of \$25,000.00, to be determined at trial, plus attorney's fees, interest, and costs.

(C) Under the Third Cause of Action, a finding that Fox is liable as the alter ego, and responsible for the obligations and debts of Fox's Foods, FRG, and Sammy's and liable for compensatory and punitive damages in an amount in excess of \$25,000.00, to be determined at trial, plus attorney's fees, interest, and costs.

(D) Under the Fourth Cause of Action, judgment against the Defendants Fox, Fox's Food, and FRG for compensatory and punitive damages in an amount in excess of \$25,000.00, to be determined at trial, plus attorney's fees, interest, and costs.

(E) Under the Fifth Cause of Action, judgment against the Defendants Fox and Sammy's for compensatory damages in an amount in excess of \$25,000.00, to be determined at trial, plus attorney's fees, interest, and costs.

(F) Under the Sixth Cause of Action, judgment against all Defendants' providing a temporary restraining order and preliminary injunction that preserves the status quo by enforcing the terms of the Supply Agreement and the Supplemental

Agreement against Fox's Food and FRG, and preventing Sammy's continued tortious interference with HB3's contracts.

(G) Under the Seventh Cause of Action, for this Court to declare the rights, status and other legal relations of HB3 and Defendants under the Supply Agreement and the Supplemental Agreement.

(H) Under the Eighth Cause of Action, a finding that Fox, Fox's Food, and Ronald Fox are liable for compensatory and punitive damages in an amount in excess of \$25,000.00, to be determined at trial, plus attorney's fees, interest, and costs.

(I) Under the Ninth Cause of Action, judgment against the Defendants Fox, Fox's Food, and FRG for compensatory damages in an amount in excess of \$25,000.00, to be determined at trial, plus attorney's fees, interest, and costs.

(J) Under the Tenth Cause of Action, a finding that Fox, Fox's Food, FRG, Sammy's, and John Does 1-10 are liable for compensatory and punitive damages in an amount in excess of \$25,000.00, to be determined at trial, plus attorney's fees, interest, and costs.

(K) Such other relief as the Judge deems just and reasonable.

Respectfully submitted,

/s/ James E. Arnold

James E. Arnold (0037712)

Michael L. Dillard, Jr. (0083907)

**ARNOLD & CLIFFORD LLP**

115 W. Main Street, Suite 400

Columbus, Ohio 43215

Tel: 614.460.1600

Fax: 614.469.1134

Email: [jarnold@arnlaw.com](mailto:jarnold@arnlaw.com)

[mdillard@arnlaw.com](mailto:mdillard@arnlaw.com)

*Co-Counsel for Plaintiff HB3, LLC*

*/s/ Loriann E. Fuhrer*

Loriann E. Fuhrer (0068037)

**KEGLER BROWN HILL + RITTER CO., LPA**

65 E. State Street, Suite 1800

Columbus, Ohio 43215

Tel: 614.462.5474

Fax: 614.464.2634

Email: [lfuhrer@keglerbrown.com](mailto:lfuhrer@keglerbrown.com)

*Co-Counsel for Plaintiff HB3, LLC*

**DEMAND FOR JURY TRIAL**

The undersigned counsel for Plaintiff hereby demands a trial by jury on any and all triable issues, such demand being made pursuant to Ohio R. Civ. P. 38.

Respectfully submitted,

*/s/ James E. Arnold*

James E. Arnold (0037712)

*Co-Counsel for Plaintiff*

**VERIFICATION**


STATE OF OHIO                    )  
                                          )  
COUNTY OF FRANKLIN         )

SS: \_\_\_\_\_

I swear that the facts recited in the foregoing, *Verified Complaint* are true to the best of my knowledge.

  
\_\_\_\_\_  
Jason Block  
HB3, LLC, Authorized Agent

SWORN TO BEFORE ME and subscribed in my presence this 12 day of October, 2022.

  
\_\_\_\_\_  
Notary Public  
My Commission expires on:



MEGAN SCHWARZENBERG  
Notary Public, State of Ohio  
My Commission Expires 07-18-2023

## LICENSE AND SUPPLY AGREEMENT

This License and Supply Agreement ("Agreement"), entered into this 28 day of ~~September~~, 2016 (the "Effective Date") by and between Fox's Food LLC, an Ohio limited liability company with offices at 553 W. Third Ave., Columbus, Ohio 43201, (hereinafter called "Licensee") and HB3, LLC, an Ohio limited liability company with offices at 6115 McNewrighten Center, Columbus, 43232 (hereinafter called "Licensor") (collectively, Licensor and Licensee are sometimes referred to herein as the "Parties").

**WHEREAS**, Licensor is a commercial baker and supplier of bagels and related baked and deli products in the Central Ohio area which are marketed under the name "Block's Bagels" (the "Name"); and

**WHEREAS**, Licensee desires to open a retail bagel and deli shop outside Bexley, Ohio (the "Bexley Store"), sell bagels and related baked and deli products supplied by Licensor and to use the Name in the conduct of Licensee's business; and

**WHEREAS**, Licensor desires to supply bagels and related baked and deli products to Licensee and permit Licensee to use the Name in the conduct of Licensee's business upon the terms and conditions set forth herein.

**NOW, THEREFORE**, the Parties agree as follows:

- 1. LICENSE TO USE NAME:** Subject to and on the terms and conditions contained herein, Licensor hereby grants to Licensee, and Licensee hereby accepts, an exclusive and non-transferable right and license to use, within a 2-mile radius of the Bexley Store and on food trucks operated within the Columbus area (these areas collectively referred to as the "Licensed Area"), the Name and related Intellectual Property Rights ("License") during the term of this Agreement in connection with the sale, marketing and distribution of bagels and related baked and deli products (the "Business"). The License granted hereunder includes, but is not limited to, a right to affix the Name and related Intellectual Property Rights to any merchandise or other item, or to any building, sign, or food truck within the Licensed Area, and the right to use the Name in its marketing materials. Licensee shall use the Name for the Business and no other purpose. For purposes hereof, related Intellectual Property Rights shall mean (i) all copyright rights and all other literary property rights associated with the Name, whether or not copyrightable, including any registrations or renewals thereof; and (ii) all trademark, service mark, trade dress and trade name rights associated with the

Name arising under the laws of any jurisdiction, including the goodwill associated therewith.

2. **USE OF LICENSOR DOMAIN NAME(S):** Licensee shall have the right to use Licensor's domain name(s) to establish a web site accessed through the main Block's Bagels website to advertise, promote and/or sell Licensor Products (as defined below) provided Licensee has obtained prior written approval from Licensor. Licensee shall also be permitted to establish its own social media accounts (including but not limited to Instagram, Facebook, Twitter, LinkedIn) distinguished from Licensor's business and to use the Name within such social media accounts. Licensee's use on social media shall not be directed negatively or disparaging in any way toward Licensor.
3. **LICENSED PRODUCTS:** Commencing with the Effective Date and subject to the terms and conditions set forth herein, Licensor shall be the exclusive supplier of the following products ("Products") sold by Licensee in the conduct of its Business:
  - a. Bagels, bagel sticks, bialys;
  - b. In-House Breads and challahs
  - c. In-House Desserts;
  - d. Chicken Salad;
  - e. Tuna Salad;
  - f. Egg Salad; and
  - g. All cream cheese flavors.
4. **LICENSE FEE:** Licensee shall pay Licensor a one-time license fee of \$50,000 ("License Fee") for the use of the Name, Products, and domain names, as described herein, for the term of this Agreement, payable upon execution of this Agreement. If a purchase agreement is entered between Licensee and Licensor regarding the sale of Licensor's Business, Licensor shall credit to Licensee a portion of the License Fee equal to either (1) \$25,000, or (2) an amount equal to \$2,080 multiplied by the number of full months that remain under the second year of this Agreement, whichever is less. Licensor is not obligated to return any portion of the License Fee if this Agreement continues for more than two full years.
5. **PERFORMANCE BONUS PAYMENTS:** Annually, for the duration of this Agreement, Licensee shall pay Licensor a bonus payment ("Performance Bonus") equal to 5% of the gross revenue in excess of \$500,000, with a ceiling of \$1,000,000, in annual sales generated from the Bexley Store. The first annual payment of the Performance Bonus shall be paid twelve (12) months after the opening of the Bexley Store. Any payment of this Performance Bonus shall be

subordinate to any of Licensee's obligation to make rental payments, tenant improvement payments and any payments due on the Huntington Bank Small Business Loan. If Licensee cannot immediately make payment of the Performance Bonus, Licensor and Licensee shall work out an agreement to make such payment over the course of an agreed upon period, so as to not harm Licensee's ability to conduct Business.

6. **CONSULTING SERVICES:** Licensor shall also offer Licensee advice on the development of market research, strategies, development and implementation of annual marketing plans, new product development and modifications to existing product lines, package selection and graphics, product positioning, competitive analyses, development of advertising, and promotional and merchandising strategies, including media selection and management, for the Business ("Consulting Services")
7. **CONSULTING FEE:** In exchange for the Consulting Services, Licensee shall pay Licensor a fee ("Consulting Fee") of \$2,000 per month, for a total of six months. The Consulting Services described above shall begin upon execution of this Agreement, and shall continue for a total of six months. Licensee shall pay Licensor the Consulting Fee at the end of each month of Licensor's Consulting Services, beginning with the first payment one month after the Bexley Store opens and ending with the final payment five months thereafter. If the parties agree, Licensor and Licensee may renew the Consulting Services for an additional six-month term.
8. **LICENSEE COMMISSIONS:** Licensee agrees to use reasonable efforts to identify and refer to Licensor prospective wholesale customers of bagels and related baked and deli products. Licensor agrees to compensate and pay Licensee a commission ("Licensee's Wholesale Commission"), calculated on the basis of gross sales and all sales made by Licensor to wholesale customers referred by Licensee on to Licensor. Licensor and Licensee shall mutually determine Licensee's Wholesale Commission amount payable to Licensee, but such amount shall be 5% of gross sales of each new wholesale account and shall be paid on a residual and ongoing basis for any continued business that the new wholesale customer account generates. Licensee's Wholesale Commission shall be paid monthly by Licensor.
9. **QUALITY STANDARDS; ADVERTISING; PRODUCT EMERGENCIES:**

- a. All Products must be produced, stored, maintained, and transported in strict compliance with all Licensee's quality standards and procedures. All Products must be stored, maintained, and prepared by Licensee in accordance with Licensor's longstanding quality standards. Licensor and Licensee shall at all times comply with all applicable laws and all applicable industry standards, respecting items for human consumption, pesticides and all related matters. Licensor shall consistently apply Good Manufacturing Practices, as that term is defined by law and convention, in all phases of production, packaging, storage and shipment of Products. Licensor and Licensee shall comply with all rules, laws and regulations (including those relating to the labor, manufacture and resale of goods).
- b. Licensor and Licensee, to the extent of their respective involvement in the manufacture and resale of the Products, shall further ensure that, in respect to the product designation and its ingredients, formulation, grade and quality, each Product shall be honestly, truthfully and not misleadingly labeled and advertised, and shall otherwise comply, in every respect, with the labeling, packaging, advertising and other related laws.
- ~~\*~~ c. Licensee shall promptly notify Licensor, in writing, of each complaint, by any individual and/or governmental agency, regarding any Product(s), setting forth, in reasonable detail, all pertinent information known to Licensee in respect thereto.
- d. Licensor shall promptly notify Licensee, in writing, of each complaint, by any individual and/or governmental agency, regarding any Product(s), setting forth, in reasonable detail, all pertinent information known to Licensor in respect thereto
- ~~\*~~ e. If Licensor, at any time, has reason to believe or suspect that any Product does not conform to the Licensee's quality standards and procedures, or is mislabeled or does not otherwise conform to the labeling requirements hereof, or presents any threat to the public's health or any individual's health or safety, or is otherwise not in full conformity with all applicable laws and has been released into the stream of commerce, Licensor shall immediately notify Licensee of this fact, and Licensor shall, unless directed not to do so by Licensee, promptly retrieve each such Product at Licensor's sole expense. These requirements shall also apply mutually to Licensee and are in addition to those set forth in Section 9f.
- f. Licensor and Licensee shall, immediately upon notice thereof, fully inform the other as to any actual or proposed action, by any governmental agency, consumer or environmental group, retailer or other customer, media or other organization or any individual(s), directed toward removing any quantity of any Product(s) from the market including removal from even one (1) retail outlet therein, based on alleged injury or death, alleged unwholesomeness or potential for harm, alleged

contamination, tampering or similar act and/or alleged violation of law in connection with production, labeling, packaging, storage, shipment, advertising and/or sale. Any violation of the obligations described in this Section 9f with regards to serious bodily harm or fraudulent activity shall be grounds for immediate termination of this Agreement, at the option of the non-violating party.

- g. Licensor and Licensee shall permit the other party or its authorized representatives to inspect, at any time during regular business hours, the facilities where Products are manufactured, sold, and/or packaged in order to verify that the same are manufactured, sold, and/or packaged in compliance with all applicable laws, Good Manufacturing Practices and the other party's quality standards and instructions, as herein specified or otherwise.
- h. Licensor and Licensee shall cause to be submitted a reasonable number of samples of each Product to each other, or to an authorized representative upon request, from time to time.
- i. Licensor agrees to meet and supply Licensee with Licensee's estimated daily requirements of any and all Products.
- k. If Licensor cannot meet Licensee's daily requirement of any of the Products, Licensee shall be permitted to seek a supplemental short term supply of such Product from a third party supplier and may continue to use such supplier until Licensor is able to meet Licensee's daily requirement.

**10. PRODUCT PRICES:** Licensor shall sell all Products to Licensee at the wholesale price used by Licensor with regard to its most favored wholesale customer. A copy of the most favored wholesale customer price list shall be provided by Licensor to Licensee prior to the execution of this Agreement. Licensee shall be free to control and set the price of all Products Licensee sells to its customers.

**11. PAYMENTS; ALLOCATIONS OF COSTS AND EXPENSES:**

- a. Licensee will determine the terms of payment for their customers.
- b. Except as otherwise provided in this Agreement, or as subsequently agreed by the Parties in writing, each party will be responsible for their own costs and expenses.
- c. Licensor agrees to deliver to Licensee all Products, as needed, and Licensee agrees to pay Licensor a reasonable delivery fee.
- d. Licensee shall make weekly payments to Licensor for the purchase and delivery of the Products. The first weekly product payment shall be due two weeks after the first delivery of Products by Licensor.

**12. MISCELLANEOUS:** If Licensor goes out of business, or otherwise can no longer fulfill its contractual obligations, Licensee has the right to seek other suppliers and continue to use the Name and related Intellectual Property Rights. Failure of Licensor to meet the contractual obligations of this Agreement does not terminate any rights of Licensee under the Agreement.

**13. COMPLIANCE WITH LAWS AND REGULATIONS:** Licensor and Licensee shall, and shall cause their shareholders, members, officers, directors, manager and managing personnel to, comply with all laws, rules and government regulations pertaining to their respective business and shall not violate any laws which would create an adverse effect on the Name and related Intellectual Property Rights.

**14. EXCLUSIVE OPTION TO PURCHASE:**

- a. Licensor hereby grants Licensee an exclusive option to purchase ("Option") Licensor's business and associated assets for a purchase price of \$650,000, with \$325,000 payable in cash at closing and the balance payable monthly over a 5-year term, at such annual interest rate agreed to by the parties (between 2% and 6%), beginning with the first monthly payment one year after closing
- b. Licensee's Option shall remain open for two years following the Effective Date of this Agreement. During the two-year period of the Option, Licensor agrees to not market the sale of the business nor to entertain offers from any third parties.
- c. Licensee shall exercise its Option by providing written notice to Licensor, accompanied by a proposed asset purchase agreement containing standard representations and warranties. The closing shall be no later than 90 days following delivery of the notice. Licensor shall continue to maintain the McNaughten Store and make all repairs needed to keep it in the condition existing at the time of this Agreement, and Licensor shall ensure that all outstanding liens and encumbrances, including tax limitations, have been paid and released.
- e. This Agreement contains no binding obligation on the part of Licensee regarding the purchase of Licensor's business and associated assets and nothing herein shall be construed as granting Licensor or its members the right to become a member, partner or partial owner of the Business.

**15. RIGHT OF FIRST REFUSAL:**

- a. Upon the expiration of Licensee's Option described above, Licensee shall retain, for a period of three years, a right of first refusal to purchase Licensor's business and associated assets.

- b. Upon Licensor receiving any binding third party offer to purchase Licensor's business and associated assets, Licensor must present such offer to Licensee and allow Licensee the right to purchase the Licensor's business and associated assets on the same terms and conditions as contained in the third party offer.
- c. This Agreement contains no binding obligation on the part of Licensee to purchase Licensor's business and associated assets and nothing herein shall be construed as granting Licensor or its members the right to become a member, partner or partial owner of the Business.
- d. Licensee shall have sixty (60) days from the date Licensor notifies Licensee of said offer in which to notify Licensor, in writing, that it elects to purchase Licensor's business and associated assets.
- e. Licensor shall permit Licensee to conduct a review of Licensor's business, assets, liabilities, and other details during the sixty (60) day period.

**16. RESTRICTIONS ON TRANSFER:** For the duration of this Agreement and any renewals thereof, Licensor and its members agree that any transfer of Licensor's equity interest or addition of new members shall be subordinate to Licensee's rights under this Agreement, shall include an acknowledgement of this Agreement, and shall remain subject to this Agreement and its continued enforcement.

**17. TERM:**

- a. The Initial Term of this Agreement is ten (10) years from the Effective Date of this Agreement.
- b. After the Initial Term, the Agreement will automatically renew once for an additional one (1) year renewal period, unless one party gives written notice to the other party no less than ninety (90) days prior to the end of the Initial Term that this Agreement will not otherwise renew.

**18. TERMINATION:**

- a. Licensee or Licensor may terminate this Agreement as set forth in Section 9f above.
- b. Either Party can terminate this Agreement for "cause" upon providing ninety (90) days advanced written notice if any of the following occurs:
  - i. A material breach of the terms of this Agreement, provided that the breach remains uncured for thirty (30) days after receiving notice from the non-breaching party;
  - ii. Insolvency of either Party;
  - iii. Assignment by either Party for the benefit of creditors; or
  - iv. Voluntary or involuntary bankruptcy, or similar proceedings, by or against either Party.

- c. The terminating Party shall provide written notice to the other Party stating the grounds for terminating the Agreement.
- d. Each Party shall be entitled to any monies owed up to the time of termination.

**19. CONFIDENTIALITY:**

- a. Both Parties will receive confidential and proprietary information and data concerning products, research and engineering, development of new products, business plans, price schedules, costs, margins, customer data and operations as well as other confidential and proprietary information not contemplated at the time of this Agreement.
- b. Both Parties agree to treat all such information as confidential and the proprietary property of the other Party and will not divulge it to others at any time without express agreement of the disclosing party.
- c. Any confidential and proprietary information received by either Party from the other will remain the property of the Party providing the confidential and proprietary information after the termination of this Agreement and must be returned immediately upon request at the termination of the Agreement, except that one copy of the information received may be retained for archival purposes.
- d. The following are exceptions to the Confidentiality Clause, and are not considered "confidential information":
  - i. Information that is or becomes generally known to the public through no wrongful act of either Party; or
  - ii. Information that is, or becomes, lawfully available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, its affiliates or designees; or
  - iii. Information that is furnished by the Disclosing Party to a third party without confidentiality restrictions.

**20. INDEPENDENT CONTRACTORS:** Licensor and Licensee are independent contractors, and nothing in this Agreement shall create or be deemed to create any relationship of agency, partnership or joint venture between them. Neither party is authorized to incur debt or other obligations of any kind on behalf of the other, except as may be specifically authorized in writing, and neither party shall be liable for any debts, accounts, obligations or other liabilities of the other party or of the agents or employees of the other party. In the absence of prior, written, specific authorization, neither party may represent the other, nor purport to represent the other, in any manner or to any extent whatsoever, in any judicial, governmental or quasi-governmental inquiry, investigation, hearing or proceeding, or in any arbitration. Licensor has no right to control Licensee or

Licensee's employees. Licensee has no right to control Licensor or Licensor's employees

**21. FORCE MAJEURE:** Failure of either Party to perform any provision of this Agreement by reason of an act of nature, embargo, strike, war or terrorist attack, or any other circumstance reasonably beyond the control of the defaulting Party does not constitute an event of default or breach of the Agreement

**22. INDEMNIFICATION:**

- a. For all Products provided by Licensor to Licensee and thereafter sold by Licensee from the Effective Date of this Agreement, Licensor will indemnify, defend and hold Licensee, its officers, directors, employees, agents, subsidiaries, affiliates, successors, assigns, (collectively referred to as "Indemnitees"), harmless from any and all claims by a third party arising out of, (i) any alleged product liability claim, (ii) any alleged Licensor warranty claims, (iii) any alleged patent infringement claims or (iv) any other claims that may be made against Licensor; provided that the Indemnitees notify Licensor within thirty (30) days of first notice of any such claim against the Indemnitees and the Indemnitees cooperate to provide Licensor all information required to defend against such a claim. Indemnification will include any and all fees, costs and expenses incurred by and on behalf of the Indemnitees. Upon Licensor's written notice to the Indemnitees that Licensor has assumed the defense of any legal action or proceedings with attorneys reasonably acceptable to the Indemnitees, Licensor will not be liable to the Indemnitees for any legal or other expenses subsequently incurred by the Indemnitees in connection with the defense thereof.
- b. Licensee shall indemnify, defend and hold Licensor harmless from any and all claims by a third party arising out of Licensee's negligent act or omission, or the negligent or intentional acts or omissions of the Licensee's agents or employees.

**23. INSURANCE:**

- a. Both Parties will at all times maintain in full force and effect, general liability insurance coverage, including broad form vendor's coverage, completed operations and product liability insurance, with a minimum of \$2,000,000 in coverage per occurrence.
- b. Within thirty (30) days of the effective date of this Agreement and annually thereafter, each Party will furnish the other a certificate of insurance evidencing the required coverage.

24. **ASSIGNMENT:** Licensee shall have the right to assign and transfer any and all of its rights under this Agreement to an entity wholly owned or controlled by Jeremy Fox, upon written consent of Licensor. However, Licensee shall have the right to assign and transfer to anyone else upon written consent of Licensor, its rights under this Agreement, so long as such assignment or transfer excludes Sections 14 and 15. Licensor may not unreasonably withhold or delay such a request to assign or transfer.
25. **WAIVER:** Failure of either Party to enforce any of the provisions of this Agreement should not be construed to be a waiver of the provisions or the subsequent right to enforce the provisions.
26. **APPLICABLE LAW:** This Agreement will be interpreted, enforced and governed by the laws of the State of Ohio, USA, and shall be construed fairly as to all Parties.
27. **SEVERABILITY:** In the event that any term or provision of this Agreement shall, for any reason be held invalid, illegal or unenforceable in any respect, such invalidity or unenforceability will not affect any other term or provision in the Agreement.
28. **ENTIRE AGREEMENT:** This Agreement contains the whole agreement between the Parties in respect of the subject matter of this Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

29. **NOTICE:**

If to LICENSOR:

HB3 LLC DBA B/ok's B/ok's + Dal  
6115 McNAUGHTEN CTR  
COLUMBUS, OHIO 43232

If to LICENSEE:

Fox's Food LLC  
c/o Jeremy Fox  
553 W. Third Ave.  
Columbus, Ohio 43201

With Copy To:  
Robert Onda, Esq.

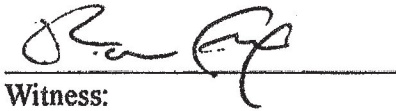
IN WITNESS WHEREOF, this Agreement is executed by each party on the date set forth below.

**LICENSEE:**

**FOX'S FOOD LLC**, an Ohio  
limited liability company



By: Jeremy Fox  
Its:

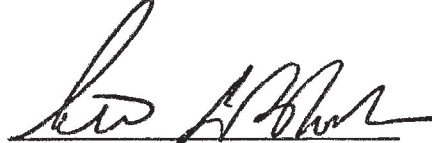


Witness:

9/28/16  
Date:

**LICENSOR:**

**HB3, LLC**, an Ohio  
limited liability company



By:  
Its:



Witness:

9-28-16  
Date:

**LICENSOR'S MEMBERS:**

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

\_\_\_\_\_  
Witness: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

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

\_\_\_\_\_  
Witness: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

### **HB3, LLC EQUIPMENT USED BY FOX**

1. Bagel Oven
2. Meat Slicer
3. Bagel Kettle
4. Oven Table
5. Kettle Table
6. Bagel Racks (6)
7. Metal Shelving
8. Stainless Steel Tables (2)
9. Grill Top
10. 3 Bin Stainless Steel Sink
11. Bread Slicer
12. Bagel Bins (20)
13. Safe (Vault)
14. Bagel Cart
15. Glass Door Cabinet
16. Ice Machine
17. Bagel Slicer
18. Neon Signs
19. Kettle Hood
20. Seed Carts
21. Over-Counter Broiler