



## NOTICE OF EXTRAORDINARY MEETING OF SHAREHOLDERS

Notice is hereby given that an Extraordinary Meeting of shareholders of Burger Fuel Worldwide Limited (the "Company") will be held at The Fort Lane Vaults, 7 Fort Lane, Auckland on 26 February 2014 commencing at 3pm.

### AGENDA

The business of the meeting will be as follows:

#### **A. Resolution 1: Franchisee Brands LLC Share Purchase, Allotment of Shares and Grant of Call Options**

1. To consider, and if thought fit, to approve by an ordinary resolution the:
  - (a) allotment by the Company of and subscription; and
  - (b) purchase from Mason Roberts Holdings Limited (as nominee for the Mason Family Trust and JCR Investment Trust) ('MRHL'),by Franchise Brands LLC ('Franchise Brands') of, and for, up to a total of 29,816,775 fully paid ordinary shares in the Company by passing the following ordinary resolution:

"That shareholders approve, for the purposes of the Takeovers Code, the following inter-related transactions:

- (a) the allotment by the Company of, and the subscription by Franchise Brands LLC for, 4,357,298 fully paid ordinary shares in the Company at an issue price of \$1.35 per share;
- (b) the sale by Mason Roberts Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to 803,029 shares and JCR Investment Trust as to 803,028 shares), and purchase by Franchise Brands LLC, of 1,606,057 fully paid ordinary shares in the Company at \$1.35 per share; and
- (c) the grant by Mason Roberts Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to up to 4,412,883 shares and JCR Investment Trust as to up to 19,440,537 shares) to Franchise Brands LLC of options to acquire for up to 23,853,420 fully paid ordinary shares in the Company and any subsequent exercise of those options,

respectively on the terms and in the manner set out in the Explanatory Notes to this Notice of Meeting.”

*See Explanatory Notes below. Resolution 1 is the subject of the Independent Adviser’s Report prepared for the transactions contemplated in this Notice of Meeting, for the purposes of the Takeovers Code. Shareholders are encouraged to read that document in deciding how to vote. A copy of the Independent Adviser’s Report accompanies this Notice of Meeting. Resolution 1 is an ordinary resolution and therefore is required to be passed by a majority of more than 50% of the votes of those shareholders entitled to vote and voting on that resolution.*

**B. Resolution 2: Purchase by CMJR Holdings Limited of Shares from T.E.A. Custodians Limited**

2. If Resolution 1 is passed, to consider, and if thought fit, to approve by an ordinary resolution the issue of call options to CMJR Holdings Limited (as nominee for the Mason Family Trust (as to 300,000 options) and JCR Investment Trust (as to 300,000 options)) for up to 600,000 shares in the Company by T.E.A. Custodians Limited, and any subsequent exercise of those options by passing the following ordinary resolution:

“That shareholders approve, for the purposes of the Takeovers Code, the grant by T.E.A. Custodians Limited to CMJR Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to 300,000 options and JCR Investment Trust 300,000 options) of call options for up to 600,000 fully paid ordinary shares in the Company, and any subsequent exercise of those options, in the manner set out in the Notice of Meeting and Explanatory Notes.”

*See Explanatory Notes below. Resolution 2 is the subject of the Independent Adviser’s Report prepared for the transactions contemplated in this Notice of Meeting, for the purposes of the Takeovers Code. Shareholders are encouraged to read that document in deciding how to vote. A copy of the Independent Adviser’s Report accompanies this Notice of Meeting. Resolution 2 is an ordinary resolution and therefore is required to be passed by a majority of more than 50% of the votes of those shareholders entitled to vote and voting on that resolution.*

By order of the Board of Directors of the Company



Peter Brook  
Chairman  
BurgerFuel Worldwide Limited

Auckland, New Zealand  
11 February 2014

## **EXPLANATORY NOTES**

### **A. Resolution 1: Franchisee Brands LLC Share Purchase and Allotment**

This resolution seeks approval by ordinary resolution, for the purposes of Rule 7(c) and Rule 7(d) of the Takeovers Code Approval Order 2000 (the 'Takeovers Code' or the 'Code'), of the following three transactions:

- a. the allotment by the Company of, and the subscription by Franchise Brands LLC for, 4,357,298 fully paid ordinary shares in the Company at an issue price of \$1.35 per share;
- b. the sale by Mason Roberts Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to 803,029 shares and JCR Investment Trust 803,028 shares), and purchase by Franchise Brands LLC, of 1,606,057 fully paid ordinary shares in the Company at \$1.35 per share; and
- c. the grant of call options by Mason Roberts Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to up to 4,412,883 shares and JCR Investment Trust as to up to 19,440,537 shares) to Franchise Brands LLC to acquire up to 23,853,420 fully paid ordinary shares in the Company and any subsequent exercise of those options.

The background to, and details of, each of these transactions is explained in the following sections of these explanatory notes.

Under Rule 17(1) of the Code, Mason Roberts Holdings Limited (as nominee for the Mason Family Trust and JCR Investment Trust) and its associates are prohibited from voting on this resolution.

### **Proposed Transaction and Structure**

#### *Background to and commercial rationale for the transaction*

Since listing on the NZAX in 2007, the Company has been successful in expanding its brand by appointing individual franchisees in New Zealand and master franchisees in various Middle Eastern countries. The Company currently operates 35 stores in New Zealand, 1 in Australia and 19 in the MENA (Middle East and North Africa) region. More stores are planned to open in each of those countries. All stores are operated under franchise or master licence agreements, except for one – the Ponsonby store in Auckland which is owned and operated by the Company.

The Company has proven that its model is scalable by successfully establishing itself in the MENA region. The Company has long term aspirations to franchise in excess of 1000 restaurants globally. The biggest challenge the Company faces is sourcing appropriate franchisees to operate the brand in various countries and regions around the world. In short, the Company's long term growth is hampered by its ability to fill its forward order book for new BurgerFuel stores.

Over time this has led to the Company reviewing its options to accelerate growth. Through this process the Company has decided that the best option to advance its growth aspirations through its current operating systems and management processes

would be to partner with a major global company, with a proven track record in food and franchising. Ideally the company would be US based.

The proposed transaction with Franchise Brands LLC (Franchise Brands) meets this objective.

Franchise Brands was created in 2005 with the support and guidance of the founders of SUBWAY® restaurants, Fred DeLuca and Dr. Peter Buck, in order to invest in and offer guidance to small and mid-market companies with experienced management that are seeking to expand their businesses.

The proposed transaction provides a key strategic advantage to the Company as subject to certain terms, Franchise Brands will introduce BurgerFuel to SUBWAY® franchisees and development agents for the purposes of giving the Company an opportunity to communicate and promote the BurgerFuel franchise opportunity with the objective of rapidly growing BurgerFuel store numbers worldwide in a manner consistent with all disclosure and franchise law requirements.

In addition to potentially accessing many experienced franchisees who qualify to expand their business interests, the Company will also gain access to local knowledge and experience in each of the countries and regions it ultimately enters via the relationship with Franchise Brands. It is also anticipated that there may also be operational cost advantages that will flow from this relationship if the Company gains access to the suppliers to the SUBWAY® network, through the Franchise Brands relationship.

Underpinning the relationship with Franchise Brands will be:

- a. Franchise Brands' equity interest in the Company, through the share allotment, share acquisition and grant of options that are the subject of this Notice of Meeting; and
- b. a collaboration agreement with Franchise Brands which is discussed below.

Turning to the allotment and acquisition of shares, both the Company and Franchise Brands have agreed that the optimal means by which the interests of Franchise Brands and the Company may be aligned to advance the objectives of the relationship is through Franchise Brands becoming a shareholder of the Company. This cements the relationship into a meaningful, long term relationship with incentive and upside for both parties. The subscription by Franchise Brands for new equity will also provide additional capital to the Company in the form of cash.

Chris Mason and Josef Roberts, the founder and CEO of the Company (whose interests together comprise the biggest shareholder in the Company) have advised the Company that they consider that this opportunity is highly significant for the Company and will potentially provide the Company with worldwide distribution which could propel the Company's financial performance and share value well beyond their current expected future levels within a timeframe that will be much faster than the current organic pace of growth.

### *Proposed share transactions*

The proposed transaction (subject to the necessary shareholder and any regulatory approvals, rulings or exemptions being obtained) will involve:

- a. The allotment by the Company of, and the subscription by Franchise Brands LLC for, 4,357,298 fully paid ordinary shares in the Company at an issue price of \$1.35 per share. The shares to be issued by the Company will comprise 7.31% of the total issued shares of the Company (immediately after that allotment).
- b. The sale by Mason Roberts Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to 803,029 shares and JCR Investment Trust 803,028 shares), and purchase by Franchise Brands LLC, of 1,606,057 fully paid ordinary shares in the Company at \$1.35 per share. The shares to be purchased by Franchise Brands will comprise 2.91% of the total issued shares of the Company immediately preceding the purchase referred to above, and 2.69% immediately after.

Accordingly, immediately after the allotment and sale referred to in the paragraphs above, Franchise Brands will hold 10% of the total issued shares in the Company.

The sale and allotment are interdependent. Settlement of both transactions is intended to occur 5 business days after shareholder approval for the transactions is obtained (**'Completion Date'**).

- c. The grant by Mason Roberts Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to up to 4,412,883 shares and JCR Investment Trust as to up to 19,440,537 shares) to Franchise Brands LLC of call options for up to 23,853,420 fully paid ordinary shares in the Company on the following basis:
  - i. The call options are exercisable in four tranches:
    - A. 5,963,355 fully paid ordinary shares in the Company (**'Tranche One Option Shares'**) which will comprise 10% of the issued capital of the Company as at Completion Date, may be purchased if Franchise Brands issues a notice of exercise (**'Exercise Notice'**) during the period commencing 20 business days before the second anniversary of the completion date of the initial purchase by Franchise Brands of shares in the Company (described in (a) and (b) above) (**'First Completion'**) and ending on the Tranche One End Date<sup>1</sup> (**'Tranche One Period'**). If Franchise Brands does not issue an Exercise Notice during the Tranche One Period, Mason Roberts Holdings may sell up

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<sup>1</sup> The Tranche One End Date depends on the average share price of the Company's shares when the Tranche One Period begins and can be between two and three years after the completion of the initial purchase by Franchise Brands of shares in the Company. If that share price is \$1.49 a share at the relevant time, then the Tranche One End Date is the second anniversary of the completion of the initial purchase by Franchise Brands of shares in the Company. If it is less than \$1.49 a share at the relevant time, then the Tranche One End Date is the earlier of 20 business days after the average share price is \$1.49 (provided this date is after the second anniversary) and the third anniversary of completion.

to 1,000,000 of the Tranche One Option Shares on the public market. The number of Tranche One Option Shares may be so reduced.

- B. 5,963,355 fully paid ordinary shares in the Company (**'Tranche Two Option Shares'**) which will comprise 10% of the issued capital of the Company as at Completion Date, may be purchased if Franchise Brands issues an Exercise Notice during the period commencing 20 business days before the fourth anniversary of the First Completion and ending on the Tranche Two End Date<sup>2</sup> (**'Tranche Two Period'**). If Franchise Brands does not issue an Exercise Notice during the Tranche Two Period, Mason Roberts Holdings may sell up to 1,000,000 of the Tranche Two Option Shares on the public market. The number of Tranche Two Option Shares may be so reduced.
  - C. 5,963,355 fully paid ordinary shares in the Company (**'Tranche Three Option Shares'**) which will comprise 10% of the issued capital of the Company as at Completion Date, may be purchased if Franchise Brands issues an Exercise Notice during the period commencing 20 business days before the sixth anniversary of the First Completion and ending on the Tranche Three End Date<sup>3</sup> (**'Tranche Three Period'**). If Franchise Brands does not issue an Exercise Notice during the Tranche Three Period, Mason Roberts Holdings may sell up to 1,000,000 of the Tranche Three Option Shares on the public market. The number of Tranche Three Option Shares may be so reduced.
  - D. 5,963,355 fully paid ordinary shares in the Company (**'Tranche Four Option Shares'**) which will comprise 10% of the issued capital of the Company as at Completion Date, may be purchased if Franchise Brands issues an Exercise Notice during the period commencing 20 business days before the eighth anniversary of the First Completion and ending on the Tranche Four End Date<sup>4</sup>. (**'Tranche Four Period'**).
  - E. If Franchise Brands does not exercise any of these options, they will accumulate in the subsequent Tranche, until the eighth anniversary as identified in tranche four (described in D above). This accumulation is subject to Mason Roberts Holdings' rights to sell referred to above, such that the accumulated options will be for no less than 20,853,420 fully paid ordinary shares in the Company.
- ii. If the Company reaches or exceeds its target of 1,000 open and operating Burger Fuel outlets by the eighth anniversary of the call option agreement,

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<sup>2</sup> The Tranche Two End Date operates on the same basis as the Tranche One End Date, except that the threshold price is \$1.69 a share and the relevant periods are between the fourth and fifth anniversary of the completion of the initial purchase by Franchise Brands of shares in the Company.

<sup>3</sup> The Tranche Three End Date operates on the same basis as the Tranche One End Date and Tranche Two End Date, except that the threshold price is \$1.80 a share and the relevant periods are between the sixth and seventh anniversary of the completion of the initial purchase by Franchise Brands of shares in the Company.

<sup>4</sup> The Tranche Four End Date operates on the same basis as the foregoing tranche end dates, except that the threshold price is \$1.98 a share and the relevant periods are between the eighth and ninth anniversary of the completion of the initial purchase by Franchise Brands of shares in the Company.

then the number of options will be limited to 35% of the total outstanding shares in the Company (if all options are exercised, which would take Franchise Brands to a 45% ownership). If the Company has not achieved a minimum of 1,000 outlets by the eighth anniversary of the call option agreement, the terms outlined above for tranche four (described in D above) apply. In this case Franchise Brands could increase its ownership stake to 50% of the total issued shares of the Company (if all options are exercised).

iii. If the collaboration agreement (discussed in detail below) is terminated, and the effective date of that termination is:

- on or prior to the fourth anniversary of the completion of the initial purchase by Franchise Brands of shares in the Company, then:
  - all call options that would accrue on any tranche period on or following the date of that termination lapse; and
  - accumulated but unexercised call options remain exercisable until the sixtieth day following the date of that termination.
- after the fourth anniversary of the completion of the initial purchase by Franchise Brands of shares in the Company, but before the sixth anniversary of that completion, then:
  - the tranche three call options continue to accrue;
  - the tranche four call options lapse; and
  - accumulated but unexercised call options remain exercisable until the sixtieth day following the date of that termination.
- after the sixth anniversary of the completion of the initial purchase by Franchise Brands of shares in the Company, then that termination has no effect on the call options.

iv. The exercise price of the:

- Tranche One Option Shares is:
  - \$1.49 per share; or
  - if the Average Market Price of the Company shares as at the Tranche One End Date<sup>5</sup> is:
    - less than \$1.49 per share, the applicable Average Market Price; or
    - \$3.24 or more per share and at least 160 Burger Fuel restaurants are open and operating, \$1.62 per share.
- Tranche Two Option Shares is:
  - \$1.64 per share; or
  - if the Average Market Price of the Company shares as at the Tranche Two End Date<sup>6</sup> is:

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<sup>5</sup> See footnote 1.

- less than \$1.64 per share, the applicable Average Market Price; or
  - \$3.56 or more per share and at least 300 Burger Fuel restaurants are open and operating, \$1.79 per share.
- Tranche Three Option Shares is:
  - \$1.80 per share; or
  - if the Average Market Price of the Company shares as at the Tranche Three End Date<sup>7</sup> is:
    - less than \$1.80 per share, the applicable Average Market Price; or
    - \$3.92 or more per share and at least 700 Burger Fuel restaurants are open and operating, \$1.97 per share.
- Tranche Four Option Shares is:
  - \$1.98 per share; or
  - if the Average Market Price of the Company shares as at the Tranche Four End Date<sup>8</sup> is:
    - less than \$1.98 per share, the applicable Average Market Price; or
    - \$4.32 or more per share and at least 1000 Burger Fuel restaurants are open and operating, \$2.16 per share.

For this purpose:

- **Average Market Price** means the volume weighted average market price of ordinary shares in the Company for the 60 Business Days prior to the date on which that price is being determined.
  - **Exercise Period** means the period during which a notice of exercise for the applicable options for the Shares may be given by Franchise Brands.
- d. Each of Franchise Brands and Mason Roberts Holdings granting the other preemptive rights on any proposed transfer of shares (it being acknowledged that the exercise of those rights would require further and separate shareholder approval under the Code).
- e. Mason Roberts Holdings undertaking that it will not for a period of 8 years, without the consent of Franchise Brands, offer to sell (or sell) any of its shares in the Company to any third party, other than those option shares in respect of which the option has lapsed or the applicable Exercise Period has expired.
- f. A proposed change to the Company's constitution being put to shareholders within 12 months of completion of Franchise Brands' subscription for shares in the Company, that would give Franchise Brands a right to nominate a number

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<sup>6</sup> See footnote 2.

<sup>7</sup> See footnote 3.

<sup>8</sup> See footnote 4.



of directors to the Company's board that corresponds with its proportionate shareholding.

- g. As an anti-dilution measure, Franchise Brands being granted a first option on any future shares issued in the future by the Company. The implementation of this effective pre-emptive right is subject to the Takeovers Code and the NZAX Listing Rules (including, as relevant, the shareholder approval requirements of the Code and Listing Rules).

Chris Mason, Josef Roberts and the Board do not consider that the proposed transaction materially adversely impacts on any of the minority shareholders in the Company. In fact it is their considered view that the transaction and resulting relationship has the potential to significantly accelerate the growth of the Company in its primary objective of rapid global expansion. A major opportunity for the Company will be entry into the US market where the Company believes it can successfully launch and develop many BurgerFuel outlets. If the Company can achieve these goals then it follows that all the shareholders will benefit by way of increased value in their holdings, as well as the potential for shareholder dividends over time.

The board's view is also that enabling Franchise Brands to obtain significant ownership in the Company will also motivate Franchise Brands to assist the Company, as Franchise Brands will be incentivised to further the success and, accordingly, the value of the Company.

The independent directors, Chairman Peter Brook and independent director Alan Dunn, strongly support the transaction and recommend that shareholders support the transaction by voting in favour of Resolution 1. Their reasons are set out in page 14. We note that, given their interest in the transaction, Josef Roberts and Chris Mason (in their capacity as directors) have abstained from giving a recommendation for the purposes of Rule 19 of the Takeovers Code.

#### *Collaboration Agreement*

On completion of the initial acquisition and subscription by Franchise Brands of and for the shares in the Company as described above, Franchise Brands and the Company are to enter into a collaboration agreement under which Franchise Brands is to assist with the development of the Burger Fuel brand by giving Burger Fuel access, and facilitating introductions, to the SUBWAY® network of franchisees and development agents.

In consideration for those 'collaboration services', Burger Fuel has undertaken to pay Franchise Brands a collaboration fee. That fee is contingent, and is determined as follows:

- The fee is an amount, per month, equal to 1% of 'Qualifying Gross Sales' for that month (the collaboration fee).
- Qualifying Gross Sales means, in relation to each 'Applicable Store', the gross takings of that store in respect of the products supplied to customers of that store.
- 'Applicable Store' means each Burger Fuel store that commences operation between the commencement date of the agreement and the date of its

termination (should that occur). This excludes any stores opened and operated under current master licence agreements or franchised stores under contract.

The Company is paid a royalty by its franchisees that is a specified percentage of the Qualifying Gross Sales of the franchisee. The agreement provides that as the Company is paid this royalty, it pays a portion to Franchise Brands (which is the collaboration fee). Therefore, the arrangement is intended to allow Franchise Brands to share in this income, without the Company taking any credit risk on payment of the Franchise Brands share.

The arrangement allows Franchise Brands to share in the growth of franchisee income that may follow the development of the BurgerFuel franchisee network resulting in part from the collaboration services that Franchise Brands provides. It thereby further aligns the interests of the Company and Franchise Brands in the development of the Burger Fuel brand.

## **Legal Context – NZAX Listing Rules and Takeovers Code**

### *Takeovers Code provisions*

The Company is a 'code company' being subject to the Takeovers Code (Code) by virtue of its listing on NZAX.

Rule 6(1)(a) of the Code prohibits any person who holds or controls no voting rights or less than 20% of the voting rights in a code company from becoming the holder or controller of an increased percentage of the voting rights in the code company unless, after that event, that person and that person's associates hold or control not more than 20% of the voting rights in the code company except as provided in Rule 7. Rule 6(1)(a) applies to the proposal to issue and sell shares in the Company to Franchise Brands.

Rules 7(c) and 7(d) permit these increases in voting rights if the acquisition by, and allotment to, a person of voting securities in the code company have first been approved by an ordinary resolution of shareholders entitled to vote in accordance with the requirements of the Takeovers Code. The Company seeks this approval for each of the transactions described above in Resolution 1.

### *NZAX Listing Rules*

Under Rule 7.3.5 of the NZAX Listing Rules, the Company may issue ordinary shares if the total number of the shares issued, and all other ordinary shares issued pursuant to Rule 7.3.5 during the period of 12 months preceding the date of the issue, will not exceed the aggregate of:

- a. 25% of the total number of ordinary shares on issue at the commencement of that period; and
- b. 25% of the number of the ordinary shares issued during that period pursuant to any of Rules 7.3.1(a), 7.3.4, 7.3.6 and 7.3.11; and

- c. 25% of the number of ordinary shares which have been acquired or redeemed by the NZAX Issuer during that period (other than ordinary shares held as Treasury Stock).

The number of shares proposed to be allotted to Franchise Brands falls within the thresholds referred to above.

*Information required under rules 15 and 16 of the Takeovers Code*

As stated above, the proposed share transactions involve both an acquisition of shares which requires approval under Rule 7(c) of the Takeovers Code, and an allotment by the Company to Franchise Brands of shares, which requires approval under Rule 7(d) of the Takeovers Code.

Rule 15 provides that shareholders must receive specified information before voting on any resolution under Rule 7(c) of the Takeovers Code. In addition, Rule 16 of the Takeovers Code provides that shareholders must receive the specified information before voting on any resolution under Rule 7(d) of the Takeovers Code

The required information is set out below:

- Franchise Brands LLC is acquiring the voting securities and Mason Roberts Holdings Limited (as nominee for the the JCR Investment Trust and Mason Family Trust) is disposing of the voting securities in the sale and option transactions. Franchise Brands LLC is also the allottee under the share allotment by the Company.
- The following are the particulars of the voting securities to be allotted to Franchise Brands by the Company and acquired by Franchise Brands from Mason Roberts Holdings:<sup>9</sup>
  - i. The maximum number of voting securities that could be acquired by Franchise Brands under the sale and option and subscription arrangements is 29,816,775 voting securities, comprising:
    - A. 4,357,298 voting securities to be allotted;
    - B. 1,606,057 voting securities to be acquired at the same time as the allotment; and
    - C. if the maximum number of call options are exercised, a further 23,853,420 voting securities to be acquired.

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<sup>9</sup> Rule 15(b) of the Takeovers Code requires that a Notice of Meeting specify the exact numbers (and percentages) of shares to be acquired by Franchise Brands from Mason Roberts Holdings. That is not possible in this case, as the exact number of shares to be acquired by Franchise Brands depends upon the number of options Franchise Brands elects to exercise. This is presently unknown. Accordingly, the Company has sought from the Takeovers Panel, and been granted, an exemption from the application of Rule 15(b) (*Takeovers Code (Burger Fuel Worldwide Limited) Exemption Notice 2014 (Exemption Notice)*). The key conditions of the Exemption Notice are summarised on page 15. The assumptions upon which the calculations of percentages set out above are based, are set out in clause 8 of the Exemption Notice. The particulars in this section of the Notice of Meeting are those required under clause 7 of the Exemption Notice.

- ii. The maximum number of voting securities that could be acquired by Franchise Brands after completion of the acquisition of voting securities and the allotment, expressed as a percentage of the total voting securities of the Company on issue, is 50%, comprising:
  - A. Voting securities to be allotted (4,357,298) will represent 7.31% of all voting securities on issue in the Company following completion of the acquisition of voting securities under the Sale and Option Agreement and the allotment under the Subscription Agreement .
  - B. Voting securities to be acquired (1,606,057) will represent 2.69% of all voting securities on issue in the Company following completion of the acquisition of voting securities under the Sale and Option Agreement and the allotment under the Subscription Agreement.
  - C. Voting securities that are the subject of the call options (23,853,420), if the maximum number of options is exercised, will represent 40% of all voting securities on issue in the Company following completion of the acquisition of voting securities under the Sale and Option Agreement and the allotment under the Subscription Agreement.
- iii. The maximum percentage of the total voting securities on issue, that could be held or controlled by Franchise Brands after completion of the acquisition of voting securities under the sale arrangements and the allotment under the subscription arrangements will be 50%.
- iv. The maximum percentage of the total voting securities on issue, that could be held or controlled, in aggregate, by Franchise Brands and its associates<sup>10</sup> after completion of the acquisition of voting securities under the sale arrangements and the allotment under the subscription arrangements is 83.4% of all voting securities on issue in the Company.
- The consideration for the:
  - i. 4,357,298 voting securities to be allotted is to be a subscription price of \$1.35 per share with the aggregate subscription price for those shares therefore being \$5,882,353;
  - ii. 1,606,057 voting securities to be acquired at the same time as the allotment shares above is to be a subscription price of \$1.35 per share with the aggregate subscription price for those shares therefore being \$ 2,168,177;
  - iii. call option shares is (using the definitions used above):
    - for the Tranche One Option Shares:
      - \$1.49 per share; or
      - if the Average Market Price of the Company shares as at the Tranche One End Date<sup>11</sup> is:

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<sup>10</sup> Assuming, for this purpose, that Franchise Brands is an associate of Mason Roberts Holdings.

<sup>11</sup> See footnote 1.

- less than \$1.49 per share, the applicable Average Market Price; or
  - \$3.24 or more per share as at the first day of the Exercise Period for those shares and at least 160 Burger Fuel restaurants are open and operating, 1.62 per share.
- Tranche Two Option Shares is:
  - \$1.64 per share; or
  - if the Average Market Price of the Company shares as at the Tranche Two End Date<sup>12</sup> is:
    - less than \$1.64 per share, the applicable Average Market Price; or
    - \$3.56 or more per share as at the first day of the Exercise Period for those shares and at least 300 Burger Fuel restaurants are open and operating, 1.79 per share.
- Tranche Three Option Shares is:
  - \$1.80 per share; or
  - if the Average Market Price of the Company shares as at the Tranche Three End Date<sup>13</sup> is:
    - less than \$1.80 per share, the applicable Average Market Price; or
    - \$3.92 or more per share as at the first day of the Exercise Period for those shares and at least 700 Burger Fuel restaurants are open and operating, \$1.97 per share.
- Tranche Four Option Shares is:
  - \$1.98 per share; or
  - if the Average Market Price of the Company shares as at the Tranche Four End Date<sup>14</sup> is:
    - less than \$1.98 per share, the applicable Average Market Price; or
    - \$4.32 or more per share as at the first day of the Exercise Period for those shares and at least 1000 Burger Fuel restaurants are open and operating, \$2.16 per share

The subscription price for the shares to be allotted by the Company and the purchase price for the shares to be acquired from Mason Roberts Holdings at that time is payable at completion of those transactions, which is to be 5 business days after the date on which shareholder approval is obtained. The consideration for the call option shares is payable 10 business days after completion of the sale of each tranche, which is 10 business days after the applicable exercise notice is issued.

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<sup>12</sup> See footnote 2.

<sup>13</sup> See footnote 3.

<sup>14</sup> See footnote 1.

- The transactions described above are proceeding to realise the benefits to the Company described above in relation to the partnering with Franchise Brands and the access to the SUBWAY® network and expertise that will follow.
- The acquisition of the Company shares under each of the three transactions described above, if approved, will be permitted under Rules 7(c) and 7(d) of the Takeovers Code as an exception to Rule 6 of the Takeovers Code.
- The Company has been advised by Franchise Brands LLC that it has not entered into (nor does it intend to enter into) any agreement or arrangement (whether legally enforceable or not) with any other person relating to the allotment or acquisition, holding, or control of the voting securities to be acquired, or to the exercise of voting rights in the Company.
- An independent adviser's report prepared by Simmons Corporate Finance Limited for the purposes of Rule 18 is attached to this Notice of Meeting.
- Rule 19 of the Takeovers Code requires the directors of the Company to provide a written statement as to whether they recommend approval or disapproval of any proposed acquisition or allotment of shares under Rule 7(c) or Rule 7(d), and give their reasons. The independent directors of the Company (being the directors other than Josef Roberts and Chris Mason) recommend approval of Resolution 1 for the following reasons:
  - As stated above, the proposed transaction provides a key strategic opportunity to the Company by providing access, through Franchise Brands, to SUBWAY® franchisees and the resources and support of Franchise Brands itself. These benefits have the potential to result in significant growth of the Company's business, to the benefit of all shareholders.
  - The findings of the independent adviser's report prepared by Simmons Corporate Finance Limited conclude that "*the positive aspects of the FB Transactions overwhelmingly outweigh the negative aspects from the perspective of the Non-associated Shareholders*".

We note that, given their interest in the transaction, Josef Roberts and Chris Mason (in their capacity as directors) have abstained from giving a recommendation for the purposes of Rule 19 of the Takeovers Code.

*Takeovers Code (Burger Fuel Worldwide Limited) Exemption Notice 2014*

Rule 15(b) of the Takeovers Code requires that a Notice of Meeting specify the exact numbers (and percentages) of shares to be acquired by Franchise Brands from Mason Roberts Holdings.

That is not possible in this case, as the exact number of shares to be acquired by Franchise Brands depends upon the number of options Franchise Brands elects to exercise. This is presently unknown.

Accordingly, the Company has sought from the Takeovers Panel, and been granted, an exemption from the application of Rule 15(b) (Takeovers Code (Burger Fuel Worldwide Limited) Exemption Notice 2014 ('**Exemption Notice**').

**Please note that by exempting Franchise Brands from rule 7(c) of the Code and the Company from rule 15(b) of the Takeovers Code, the Takeovers Panel is:**

- **neither endorsing nor supporting the accuracy or reliability of the contents of this notice of meeting; and**
- **not implying it has a view on the merits of the allotment of voting securities to Franchise Brands under the subscription agreement with the Company or the acquisition of voting securities by Franchise Brands under the sale and option agreement with Mason Roberts Holdings.**

The key conditions of the Exemption Notice are that:

- This notice of meeting contains, or is accompanied by, the following particulars:
  - the maximum number of voting securities that could be acquired by Franchise Brands under the sale and option arrangements;
  - the maximum number of voting securities that could be acquired by Franchise Brands after completion of the acquisition of voting securities under the sale and option arrangements and the allotment under the subscription arrangements, expressed as a percentage of the total voting securities on issue;
  - the maximum percentage of the total voting securities on issue, that could be held or controlled by Franchise Brands after completion of the acquisition of voting securities under the sale and option arrangements and the allotment under the subscription arrangements;
  - the maximum percentage of the total voting securities on issue, that could be held or controlled, in aggregate, by Franchise Brands and its associates after completion of the acquisition of voting securities under the sale and option arrangements and allotment under the subscription arrangements.
- The Company includes in every annual report issued by it while the exemption remains in force:
  - a summary of the terms of the Call Options, as approved at the meeting at which shareholder approval of the Call Options was given;
  - a summary of the terms and conditions of the exemptions granted under this notice;

- a statement, as at the end of the financial year to which the report relates, of:
  - the number of voting securities acquired by Franchise Brands under the call options; and
  - the number of voting securities then on issue that are held or controlled by Franchise Brands, and the percentage of all voting securities on issue that that number represents; and
  - the percentage of all voting securities then on issue that are held or controlled, in aggregate, by Franchise Brands and Franchise Brands' associates; and
  - the maximum percentage of all voting securities that could be held or controlled by Franchise Brands if it acquires the approved maximum number of voting securities under the sale and option agreement; and
  - the maximum percentage of all voting securities that could be held or controlled, in aggregate, by Franchise Brands and Franchise Brands' associates if it acquires the approved maximum number of voting securities under the sale and option agreement; and
  - a statement of the assumptions on which the above particulars are based.
- From the date the Exemption Notice comes into force and up to completion of the final exercise of the call options, the Company must:
  - disclose on its internet site the information regarding the call options required to be included in its annual reports;
  - announce on its internet site any aggregate increase of 1% or more in the voting securities held or controlled by Franchise Brands since the date of the last disclosure under this paragraph or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting securities held or controlled by Franchise Brands; and
  - maintain every such announcement on its internet site in a prominent position,

in each case as soon as the Company is aware, or ought to be aware, that the relevant increase has occurred.
- The numbers and percentages referred to on pages 11 and 12 of this Notice of Meeting are calculated on the basis of the numbers of voting securities set out in page 12.
- This Notice of Meeting also contains, or is accompanied by full particulars of the proposed Franchise Brands transactions (as set out above) and this summary of the terms and conditions of the Exemption Notice.
- This Notice of Meeting prominently displays the disclaimer set out in page 15.



## **B. Resolution 2: Purchase by CMJR Holdings Limited of Shares from T.E.A. Custodians Limited**

This resolution seeks approval by ordinary resolution, for the purposes of Rule 7(c) of the Takeovers Code, of the grant by T.E.A. Custodians Limited to CMJR Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to up to 300,000 shares and JCR Investment Trust as to up to 300,000 shares) of call options for up to 600,000 fully paid ordinary shares in the Company and any subsequent exercise of those options.

The background to, and details of, this transaction is explained in the following sections of these explanatory notes.

Under Rule 17(1) of the Code, each of T.E.A. Custodians Limited and CMJR Holdings Limited (as nominee for the Mason Family Trust, JCR Investment Trust, CMJR Trust) and their associates are prohibited from voting on this resolution.

### **Proposed Transaction and Structure**

#### *Background to and commercial rationale for the transaction*

As an ancillary transaction to the sale of shares by Mason Roberts Holdings Limited to Franchise Brands LLC described above, CMJR Holdings Limited has negotiated the issue of options that would enable a purchase from T.E.A. Custodians Limited of up to 600,000 shares in the Company.

The exercise of those options (and thereby the purchase of the shares) may only proceed if the sale of shares to Franchise Brands by Mason Roberts Holdings Limited also proceeds. The price of the shares being sold to Franchise Brands by Mason Roberts Holdings Limited, and the exercise price for the options issued to CMJR Holdings Limited by T.E.A. Custodians Limited, are the same (at \$1.35 per share). The two transactions are therefore linked, although CMJR Holdings Limited has negotiated independently with T.E.A. Custodians Limited.

#### *Proposed transaction*

The proposed transaction (subject to the necessary shareholder and any regulatory approvals, rulings or exemptions being obtained) will involve the grant of call options by T.E.A. Custodians Limited to CMJR Holdings Limited (as nominee for and on behalf of the Mason Family Trust as to 300,000 shares and JCR Investment Trust up to 300,000 shares) to acquire 600,000 fully paid ordinary shares in the Company.

The foregoing call options may only be exercised if the conditions for the purchase by Franchise Brands of shares from Mason Roberts Holdings Limited are satisfied, and completion of any purchase of those option shares must take place at the same time as the sale of shares to Franchise Brands. If the purchase by Franchise Brands of shares from Mason Roberts Holdings Limited proceeds (and subject to the shareholders' approval sought in this Notice of Meeting), Mason Roberts Holdings will proceed to exercise the call options and thereby acquire the 600,000 shares from T.E.A. Custodians Limited. The exercise price for the T.E.A. Custodians option shares is \$1.35 per share, which is the same as the purchase price of the shares being sold to Franchise Brands.

## Legal Context – Takeovers Code

### *Takeovers Code provisions*

The Company is a 'code company' being subject to the Code by virtue of its listing on NZAX.

Rule 6(1)(b) of the Code prohibits any person who holds or controls 20% or more of the voting rights in a code company from becoming the holder or controller of an increased percentage of the voting rights in the code company except as provided in Rule 7. Rule 6(1)(b) applies to the proposal for CMJR Holdings Limited (for and on behalf of the Mason Family Trust and JCR Investment Trust) from acquiring the options and related shares from T.E.A. Custodians Limited.

Rule 7(c) permits the foregoing increase in voting rights if the acquisition by a person of voting securities in the code company has first been approved by an ordinary resolution of shareholders entitled to vote in accordance with the requirements of the Takeovers Code. The Company seeks this approval for each of the transactions described above in Resolution 5.

### *Information required under rule 15 of the Takeovers Code*

As stated above, the proposed share transactions involve both an acquisition of shares which requires approval under Rule 7(c) of the Takeovers Code, and an allotment by the Company to Franchise Brands of shares, which requires approval under Rule 7(c) of the Takeovers Code.

Rule 15 provides that shareholders must receive specified information before voting on any resolution under Rule 7(c) of the Takeovers Code. In addition, Rule 16 of the Takeovers Code provides that shareholders must receive the specified before voting on any resolution under Rule 7(d) of the Takeovers Code

The required information is set out below:

- (a) CMJR Holdings Limited (as nominee for the the JCR Investment Trust and Mason Family Trust) is acquiring the voting securities and T.E.A. Custodians Limited is disposing of the voting securities.
- (b) The following are the particulars of the voting securities to be acquired by CMJR Holdings Limited from T.E.A. Custodians Limited:
  - i. 600,000 voting securities are to be acquired when the options are exercised.
  - ii. The number of shares to be acquired (when the options are exercised) represents 1.09% of all voting securities on issue in the Company (which will be diluted to 1.00% of the shares following the allotment of securities to Franchise Brands LLC which is to occur contemporaneously with this acquisition).
  - iii. After the completion of the acquisition from T.E.A. Custodians, and immediately following the sale of shares to and allotment by Franchise

Brands, CMJR Holdings Limited will hold or control 1.00% of all voting securities on issue in the Company. The beneficial interests in that holding will be held:

- i. as to 0.5% for the Mason Family Trust (which trust will control 12.36% of all voting securities on issue in the Company after the completion of the acquisition from T.E.A. Custodians, and immediately following the sale of shares to and allotment by Franchise Brands); and
  - ii. as to 0.5% for the JCR Investment Trust (which trust will control 61.08% of all voting securities on issue in the Company after the completion of the acquisition from T.E.A. Custodians, and immediately following the sale of shares to and allotment by Franchise Brands); and
- (c) The consideration for the call option shares is \$1.35 per share. No separate consideration is being paid for the issue of the call options.
  - (d) The transactions described above were agreed by T.E.A. Custodians to assist in mitigating slightly the diminution in the Mason Family Trust's and JCR Investment Trust's beneficial shareholding in the Company that would follow the Franchise Brands transaction described above. T.E.A. Custodians consider that the value of their remaining holding may, as a result of the new BurgerFuel and Franchise Brands association and the perceived benefits, increase significantly faster over time.
  - (e) The acquisition of shares under the transactions described above, if approved, will be permitted under Rule 7(c) of the Takeovers Code as an exception to Rule 6 of the Takeovers Code.
  - (f) CMJR Holdings Limited has not entered into (nor does either intend to enter into) any agreement or arrangement (whether legally enforceable or not) with any other person relating to the allotment or acquisition relating to the allotment, acquisition, holding, or control of the voting securities to be acquired, or to the exercise of voting rights in the Company.
  - (g) An independent adviser's report prepared by Simmons Corporate Finance Limited for the purposes of Rule 18 is attached to this Notice of Meeting.
  - (h) Chris Mason and Josef Roberts have abstained from making any recommendation to shareholders on the basis of their interest in the proposed transactions. The remaining directors have decided not to make a recommendation to shareholders in respect of the proposed transactions between T.E.A. Custodians Limited and CMJR Holdings Limited. The reason for not doing so is that the remaining directors regard the proposed transaction as not having any discernible impact on the Company and no other shareholder is participating in the proposed transactions.

## **PROXIES AND REPRESENTATIVES**

All shareholders are entitled to attend the Company's Extraordinary Meeting.

Any shareholder of the Company entitled to attend and vote at the meeting may appoint another person as his / her proxy to attend and vote instead of him/her. A proxy need not be a shareholder of the Company. A proxy form accompanies the notice of meeting. If you wish, you may appoint "the Chairman of the Meeting" as your proxy.

Any corporation that is a shareholder of the Company may appoint a person as its representative to attend the meeting and vote on its behalf, in the same manner as that in which it could appoint a proxy.

You may either direct your proxy how to vote for you, or you may give your proxy discretion to vote how he/she sees fit. If you wish to give your proxy discretion you should mark the appropriate boxes on the proxy form. If you do not mark any box for a particular resolution, then your direction is to abstain for that resolution.

If you wish to vote by proxy you must complete the **enclosed** proxy form and lodge it at the office of the Company's share registry, Computershare Investor Services Limited at either Private Bag 92-119, Auckland 1142 or online at [www.investorvote.co.nz](http://www.investorvote.co.nz), so as to be received no later than 3pm on 24 February 2014.