



**Churro Station®**

**FRANCHISE AGREEMENT**

**EXHIBIT A**

# **CHURRO STATION**

## **FRANCHISE AGREEMENT**

### **Table of Contents**

1. INCORPORATION OF RECITALS.....	3
2. GRANT OF FRANCHISE. ....	3
3. FRANCHISE FEE. ....	4
4. TERM OF THE FRANCHISE AND RENEWAL OPTIONS.....	5
5. LOCATION AND PROTECTED TERRITORY. ....	7
6. DESIGN AND CONSTRUCTION OF YOUR SHOP; MAINTENANCE AND REPAIR. ....	14
7. TRAINING AND PREOPENING ASSISTANCE. ....	17
8. SHOP OPERATIONS AND CONTINUING ASSISTANCE. ....	19
9. ROYALTY AND ADVERTISING FEES. ....	27
10. ADVERTISING AND PROMOTION. ....	29
11. ACCOUNTING, AUDITS, TRADE ACCOUNTS, SECURITY INTEREST, AND LATE CHARGES. ....	31
12. INSURANCE AND DAMAGE OR DESTRUCTION OF YOUR SHOP.....	33
13. RELATIONSHIP OF THE PARTIES; INDEMNIFICATION. ....	36
14. USE AND PROTECTION OF THE LICENSED COMMERCIAL SYMBOLS AND OTHER PROPRIETARY PROPERTY. ....	37
15. TRANSFER OF THE FRANCHISE AND ANY INTERESTS IN IT AND OUR RIGHT OF FIRST REFUSAL. ....	40
16. DEFAULTS, CURES, TERMINATION AND REMEDIES.....	47
17. COVENANTS NOT TO COMPETE.....	54
18. DISPUTE RESOLUTION; ARBITRATION.....	54
19. MODIFICATION OF THIS AGREEMENT. ....	55
20. NOTICES AND APPROVALS.....	56
21. CONSUMER PRICE INDEX ADJUSTMENT.....	56
22. HEIRS, SUCCESSORS, AND ASSIGNS. ....	57
23. WAIVERS.....	57
24. SEVERABILITY. ....	57
25. COVENANT OF FURTHER ASSURANCES. ....	57

<b>26. GOVERNING LAW.....</b>	<b>58</b>
<b>27. COUNTERPARTS.....</b>	<b>59</b>
<b>28. HEADINGS AND GENDER.....</b>	<b>59</b>
<b>29. MISCELLANEOUS.....</b>	<b>59</b>
<b>30. INVENTIONS, DISCOVERIES, AND IDEAS .....</b>	<b>59</b>
<b>31. ACCORD AND SATISFACTION.....</b>	<b>60</b>
<b>32. JOINT AND SEVERAL LIABILITY.....</b>	<b>60</b>
<b>33. OUR RIGHT TO ACT. ....</b>	<b>60</b>
<b>34. ENTIRE AGREEMENT. ....</b>	<b>61</b>

**CHURRO STATION®**  
**FRANCHISE AGREEMENT**

This Agreement is entered into in Corte Madera, California, on \_\_\_\_\_, 20 \_\_\_\_, by CHURRO STATION FRANCHISES, LLC, a California limited liability company, whose address is 2 Fifer Avenue, Suite 110, Corte Madera, California 94925, referred to in this Agreement by words such as "we", "us", and "our", and \_\_\_\_\_, whose address is \_\_\_\_\_, referred to in this Agreement by words such as "you" and "your", and who are collectively referred to in this Agreement as "the parties".

This Agreement is made with reference to the following facts, representations, and purposes:

A. We have been licensed by CHURRO STATION, LLC, a California limited liability company ("our licensor"), to use the service mark "*Churro Station*" and certain trademarks, service marks, trade secrets, trade dress, recipes, practices, procedures, and other proprietary information and property and to grant to third parties the right to open and operate retail food shops that use that information and property. These shops must follow the *Churro Station* format and use the *Churro Station* recipes, practices, procedures, and other proprietary property licensed to you under this Agreement. Under our license, we are developing a chain of shops bearing the *Churro Station* name which are designed, built, and decorated in accordance with our requirements. These shops are intended to be run in accordance with substantially uniform standards of operation in order to create and maintain a high quality image and appeal to the public. In order to maintain and increase the goodwill and public acceptance of *Churro Station* shops, *Churro Station* shops must maintain the standards, and follow the requirements, practices, and procedures, we establish from time to time. In this regard, we maintain control over the format, design, decor, equipping, fixturing, stocking, practices, procedures, recipes, services, products, advertising and promotion, and many other aspects of the operation of *Churro Station* shops.

B. All of the items we license to you under this Agreement, including the trademarks, trade names, service marks, logotypes, other commercial symbols, processes, procedures, trade dress, equipment specifications, trade secrets, recipes, trade practices, copyrights, patents, menus, manuals, forms, formats, advertising and promotional material and practices, bulletins, notices, communications, training material, goodwill, and all other items, tangible and intangible, used presently, or specified for use in the future in connection with this franchise, are referred to in this Agreement as "the licensed assets".

C. You have applied to us for a franchise to own and operate a *Churro Station* shop ("your shop") and to use the licensed assets in connection with it. You represent and warrant to us that you and everyone who will own an interest in this franchise has set forth fully and truthfully all of the information we have requested on our application and financial disclosure forms, and in all other written and oral communications between us. You further represent and

warrant that all persons or entities who will have an ownership interest in this franchise and in any entity that will own any interest in this franchise have been disclosed to us in writing, have provided all information we have requested of them, and, at our request, have signed a guaranty of the performance of the franchisee under this Agreement.

D. You acknowledge and represent to us that you have investigated the region in which you plan to open your *Churro Station* shop and have found no use of the name "*Churro Station*", or any similar trade name or commercial identification, in that area.

E. We desire to grant to you a franchise to open a *Churro Station* shop on the terms and conditions of this Agreement, and based solely upon the representations and promises in it.

F. You acknowledge that neither we, nor anyone purporting to act for us, have made any promises or representations concerning *Churro Station* shops, the sales volumes which are likely to be experienced by your shop, the profits likely to be made in your shop, the likelihood of success of the franchised business, or any other matter in connection with the proposed franchise or the franchised business, other than those promises and representations which are set forth in this Agreement, any signed amendments or exhibits to this Agreement, or in the franchise offering circular that accompanied this Agreement. If any such promises or representations have been made, you are instructed to make sure that they are set forth in writing in this Agreement, or in an amendment or exhibit to this Agreement, and that any such amendment or exhibit is signed by both of us. In granting you this franchise, we are relying on you to see that all promises and representations on which you are relying are reduced to writing, are signed, and are made a part of, or are attached to, this Agreement. If they are not, you may not be able to rely on such promises or representations and we will not be bound by them.

G. As used in this Agreement the word "you", and similar words, refer to all of the people who sign this Agreement, to any entity that has any interest in this franchise, and to any other people or entities that own a material portion of the assets used in the operation of your shop.

H. The terms "this franchise" and "your shop" refer to the business operated pursuant to this Agreement as well as a significant portion of the property used in the operation of your shop. The words "this Agreement" refer to this Franchise Agreement, the rights granted by this Agreement, and any amendments, alterations, additions, exhibits, and addenda to this Agreement, but only those that are signed by all of the parties to this Agreement. If, for any reason, we change the name of our shops from *Churro Station* as allowed by this Agreement, the terms of this Agreement will apply equally to operations under the changed name.

I. As used in this Agreement, references to our "manual" means any manual or manuals, whatever named, that describe the manner of operating your *Churro Station* shop, the forms and formats to be used in your shop, our operating, reporting, advertising, and business requirements, the use of our names, marks, trade dress, and other proprietary property, the licensed assets, and so forth.

J. The person or people signing this Agreement warrant that they have full power and authority to enter into this Agreement, and, if they have signed on behalf of a partnership, limited liability company, corporation, or other entity, that it has been duly organized, is validly existing, is qualified, and is in good standing in the jurisdiction in which it was formed and, if necessary as a condition of doing business where your shop is located, in the jurisdiction where your *Churro Station* shop will be situated.

WHEREFORE, in consideration for the mutual promises set forth herein, and based on the above recitals, facts, representations, and purposes, as well as for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound, the parties to this Agreement agree as follows:

### **1. Incorporation of Recitals.**

1.01 The representations, facts, promises, warranties, recitals, and statements set forth above are true and are incorporated into this Agreement by reference.

### **2. Grant of Franchise.**

2.01 We hereby grant you a franchise to own and operate the number of *Churro Station* shops specified below in accordance with the provisions, and for the term, set forth in this Agreement. You agree to use the licensed assets only as allowed by this Agreement.

2.02 You acknowledge that, other than as set forth in this Agreement, we and our licensor have the sole right to use, and to permit others to use, the licensed assets. You agree that you do not now have, nor in the future will you have, any rights in or to any of the licensed assets other than the rights granted to you by this Agreement.

2.03 You agree not to use the name "Churro Station", or any names similar to it, in the name of any partnership, corporation, limited liability company, or other entity, that you own or form, whether to own and operate your shop or in connection with any other activity or entity in which you may now have, or in the future may have, any direct or indirect interest.

2.04 No goodwill associated with the *Churro Station* system now or in the future, or with any of the licensed assets, will belong to you or to any person who, or entity which, owns or is otherwise involved with this franchise whether because of your, or their, use of the assets, or otherwise. You agree that all goodwill connected in any way with the licensed assets, our names and marks, and the *Churro Station* system, belongs exclusively to us and to our licensor, and will so in the future.

2.05 *You acknowledge that we have advised you to obtain the advice of competent legal counsel when reviewing this Agreement, and any other contracts you propose to enter, so that you will understand fully your rights and obligations under this Agreement and such other contracts.*

### 3. Franchise Fee.

#### 3.01 Initial Franchise Fee

(a) If this Agreement covers a single *Churro Station* shop, you agree to pay us the sum of \$25,000.00 in consideration for the rights granted to you under this Agreement. If this Agreement grants you the right to open more than one *Churro Station* shop, the initial fee you must pay is determined as follows:

<u>Number of Shops</u>	<u>Total Initial Franchise Fee</u>
2	\$45,000.00
3	\$63,000.00
4	\$78,000.00
Each additional shop	\$15,000.00 per shop

(b) The franchise fee is payable in full upon the signing of this Agreement.

(c) Once you are an existing *Churro Station* franchisee and desire to purchase a franchise for a second, or subsequent, shop, the initial franchise fee for each will be equal to 80% of the single-shop franchise fee being charged at the time you sign your Franchise Agreement covering the additional shop or shops.

#### 3.02 Finding a Location for a Single-Shop Franchise

(a) If this Agreement covers a single *Churro Station* shop, upon signing this Agreement and paying the appropriate franchise fee, you will have the right to locate a *Churro Station* shop in the following area, called "your designated area":

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(b) You will have the exclusive right for 30 days to find a location for your *Churro Station* shop within your designated area that meets our approval. During the 30-day period, we will not grant another person the right to seek a location for a *Churro Station* shop in that area nor will we take a location in that area ourselves for a company-owned *Churro Station* shop. See Section 5 below for how to apply for approval of a site.

(c) If you do not find a location acceptable to us within the concerned area within 30 days from the date of this Agreement, you will have another 60 days within which to find a location that we approve in that area on a nonexclusive basis. During the nonexclusive 60-day period, we can allow other *Churro Station* franchisees to, and can ourselves, seek and take locations for *Churro Station* shops within the area. The taking of sites in your designated area by us, or by others, may limit or eliminate the acceptable locations available to you.

(d) If you do not find an acceptable location in your designated area within 90 days from the date of this Agreement, we can terminate this Agreement and refund one-half of your initial fee to you. We can retain the balance of your initial fee in consideration for our efforts in connection of granting you this franchise.

(e) When you have found a site that you consider acceptable, you must submit to us the information set forth in Section 5 of this Agreement in order to obtain our approval of your proposed site. You must obtain our approval of your site before you can lease, or otherwise acquire, it. You must also comply with the leasing requirements of Section 5 or we can terminate this Agreement. The refundability of your franchise fee under various circumstances related to your site and lease are discussed in Section 5.

### 3.03 Development of Multiple Shops

(a) If this Agreement grants you the right to open more than one *Churro Station* shop, your shop-opening schedule and your designated area are set forth on Exhibit B. You must open each shop by the date specified in this schedule or you will lose your right to open any shops not then open or under construction. The site selection and leasing requirements for each shop are as set forth in Section 5 of this Agreement.

(b) If you default under your shop-opening schedule, we can retain all fees you have paid to us as consideration for holding your designated area from the market and granting you development rights.

(d) The terms of this Agreement will govern all of the shops you open pursuant to the development rights granted by this Agreement.

(e) Since we charge a reduced franchise fee for your second and subsequent shops, we can, in our discretion, reduce or eliminate the initial services we provide in connection with the opening of those shops.

## **4. Term of the Franchise and Renewal Options.**

4.01 (a) The initial term of this Agreement is 10 years, beginning on the date of this Agreement. If the term of your lease is for 10 years and it begins not more than one year after the date of this Agreement, the term of this Agreement will be extended for not more than one year so that it will expire on the date that your lease is due to expire.

(b) If this Agreement covers more than one *Churro Station* shop, the term of this Agreement shall be extended to cover the initial lease term of each shop covered by this Agreement, but the term will not be over 10 years for each shop.

(c) If the term of your lease, including any renewals and extensions, expires prior to the end of the 10-year term of this Agreement, this Agreement will end at the same time as your lease ends.



(d) If you own the building in which your *Churro Station* shop is located, the term of your Franchise Agreement begins on the date your shop opens for business.

4.02 (a) This franchise is renewable after the expiration of the initial term for one additional period of 10 years. If you want to renew this franchise, you must give us notice in writing of that desire not less than 6 months nor more than 12 months prior to the scheduled expiration date of the initial term.

(b) If you are in default under this Agreement at the time you give us notice of your intent to renew this franchise or at the time the renewal term is to begin, we can refuse to renew your franchise. If you have been given 2 or more notices of default concerning the violation of material terms of this Agreement over the course of any 3 year period, even if those violations were cured as allowed by this Agreement, we can decline to renew your franchise.

4.03 (a) As a condition of our approving of the renewal of this franchise, you agree that we can require you to sign the form of Franchise Agreement we are using for new *Churro Station* franchises at the time the renewal is to take effect. If no new franchises are then being offered, the form of Franchise Agreement that will be used will be that which we specify in our reasonable discretion at the time. The new agreement may contain terms substantially different from the terms of this Agreement.

(b) After we receive the notice of your desire to renew this franchise, we will send you the form of Franchise Agreement that will govern the renewal term for your review at least 30 days prior to the expiration of the initial term. You must agree to sign the required form of Franchise Agreement within 30 days of your receipt of that agreement or you will be deemed to have withdrawn your request to renew your *Churro Station* franchise and, thus, to have agreed to allow the franchise to terminate at the expiration of the current term.

(c) We will not require you to pay the initial fee set forth in the Franchise Agreement you are required to sign as a condition of renewal. However, for each shop being renewed you agree to pay us a renewal fee equal to 10% of the initial franchise fee we are charging to new *Churro Station* franchisees at the time of your renewal, or reimburse us for our expenses and the time of our employees in connection with your renewal or renewals, whichever sum is greater. If we are not offering new *Churro Station* franchises at the time of your renewal or renewals, we will advise you of the amount of the renewal fee when we give you the new Franchise Agreement that is to govern the renewal term. Even though a new Franchise Agreement is signed on renewal, we will not provide the initial services that may be described in that agreement and there will be no further renewal terms available.

(d) Except in the case of a relocation of your shop as described in Section 4.05 below, as a condition of renewal, you must provide evidence that you have obtained the right to occupy your shop location for a term at least equal to the renewal term.

4.04 As a condition of the renewal of this franchise, you agree that we can require you to update your equipment, refurbish your shop, and update your shop signage to the extent and in

the manner we reasonably require in order to bring your shop up to the standards of those *Churro Station* shops opened closest in time to your renewal period. We agree to notify you of such requirements, and the time within which they must be accomplished, at the time we provide you with a copy of the Franchise Agreement that will be used for your renewal term. By signing the new Franchise Agreement, you agree to comply with our requirements within the time periods we specify.

4.05 If we reasonably anticipate that one or more of the *Churro Station* shops governed by this Agreement can do materially better at a new location, as a condition of our approving the renewal of your franchise, we can require you to relocate the concerned shop or shops when the lease or leases currently in effect on the location or locations expire. Your duties and our services in connection with any relocation will be as governed by the new form of Franchise Agreement that you will sign as a part of the renewal process. If you relocate your shop when you renew, in addition to the applicable renewal fee we can also charge you our relocation fee for each relocated shop to compensate us for the additional services we provide in connection with the relocation, including providing our site and lease approval and the design and construction consulting we provide in connection with your new site or sites. Our relocation fee is equal to 30% of the franchise fee we are charging to new *Churro Station* franchisees at the time of your relocation. If we are not granting new franchises at the time of your relocation, the relocation fee will be equal to 30% of the franchise fee we were charging for new *Churro Station* franchises at the time we stopped granting new franchises, adjusted by any increase in the Consumer Price Index as described in Section 21 below.

4.06 If any renewal not otherwise permitted by this Agreement is mandated by law, to the extent allowed, the renewal period or periods, and the terms of renewal, will be governed by the provisions of the Franchise Agreement we are using for new *Churro Station* franchisees at the time the relevant renewal period is due to start. If we are not offering new *Churro Station* franchises at that time, the renewal period or periods, and the new franchise terms, will be governed by the provisions governing renewal terms set forth in the Franchise Agreement that we were using at the time we stopped offering new *Churro Station* franchises.

4.07 As a condition of renewal, you will have to sign a general release of all claims against us so that we do not start the renewal term with unresolved issues between us.

## **5. Location and Protected Territory.**

5.01 As used in this Agreement, the word "lease" also means a sublease or other agreement by which you are allowed to occupy your shop location, including a deed by which you own it.

5.02 (a) We will consult with you regarding the general criteria for your shop location so that you will know what type of location to look for. However, we have no responsibility to find a location for you. It is your responsibility to find a location for your shop that is acceptable to us within the required time period.

(b) Sometimes the protected territories granted in connection with locations approved for other franchisees may overlap the area in which you have priority to look for a site. If such a protected territory has been granted to another franchisee before you find a location we approve, you will not be able to locate your shop within that protected territory, even though it is partially in your designated area or the area in which you have the right to open multiple *Churro Station* shops.

5.03 (a) If you have been granted the right to open more than one *Churro Station* shop, the designated area within which you have the exclusive right to open your shops, and the time within which you must open each shop, are listed on Exhibit B. As long as you are in compliance with the requirements of that exhibit, we will not authorize other *Churro Station* franchisees to seek or take locations in the designated area, and we will not do so ourselves. If you open all of the shops called for by your shop opening schedule, we will not grant franchises to third parties within that area, and will not open a *Churro Station* shop within that area ourselves, as long as you are in good standing under this Agreement.

(b) If you open more than one shop pursuant to the multiple shop opening requirements described in Exhibit B, you must continuously own and operate all of those shops during the term of this Agreement in order for your exclusive rights under this Agreement to remain in effect.

5.04 If you do not find an acceptable location for your first *Churro Station* shop within 90 days from the date of this Agreement, or do not comply with the multiple shop opening requirements listed on Exhibit B, if appropriate, we can terminate this Agreement without giving you further time within which to find a location for your shop or shops.

5.05 (a) When you find a location, you must provide us with the details of the site. To assist us in deciding whether to approve the location, you must provide us with the information we request at the time, which may include population and demographic data concerning the area of the site, the identity of other food enterprises in the same shopping center, mall, complex, or area where your shop is proposed to be located, the nature of the residential, commercial, and office development in the area, and so forth. In addition, such things as traffic patterns, the layout of the proposed space, the visibility and accessibility of the proposed location, the other physical attributes of the location, and similar data must be provided to us if reasonably obtainable. If the site is in a shopping center or other multitenant development, you must provide us with a layout of the shopping center or development with the location of your proposed shop indicated. If we request additional information for our evaluation of the proposed site, you agree to use your best efforts to provide the requested information to us promptly. All costs in connection with obtaining the information set forth above and supplying it to us are strictly your responsibility.

(b) If we approve the proposed location for your *Churro Station* shop, we will notify you promptly of that approval. If we do not approve the site, we agree to notify you promptly of our objections and the steps you can take, if any, to make the site acceptable to us.

5.06 (a) As soon as possible after we approve your proposed location, but in no event more than 90 days after we do so, you must obtain a signed lease for the site. If no lease is then available, you agree to get a letter of intent from the landlord of your prospective *Churro Station* shop setting forth the basic terms of the proposed lease and accepting you as a tenant.

(b) You must provide the terms of your proposed lease to us for our approval prior to signing the lease. The provided terms should include the proposed term of the lease, any renewal options, rental and other charges, fees, or costs, limitations on the use of the premises and similar terms, along with the form lease proposed by the lessor. We must approve the lease form and leasing terms in writing before you may enter into the lease, unless we waive this requirement in writing.

(c) At our option, we can provide you with our comments on the lease terms. We are not responsible for any errors or omissions we may make in our comments on the lease, or, if we assist you in negotiating the terms of the lease, in our negotiation of the lease terms. We strongly advise you to obtain the advice of competent legal counsel when reviewing the lease to understand your rights and obligations. Neither by approving your site or your lease do we guaranty or warrant in any way that the site or lease terms are adequate for your needs or purposes. Our requirements, reviews, approvals, and assistance are for our own purposes and are not a representation or warranty guaranteeing you success in the approved location or under the terms of the concerned lease.

(d) You agree to provide us with a copy of your fully-executed lease within 5 days of its execution.

(e) If you do not obtain a lease, or, if appropriate, a letter of intent, for the site within the required time period, we can terminate this Agreement and refund one-half of your initial franchise fee, the balance of which we can retain in consideration for our efforts in connection of granting you this franchise and approving your proposed location. Once you have signed a lease, all fees and amounts you have paid to us become nonrefundable.

5.07 As a condition of our approving your proposed lease we can require you and the lessor of the site to enter into an agreement allowing the assignment of the lease to us in the event this Agreement expires or is terminated. The agreement may contain other terms concerning your occupancy and/or our rights upon the expiration or termination of this Agreement. The agreement we use for this purpose on the date this Agreement is attached to the Franchise Offering Circular that accompanied this Agreement.

5.08 (a) If we find or are presented with an acceptable site in your designated area before you have found an acceptable location for your *Churro Station* shop, we will make that location available to you, unless, for some reason, the site is limited in such a way that we cannot offer the site to you.

(b) If we present you with such a location, you will have 5 days from being notified of the location within which to accept the location. If you do not accept the location in

writing within the 5-day period, we can offer the location to another *Churro Station* franchisee, we can retain the location for a company-owned *Churro Station* shop, and/or we can terminate this Agreement and refund the initial franchise fee you have paid us, less one-half of the franchise fee you have paid which we can retain as consideration for granting you the franchise and presenting you with the proposed location. If we do not terminate this Agreement for that reason, the provisions concerning your obligation to find an acceptable location for your shop, and the time period within which you must do so, remain in effect.

5.09 Your *Churro Station* shop must be open for business within 6 months from the date you sign your lease, or, if appropriate, a letter of intent. If it is not, we can terminate this Agreement, unless, in our judgment, you have used due diligence in attempting to satisfy the requirements of this Section 5 and in our judgment the delay is beyond your reasonable control in which case we will extend the 6 month period for a reasonable period of time. If we terminate this Agreement because you have not opened your shop within the time required, we can retain your entire franchise fee as consideration for our efforts in connection with selling you the franchise, approving your site, and our other activities on your behalf to the date of the termination.

5.10 (a) In connection with our consideration and approval of your proposed shop location, if you desire a protected territory in connection with your shop we must agree with you upon any protected territory to be granted in connection with the proposed location and enter that protected territory on Exhibit A to this Agreement. We base the boundaries of your protected territory principally upon the Hispanic population within those borders. Our agreement on a protected territory within a reasonable time, if any protected territory is to be granted in connection with your shop, is a condition to the continuation of this Agreement. If, within a reasonable time we cannot agree on a protected territory, or to agree that there will be no protected territory, we can terminate this Agreement and refund one-half of your initial franchise fee the balance of which we can retain as consideration for granting you the franchise and approving your location.

(b) Once we have approved your location and lease, and have agreed with you on a protected territory, you will be authorized to enter into the lease for your shop location. If for any reason you execute your lease prior to Exhibit A being executed by both of us, your shop will be deemed not to have been granted any protected territory.

(c) The franchise awarded by this Agreement is only for the location or locations described in Exhibit A to this Agreement and does not permit you to use the licensed assets at any other location or for any other purpose except as otherwise provided in this Agreement.

(d) If this Agreement covers more than one shop, Exhibit A will be amended as the location for each shop covered by this Agreement is approved and any protected territory assigned in connection with each location is granted.

5.11 (a) Except as provided below, by granting you a protected territory, we agree not to locate a company-owned or franchised shop of the type franchised by this Agreement within that territory during the term of this Agreement.

(b) Excluded from the restriction set forth in subsection 5.11(a) above are any competing units owned, operated, and/or franchised by any person or entity with whom or which we may merge, by whom or which we are acquired, or which we acquire or otherwise become affiliated after the date of this Agreement. However, we agree that no such entity will own, operate, or franchise any facilities using the principal service marks and trademarks that are licensed to you under this Agreement.

(c) Designation of the protected territory does not grant or imply any marketing or clientele exclusivity within that area, except as noted elsewhere in this Agreement.

(d) You do not have the right to open any additional *Churro Station* shops in your protected territory unless you have been granted the right to open more than one *Churro Station* shop in this Agreement or we otherwise agree.

5.12 (a) You can relocate your *Churro Station* shop only with our prior written consent. As a condition of giving you our consent, you must sign a general release of all claims against us, our members, officers, employees, and agents, and sign the Franchise Agreement we are using for new *Churro Station* franchises at the time of the relocation.

(b) You can only relocate your shop within the protected territory originally granted to you, if any. Your relocated shop cannot be within the protected territory granted to another *Churro Station* franchisee, or within an area reserved for or to a *Churro Station* shop that we own or that is owned by one of our affiliates. The site, lease, design, construction, decoration, equipping, stocking, and every other aspect of your relocated *Churro Station* shop must be accomplished in accordance with the requirements that exist at the time for new *Churro Station* shops. We may design a new protected territory for you depending on new location of your store.

(c) To compensate us for the costs we incur in connection with your relocation, as a condition of approving your relocation, you must pay us a relocation fee in an amount equal to 30% of the franchise fee we are charging at the time for new *Churro Station* franchises to help defray the costs we incur in connection with your relocation. If we are not offering new *Churro Station* franchises at the time of your relocation, we will provide you with the Franchise Agreement we propose to use in connection with your relocation when we give you our consent to the relocation. The relocation fee in that case will be equal to 30% of the franchise fee we were charging for new *Churro Station* franchises at the time we stopped granting new franchises, and adjust that amount by any increase in the Consumer Price Index as described in Section 21 below.

(d) If we grant our consent to your relocation but think your current location is viable, you agree that we have the right to require you to assign your lease to us, or our nominee,

or to sublease the location to us, or our nominee, as a condition of our approval of your relocation. We also have the right to enter into a new lease for the space you are vacating, or one in the same shopping center or commercial area, or to have another *Churro Station* franchisee do so, and to open a company-owned or franchised *Churro Station* shop in that location.

5.13 (a) Nothing in this Agreement, including granting you a protected territory, prevents us, our licensor, our affiliates, or others whom we or they authorize, from marketing goods bearing the *Churro Station* name or marks, or names or marks similar or related to the name *Churro Station*, or any other products or services, to independent retail outlets, at wholesale, by means of catalogs, by mail order, by electronic means, including over the Internet, whether within your protected territory or elsewhere. Such goods may be the same as, or may be different from, goods you carry in your *Churro Station* shop. You will not be entitled to any compensation or other benefit because of sales made as a result of such activities, even if such sales affect your business.

(b) Nothing in this Agreement, including granting you a protected territory, prevents us, our licensor, our affiliates, and/or others whom we or they authorize, from conducting businesses providing goods or services that are not materially similar to those provided by the standard *Churro Station* shop, whether under the *Churro Station* names or marks, or under other names or marks, whether within your protected territory or elsewhere. You will not be entitled to any compensation or other benefit as a result of the sales made by or to such businesses, even if their activities affect your sales.

5.14 (a) Unless we consent in writing to the contrary, you can use your *Churro Station* shop only for providing the services and selling the merchandise we approve and, then, only in the manner we specify. Except as otherwise provided in this Agreement, you are authorized to provide services and sell goods only to retail customers and only from your shop.

(b) Except as provided elsewhere in this Agreements, you agree not to market any goods or services related to your *Churro Station* business through independent retail outlets, at wholesale, by means of catalogs, by mail order, by electronic means, including over the Internet, or by other alternative means.

5.15 Without our written consent, no business, other than the business franchised by this Agreement, can be located in your shop. Only with our consent can you operate your *Churro Station* shop inside the business premises of someone else.

5.16 (a) You are authorized to solicit wholesale customers for the products you produce in your *Churro Station* shop or shops unless and until we specify otherwise. Unless we specify otherwise at any time, prospective wholesale customers do not have to be within your protected territory or territories.

(b) You may not provide products to any wholesale customer without our prior written consent, which consent we agree not to unreasonably withhold or delay. We will base our judgment on whether to grant such consent on our evaluation of the operation of your

existing *Churro Station* shop or shops, your history of compliance with this Agreement, our estimate of whether you can consistently provide the highest quality product to your prospective customer, your ability to provide professional customer service, the proximity of your prospective customer's facilities to other *Churro Station* shops, and similar considerations.

(c) Once granted, we have the right to withdraw our approval of any or all of your wholesale accounts at any time if, in our reasonable judgment, you have committed one or more material violations of this Agreement, the operation of your *Churro Station* shop or shops is suffering on account of your wholesale activities, or for any other reason, you are not consistently providing the highest quality products to those accounts, if the facilities of any of your wholesale customers are near any current or future *Churro Station* shops, if you do not provide professional customer service to your wholesale accounts, if we decide it is more orderly, or will enhance our position versus our competitors, to create exclusive areas or areas of primary responsibility concerning wholesale accounts, or for other commercially reasonable business reasons.

(d) If we learn of any prospective wholesale account that we feel you can adequately service, we can require you to service that account and you agree to do so to the best of your ability. If we do not feel that you can service any such account, we can offer that account to another *Churro Station* franchisee or can service that account ourselves, or refer the account to our affiliates, no matter where the facilities of that account are located.

5.17 (a) A "national or regional account" is an arrangement we may make with larger businesses or other entities in which we agree to discount the products we sell for those affiliated with the designed business or entity. We can sell to national or regional accounts even if their facilities are located within your protected territory.

(b) If we establish a national or regional accounts program and the facilities of any business or entity we designate as such an account is located within your protected territory, we can require, or authorize, you to service those facilities. In that case, you agree to use your best efforts to service those accounts. You agree to honor the discounts we establish for such accounts and to service them in the manner we direct.

5.18 Except as provided in elsewhere in this Agreement, neither you, our other franchisees, our licensor, our affiliates, nor we are prohibited from soliciting retail sales to customers in your protected territory nor are you not prohibited from soliciting retail sales to customers outside of your protected territory. You are not entitled to any compensation, allowance, payment, or other consideration on account of any sales made by others to those who live or work within your protected territory.

5.19 (a) If you have the opportunity to provide *Churro Station* merchandise at special events in your protected territory, such as fairs, exhibitions, charity events, concerts, conventions, and the like, you agree to notify us of such an opportunity immediately. You must also advise us whether you want to participate in the event. If you want to participate in the event, you agree to do so and to follow our requirements in that regard. If you do not want to participate in the



special event, we, or any person or entity we may designate, can do so even though the event is in your protected territory.

(b) We will advise you of any criteria we deem reasonably necessary for the protection of the image of *Churro Station* shops, such as the appearance of any displays, booths, tables, and the like, you may use at the event. We can condition our approval of your participation in a special event on your compliance with such criteria.

(c) If we notify you of a special event in your protected territory, and any requirements we may prescribe concerning your participation in the event, you will have 5 days after your receipt of this information within which to notify us of your desire to participate in the event. If you elect to participate in the event, you agree to do so in accordance with our requirements. If you elect not to participate in the event, or do not notify us of your election to participate in the event within the 5 day period, we, or any person or entity we designate, can participate in the event even though the event is in your protected territory.

(d) If you do not participate in the special event and we, an affiliate, or a person or entity we designate, does so, you will not be entitled to any compensation because of such participation, or otherwise.

## **6. Design and Construction of your shop; Maintenance and Repair.**

6.01 After you sign your lease, we will provide you with one set of representative plans and specifications for a typical *Churro Station* shop at our expense. These plans will be an example of a *Churro Station* shop layout and will not be drawn specifically for your shop space or necessarily in accordance with the requirements of local laws. All architectural and engineering services required to conform the provided plans and specifications to your actual shop premises, and to local laws and requirements, must be obtained at your expense.

6.02 You must provide us with a copy of the proposed layout for your *Churro Station* shop as soon as it is completed by your architect or designer. We must approve the final plans and specifications proposed to be used in the construction of your *Churro Station* shop prior to their use in construction. Your plans must be provided to us in such detail and must contain such items, as we from time to time require. You must pay for all of the plans and specifications provided to us.

6.03 We will provide you with a list of the equipment, décor, furniture, fixtures, and similar items needed for your shop. You agree to purchase all necessary signs, trade fixtures, equipment, interior decoration items, and inventory as may be needed for the preparation of your shop, and all other items we specify and those required by the final plans and specifications we have approved.

6.04 We agree to be available to consult with you on the telephone regarding your design and construction obligations. However, it is your responsibility to see that your shop is built, equipped, decorated, stocked, and opened without delay and in strict accordance with the plans and specifications we have approved.

6.05 If the plans and specifications we have approved are changed in any material manner before or during the construction of your shop, we must approve those changes before the changes are implemented.

6.06 If this Agreement is terminated for any reason following the submission to us of any plans and/or specifications for your proposed *Churro Station* shop, all such plans and/or specifications become our property with no payment, compensation, or other consideration of any kind to you.

6.07 You agree that the construction of your shop will be performed by a licensed general contractor unless we specifically otherwise agree in writing.

6.08 It is agreed that the approval of your plans, specifications, and any other action or inaction by us, is done solely for our own purposes and not to protect you. Therefore, you agree that we do not warrant or guaranty in any way that those plans and specifications are suitable, adequate, or guaranty you success in your shop.

6.09 It is agreed that we assume no responsibility for the work of independent contractors employed by us or by you.

6.10 You agree to keep us fully informed of the progress of the construction of your *Churro Station* shop.

6.11 We have the right to inspect your site and the construction activity on it at all reasonable times. You agree to cooperate, and to cause your contractors to cooperate, with our agents in the performance of such inspections. It is agreed that all such inspections are for our own purposes and are not designed to protect you, to guaranty that the construction is adequate, or is in accordance with the approved plans and specifications.

6.12 Unless we waive the right to a final inspection of your premises, you agree not open for business until we conduct a final inspection of your shop and approve the opening of your shop. You agree that we have the right to prevent the opening of your shop until the requirements of the plans and specifications that we have approved, and you have met our other requirements concerning the construction, equipment, decor, decorations, furnishings, fixturing, signs, stocking, staffing, and our other opening requirements.

6.13 (a) You agree that the furniture, fixtures, and equipment of your shop must be purchased from suppliers we have specified or otherwise approved. We agree to advise any reputable supplier of our requirements for these items.

(b) You agree to purchase from us those items that we specify. We agree to sell any items we require you to purchase from us at our cost plus not more than ~~40~~20% to cover our administrative and other costs.

6.14 You agree to adhere strictly to our recipes and ingredient requirements and to serve only approved items in your *Churro Station* shop.

6.15 We must approve all signs and menu boards you use in connection with your *Churro Station* shop and the suppliers from whom you propose to acquire them.

6.16 You agree that we are not responsible for delays or losses occurring during the design, construction, equipping, decorating, stocking, furnishing, fixturing, or preparation of your shop for opening, whether caused by the condition of the premises, the design, engineering, construction, equipping, decorating, or stocking of your shop, or for any other reason.

6.17 You agree that you will pay promptly all of the designers, engineers, contractors, suppliers, and others employed in the design, construction, fixturing, decorating, improving, and supplying of your shop, except to the extent that there is a bona fide dispute between you and any such provider, in which case you agree to use your best efforts to resolve the dispute promptly and in an equitable manner.

6.18 Once your *Churro Station* shop is open for business, no alteration of the interior or exterior of your shop may be made without our prior written consent.

6.19 The maintenance and repair of your shop is your sole responsibility. You agree to keep and maintain your shop, including the interior, exterior, immediately surrounding areas, signs, trade fixtures, equipment, decor, furnishings, and all other tangible property used in connection with your shop, in a high condition of cleanliness, repair, and appearance, and to replace promptly any item of property that is not capable of being maintained in a high state of cleanliness, repair, and appearance.

6.20 You agree that all replacement, remodeling, refurbishing, alteration, modification, and/or redecoration of your shop, any material part of it, or thing in or on it will be made only with our prior consent.

6.21 You agree to repair, refinish, repaint, replace, and otherwise redo your shop, the furnishings, fixtures, decor, equipment, signs, and any other tangible part of your shop at your expense at such times as we reasonably direct. We agree that we will not require any such activity during the first 5 years of the term of this Agreement. We agree that the cost of any replacement, remodeling, refurbishing, alteration, modification, and/or redecoration we require will not exceed a total of \$15,000.00, as adjusted by any increase in the Consumer Price Index as described in Section 21 below, without your consent.

6.22 We reserve the right to modify our shop concept, format, design, signage, name, commercial symbols, decor, products, services, and all other aspects of *Churro Station* shops, and/or our business, at any time in our reasonable business judgment in order to meet competition and to attempt to enhance the business of *Churro Station* shops. In the event that we do so, you agree to adhere to such changes in the manner and within the time periods we

reasonably specify. All such alterations and modifications will be at your sole cost and expense, subject to the limitation set forth in Section 6.21 above.

## **7. Training and Preopening Assistance.**

7.01 We agree to train you in the operation of your *Churro Station* shop prior to its scheduled opening. The training will take place at a time and location we specify. If you are a partnership, corporation, limited liability company, or other entity, at least one of the trainees must be a general partner, principal shareholder, member, or owner, as appropriate, unless we otherwise approve. You agree that your *Churro Station* shop will only be under the overall supervision of a person who has successfully completed our training course or, with our prior written consent, a person who was trained by a person who successfully completed our training course.

7.02 In addition, we will train your shop manager at the same time as we train you. You agree to require your shop manager attend our training course with you. We may limit the contents of the training we provide to your shop manager to matters we feel are of concern to a shop manager.

7.03 Our training course will last approximately 5 days and will cover such things as *Churro Station* business policies, basics of food storage and preparation, food serving, presentation, and display, inventory purchasing practices and control, employee selection and training, shop operations, advertising and promotion, bookkeeping and accounting, and similar subjects.

7.04 If this Agreement allows you to open more than one *Churro Station* shop, we will train one shop manager for each *Churro Station* shop you open following your initial shop. If for any reason we agree that no one need be sent to our training course following the opening of your first *Churro Station* shop, no refund of any portion of the franchise fee, or any other fees, will be made.

7.05 You and your shop manager must attend our training course at the same time unless we agree otherwise. You and your manager must complete our training course to our reasonable satisfaction prior to the opening of your shop.

7.06 You agree to bear all of your own travel, living, and all other costs, expenses, and salary, and those of your manager in connection with attending our training course.

7.07 If your shop manager, or the partner, shareholder, member, or owner sent to training on behalf of any partnership, corporation, limited liability company, or other entity, fails to complete our training course in a manner reasonably satisfactory to us, you must send another person or persons to our training program at a time acceptable to us. We can charge the training fee set forth below for each such additional person sent to our training course for this reason. If such additional persons are not sent to and/or do not complete our training course to our reasonable satisfaction, we can terminate this Agreement without a refund of any kind.

7.08 If this franchise is owned by an individual and that individual fails to complete our training in a manner reasonably satisfactory to us, we can terminate this Agreement without any refund of the franchise fee or any of your other costs or expenses.

7.09 If a partnership, limited liability company, corporation, or other entity owns this franchise and intends to have a partner, member, shareholder, or owner, as appropriate, active in the operation of the shop and that person does not complete our training course in a manner we reasonably find satisfactory, that such person can not operate or supervise the operation of the shop.

7.10 If we terminate this Agreement for any of reasons set forth in this Section 7, you agree that, at our option, we will be allowed to purchase some or all of your shop assets at their fair market value as described in Section 16.08 below. You further agree that if this Agreement is so terminated, we can also require you to assign us your shop lease without compensation. It is agreed that no refund of the franchise fee will be payable if this Agreement is terminated for any of the reasons set forth in this Section 7.

7.11 Should you be required to send an additional person to attend our training course, or if you want us to train any additional people at any time and should we agree to do so, we can charge an additional training fee of \$250.00 per day per trainee, as that fee may be adjusted by any increase in the Consumer Price Index as described in Section 21 of this Agreement.

7.12 The training of your employees, other than the employees who attend our training course, is your responsibility.

7.13 You agree that your *Churro Station* shop will not be opened for business until we in our reasonable judgment certify that a sufficient number of your employees have been adequately trained to operate your shop.

7.14 (a) You must notify us of the planned opening date of your shop at least 30 days prior to the opening. We will provide you with the services of one or more members of our staff at your shop approximately 2 days before you open to advise and assist you during the period immediately before and immediately after the opening of your shop. When our representative or representatives arrive at your shop and the length of time he, she, or they will stay is strictly within our discretion.

(b) If your shop is not ready when our representative or representatives arrive, and for that reason he, she, or they cannot perform the preopening functions for which he, she, or they were sent, you agree to pay the added lodging and subsistence costs of our representative or representatives as well as paying us a fee for each day that our representative or representatives are prevented from completing the functions for which he, she, or they were sent. The fee that we will charge will not exceed \$300.00 per day. A deposit against this fee must be paid when we request it or we can recall our representative or representatives and charge you for the costs of sending him, her, or them back to your shop when it is ready for opening.

(c) If your shop is not ready when our representative or representatives arrive, as an alternative to keeping our representative or representatives at your shop, we can recall our representative or representatives until we are satisfied that your shop is ready to open. If we do that, you agree to pay for the costs of sending our representative or representatives back to your shop in addition to paying us the fee described in subsection (b) for each day our representative or representatives spend traveling to and from your shop.

(d) You agree to cooperate, and will cause your employees to cooperate, with us and our representatives in all matters related to the training of your personnel and all of your other obligations under this Agreement, before, during, and after the opening of your shop.

7.15 (a) We can offer system-wide refresher courses, seminars, conventions, meetings, and similar programs for our franchisees. If we do so, you agree personally to attend such events, up to a maximum of one such program in any 12 month period.

(b) In addition to the foregoing, if we sponsor regional training seminars or other meetings of any nature for our franchisees and/or their employees in the region in which your shop is located, you agree to attend all such events, and/or to send to those sessions the person or persons we designate, but not more often than one such event during any 6-month period.

(c) All of your expenses in connection with attending such meetings, sessions, events, and programs, and the salaries and expenses of your employees, are your responsibility.

(d) We reserve the right to charge reasonable fees for attendance at the above-described meetings, conventions, seminars, courses, sessions, events, and programs, and you agree to pay such amounts at the times and in the manner we specify.

## **8. Shop Operations and Continuing Assistance.**

8.01 (a) You agree to follow all systems, procedures, practices, techniques, processes, supply requirements, sources, formats, and the like, and meet the operating standards, that we periodically specify for the operation of your shop.

(b) Our manuals and the systems, procedures, forms and various other material we give you periodically, contain proprietary information concerning the operation of *Churro Station* shops. You acknowledge that improper use or disclosure of our proprietary information will cause us irreparable injury and that we can seek and obtain a temporary restraining order, and a preliminary and permanent injunction, against such improper use or disclosure, in addition to seeking damages and other relief on account of such actions.

(c) You agree to use our confidential information only in connection with establishing and operating your shop. If you make improper disclosure or use of our proprietary information, we can terminate this franchise without giving you notice or an opportunity cure the default.

(d) After the termination or expiration of this Agreement, you agree not to use or disclose our confidential information for any purpose whatsoever except as we may authorize or direct in writing.

8.02 You agree to use your best efforts to prevent any unauthorized disclosure of our trade secret material by your employees, agents, and others over whom you have control. In this regard, you agree to follow the security procedures and employ the security practices that we specify periodically, including having your employees sign our confidentiality and nondisclosure agreement.

8.03 You agree to return all copies of our manuals and all other material you obtained from or through us upon the expiration or termination of this Agreement or at such other times as we request. You agree not to copy or otherwise duplicate our manuals or material except as we direct or approve.

8.04 We have the right to make changes in our manuals and other material, and to specify other systems, procedures, forms, and requirements. You agree to follow these changes at the times and in the manner we indicate. If there are costs involved in this compliance, you must bear those costs. We agree that these changes will not unreasonably increase your obligations, including your economic obligations, during the term of this Agreement without your prior written consent.

8.05 You agree to use your best efforts to produce the maximum volume of sales from your *Churro Station* shop but only in a manner that is consistent with the terms of this Agreement and with our manuals and directives.

8.06 (a) In order to maintain and enhance the high standards and public image of *Churro Station* shops, you agree to carry all of the menu items specified by us from time to time and not to carry items not approved by us.

(b) You agree to operate your *Churro Station* shop in the highest quality manner and in accordance with all applicable laws and regulations and as prescribed by our manuals and other directives.

(c) Since morning business is important to *Churro Station* shops, unless we agree otherwise, you agree to open your shop no later than 6:00 A.M. weekdays. Other than that, you can set your own hours and days of operation. However, if in our judgment your hours or days of operation are not commercially reasonable, we can specify the hours and/or days of operation you must be open for business.

8.07 You agree that we have sole discretion as to the content of your menu and further agree that we may change the menu in whole or in part from time to time within our absolute discretion. You agree to comply promptly with our directives in this regard.

8.08 You agree to adhere strictly to our requirements and instructions as to the ingredients, method of preparation, processing, handling, wrapping, presentation, and serving of

all items provided from your *Churro Station* shop. You agree that we can change the ingredients in, and the method of preparation, presentation, and serving of, our menu items in our sole and absolute discretion. You agree to comply promptly with our directives in this regard.

8.09 You agree that we must specify and/or approve the sources from which you obtain the ingredients you use for the preparation of our menu items.

8.10 You agree that we must approve the type, format, style, decoration, and similar features of all containers, packaging, serving pieces, and other tangible items used in your shop, such as plates, cups, service ware, containers, napkins, bags, and serving pieces.

8.11 You agree to use only the menu formats, signs, uniforms, and other such items we specify or otherwise approve.

8.12 It is agreed that all of the approvals and specifications called for in this paragraph can be given or withheld in our sole and absolute discretion. All such approvals must be in writing in order to be effective.

8.13 It is agreed that our specifications can be made either by designating ingredients, materials, features, capabilities, qualities, and other attributes, or they can be indicated by reference to approved manufacturers and item, model, and/or style numbers, or by means of other designations.

8.14 You agree that no items or services, other than those we approve, will be used, sold, displayed, exhibited, shown, or otherwise provided or employed in your shop.

8.15 If we change our specifications for any items employed in your shop, you agree to comply with the revised specifications, provided that you are given a reasonable time to exhaust your inventory of the previously specified items, if they are subject to use in the course of your business, or a reasonable time over which to amortize the cost of items not normally consumed in the operation of your shop.

8.16 We, our licensor, or other persons and/or entities from time to time may develop private-labeled merchandise which may be available for use in, or for sale by, *Churro Station* shops. You can use and or provide such items only with our prior written consent. You agree to purchase, carry, sell, and use in your shop at least the minimum quantity of such items that we specify from time to time. You also agree that at our direction you will purchase reasonable amounts of goods covered by any national purchasing contracts we arrange.

8.17 (a) If we specify any other supplies, equipment, merchandise, goods, ingredients, and other items for use in, or sale from, your *Churro Station* shop, you agree to purchase, carry, sell, and use a reasonable quantity of such items in reasonable amounts we may specify from time to time.



(b) If the manufacturers or suppliers of any items you purchase pay us any rebate or other sum, except for any advertising allowance or its equivalent, on account of your purchases, we will pay you the amount of any rebate that directly resulted from your purchases.

(c) Payments to us from manufacturers or suppliers of advertising allowances, or their equivalent, will be used for the advertising of the *Churro Station* system or will be paid by us into the Advertising Fund described in Section 9(d) below. Nothing in this provision prevents us from charging suppliers a reasonable fee to compensate us for our time and effort in reviewing items submitted to us for approval and/or for investigating and deciding whether to approve proposed suppliers of goods or services for *Churro Station* shops.

8.18 You agree to hire and satisfactorily train a sufficient number of employees to handle adequately the volume of business of your shop and to provide courteous and capable assistance to your customers.

8.19 You agree to use your best efforts to insure that your personnel maintain such standards of appearance, cleanliness, and demeanor as we may specify in our manuals or otherwise, but in any event standards as will enhance the conduct and image of your shop.

8.20 (a) You can determine the prices you charge to your customers. If we consult with you regarding prices, or if we or any of our employees suggests prices to you, you are under no obligation to adhere to any of those recommendations or suggestions except as described below.

(b) If we conduct advertising in which prices for items are indicated, those prices are not binding on you. If we or the Advertising Fund conduct advertising or promotions in which prices are indicated and you do not elect to follow the specified pricing, we do not have to include your shop listing in the advertising or promotion program.

(c) If at any time we determine that it is lawful for us to require that certain prices, or minimum or maximum prices, be charged to your customers, you agree to adhere to our requirements in that regard at such times and on such conditions as we may specify.

8.21 At our request, you agree to inform us promptly of the identity, experience, and training of any or all personnel employed in your shop. You further agree to notify us of any limitations on the authority of your supervisory personnel. You agree that in the absence of such advice, we can rely on the obligations and commitments undertaken by such supervisory personnel and such undertakings will be binding upon you.

8.22 At our election you agree to require all of your managerial and supervisory personnel, and such other employees as we may specify, to execute a noncompetition and/or trade secret agreement in the form we specify.

8.23 You agree promptly to provide such reports to us as may be required by this Agreement, our manuals, or as we may otherwise request from time to time.

8.24 We agree to have a representative available by telephone at our office, or at such other location as we may designate, during our normal weekday business hours to consult with you on matters concerning the operation of your shop.

8.25 (a) We will use commercially reasonable efforts to send a representative to visit your *Churro Station* shop periodically during the term of this Agreement. If we give you notice of our visit in advance and so request, you agree to be present during the visit of our representative. You agree to cooperate fully with our representative during his or her visit. You also agree to use your best efforts to have any other people attend that we request to be present during the visit. We agree that our visits will be during your normal business hours and will take place at your shop unless both of us agree otherwise.

(b) You agree to make available to our representative during such visit, and at such other times as we may reasonably request, any information, reports, accounts, books, records, orders, statements, and any other information that we request.

(c) You agree that our representatives, and those of our licensor, will have access to and can inspect your entire shop premises, including your stock areas, drawers, locked areas, back rooms, and all other areas of your shop.

8.26 We have the right to send representatives to your shop without giving you prior notice. We also have the right to have "secret shoppers" come into your shop to inspect your shop and its operations without giving you prior notice. You agree that our representatives will have the right to photograph your shop, make video and audio recordings, speak to its customers and employees, copy your records, take inventory, and conduct such other activities as our representative may see fit. We agree that our representative will use reasonable efforts not to disrupt your operation during his or her visits.

8.27 If you are carrying any unapproved merchandise or have any unauthorized signs, fixtures, displays, or other items in your shop, you agree that our representative can remove those items from your shop without paying you for them. Our representative can also correct or rework any displays that do not comply with our display requirements or which they feel need enhancement. Our representative can take any other action he or she deems necessary to bring your shop into compliance with our requirements. You agree to follow the directions of our representative in this regard and not to interfere with our representative in the performance of his or her duties. If our representative reworks any of your displays, you agree not to change those displays without our prior written consent.

8.28 If you request a special visit to your shop by one of our representatives and we agree to honor your request, we can condition our visit on your paying us a fee and reimbursing us for our expenses in connection with the visit. We can require that you prepay the estimated fee and expense reimbursement before we agree to the visit. The fee that we can charge you for such a special visit will not exceed \$250.00 per day, plus expenses. This fee is subject to adjustment by any increase in the Consumer Price Index as described in Section 21 of this Agreement.

8.29 If we notify you at any time of defects, deficiencies, or unsatisfactory conditions in the appearance, operation, conduct, activities, or other matters related to your shop, you agree immediately to correct any such item or items in the manner we require.

8.30 (a) You agree to obtain and maintain at your expense all licenses and permits necessary for the operation of your shop.

(b) You agree to operate your shop in compliance with all laws, statutes, ordinances, rules, regulations, orders, and the like, including those which are related to health, safety, employment practices, the environment, and toxic materials, whether those laws, statutes, ordinances, rules, regulations, orders, and the like, now exist or are enacted and/or issued at a later time. You agree to be responsible for the results of your compliance, and any noncompliance, both during the term of this Agreement, any extensions or renewal of this Agreement, and thereafter.

8.31 (a) You agree to comply with the orders, regulations, rules, and directives of government officials in the conduct of their official duties as they pertain to the operation of your shop. You agree to notify us immediately of any significant orders or directives you receive from such officials, the reasons for them, and the corrective action you have taken or plan to take. You agree to correct any situation that gives rise to any of those orders or directives within the time allowed by the appropriate law, regulation, rule, order, or directive.

(b) You agree to notify us promptly of any lawsuits, arbitration proceedings, and other actions in which you become involved that pertain in any way to your *Churro Station* shop or that could affect your financial condition in any material manner.

8.32 (a) You agree to purchase the computerized point of sale recordation and reporting system that we require, including the hardware and software we specify or otherwise approve. You agree to upgrade both the hardware and software at such times as we reasonably determine. You also agree to carry such maintenance contracts on your hardware and software as we designate. You further agree to purchase the system, hardware, software, upgrades, and contracts from the sources we specify or otherwise approve.

(b) You agree to record all of your receipts and expenses, merchandise orders, invoices, customer lists, and other business information promptly in the required computer system, using the software that we specify

(c) We can periodically require that you use a different sales recordation, computer, or other reporting system and software. If we do so, we will give you a reasonable time to amortize the cost of the system and software you are using before we require you to replace that system or software.

8.33 You agree that we can have remote access to your computer system, the information in it, and the reports produced by it. You agree to install such hardware and software as we may specify to allow this access and to maintain the system so that our access will not be uninterrupted.

8.34 You agree that you are solely responsible for all taxes, liens, assessments, costs, expenses, debts, salaries, accounts, liabilities, charges, duties, imposts, fees, damages, and any and all other liabilities, outlays, or other obligations involving the payment of money or performance of any other nature, incurred in, or resulting in any way from, the construction, opening, operation of your shop.

8.35 (a) If this franchise is owned by a partnership, corporation, limited liability company, or other entity, you agree to designate a shareholder, partner, member, or other owner to be the principal agent of the entity. This is the person who will deal with us in connection with your franchise, your shop, and compliance with this Agreement. This person is referred to in this Agreement as "your managing agent". You warrant that your managing agent will have the authority to speak for and bind the franchisee entity in all matters pertaining to this Agreement and your shop. You further warrant that we can rely on such authority until such time as we are notified in writing of any change in your managing agent.

(b) Your managing agent, and any person by whom your managing agent is replaced, as allowed in this Agreement, must attend such training at the time, for the duration, and at the location we specify, and must complete that training to our reasonable satisfaction as a condition of the continuation of this Agreement.

(c) Your managing agent cannot be a person who was the principal operator of a *Churro Station* shop that had its Franchise Agreement terminated because of a default or any other person to whom we have reasonable cause to object.

(d) If for any reason your managing agent cannot continue to serve, you must appoint a new managing agent promptly. The new managing agent will be subject to the provisions of this section and to all of the other terms of this Agreement in the same manner as your prior managing agent.

(e) Nothing in this section, or elsewhere in this Agreement, in any way reduces the responsibility and liability of any entity that owns this franchise for compliance with the terms and conditions of this Agreement.

8.36 (a) No vending machines, newspaper or magazine racks, cigarette machines, games, rides, amusement devices, juke boxes, pay telephones, or similar devices, whether or not they are coin operated, nor any music, music system, or other entertainment systems or activities, whether live or recorded, can be used in your *Churro Station* shop without our prior consent.

(b) To enhance the image of your shop and to make it consistent with other *Churro Station* shops, we have the right to specify the type of music system you must use in your shop and the type of music that must be played in your shop.

8.37 If we establish any gift certificate, gift card, or similar program, you agree to participate in the program in the manner we specify.

8.38 We have the right to establish one or more franchisee advisory councils to consult with us on matters of mutual interest. If we establish such a council, we have the right to determine its rules. You agree to follow those rules and, if we so request, to participate in the activities of that council in the manner and to the extent we require.

8.39 (a) You agree to follow all of our policies and procedures concerning your use of the Internet, other electronic media, and any other media whether or not otherwise specified in this Agreement and whether such media now exists or may be developed in the future, including use in connection with your advertising, promotions, marketing, or other activities. Without our prior written consent, you agree not to use any of the licensed assets, our names or marks or any names or marks confusingly similar to them, in connection with any use you make of the Internet or other media.

(b) Upon the expiration or termination of this Agreement any sites, domain names, and all other identifying names, marks, symbols, and other means of identification that you may have used in connection with your *Churro Station* shop, will become our property and must be transferred to us in the manner we specify.

(c) Unless we agree otherwise, your exclusive presence on the Internet and on or in any other electronic or alternative media can only be on or through our Internet site or on or in such other media that we specify.

(d) Your Internet, and other media, presence, whether on our Internet site, or otherwise, must have the appearance and contain the content that we periodically specify or otherwise approve.

(e) If we allow you to have your own Internet site, or if you have any other electronic or alternative media presence, you agree not to use, or authorize the use of, any means of referring to your site, such as by meta tags, links, or other reference devices, without our prior written consent. In addition, your site or presence must not refer to or show the site of another, such as by the use of links or frames, without our prior written consent.

(f) You agree to use any intranet, extranet, or the like, that we maintain for the internal use of our franchisees or their employees for information, reporting, training, and other purposes, strictly in the manner we specify. You further agree not to inform any third person, other than those we may authorize in writing, how to access or derive information from our intranet, extranet, or other nonpublic sites. The manner of accessing and obtaining information from such sites, as well as the information contained on such sites, are our trade secrets and are subject to the provisions regarding trade secrets and proprietary information set forth elsewhere in this Agreement.

8.40 You agree to send us copies of all articles, mentions on the Internet, and other publicity or other media exposure you receive, whether positive or negative, promptly upon becoming aware of it.

## 9. Royalty and Advertising Fees.

9.01 In exchange for awarding you a *Churro Station* franchise, for the assistance we give you in connection with the opening of your *Churro Station* shop, and for the continuing right to use the licensed assets, you agree to pay us a monthly royalty equal to 5% of your gross receipts. You agree to pay us this amount by the 10<sup>th</sup> day of each month based on your gross receipts for the prior month. We can specify the manner of payment, such as by electronic funds transfer, check, or by other means. We can change the required method of payment at any time upon notice to you.

9.02 At the time payment of the royalty fee is due, you agree to send us, in the form and manner we specify, a report of your monthly gross receipts, advertising expenditures, and such other information as we may require from time to time. You must certify to us that these reports are complete, true, and correct no matter how, or by whom, they are prepared.

9.03 As of the date of this Agreement we do not have a national or regional cooperative advertising program. If we initiate such a program, in addition to your royalty payment, you agree to send us at the same time and in the same manner as your royalty payment, a monthly contribution to our advertising program fund in the amount we specify, which will not exceed 3% of your monthly gross receipts. We can periodically change the amount we require you to contribute to that program but in no event will your contribution exceed 3% of your gross receipts. In this Agreement, we refer to the cooperative advertising program fund as "the Advertising Fund".

9.04 (a) When formed, we will keep the Advertising Fund apart from our other accounts. We will send you a report of the receipts and expenditures of the Advertising Fund annually.

(b) If we own and operate any *Churro Station* shops, we agree to have those shops contribute to the Advertising Fund on the same basis as you do.

9.05 (a) We will use the Advertising Fund for the development, production, execution, direction, review, analysis, and administration of advertising, promotional, and public relations activities designed to benefit the *Churro Station* system of shops on a regional or national basis. We have complete and absolute discretion over how and when sums from the Advertising Fund are spent and what items are charged to it. However, we agree to use the Advertising Fund only for the planning, production, execution, placement, publishing, broadcasting, and analysis of advertising, promotion, and public relations materials and programs, including point of purchase materials, brochures, display materials, market research and analysis, the employment of advertising and promotion staff and agencies, the purchasing of media time and space, the planning, production, and execution of promotion or public relations events, the review and analysis of those activities, and for related purposes.

(b) Until there are enough *Churro Station* shops to make national advertising practical, we can use the Advertising Fund for local and regional advertising, promotion, and public relations activities.

(c) We are not obligated to spend the receipts of the Advertising Fund in any particular region, even if a disproportionate amount comes from a particular area, nor within any particular time period.

9.06 We can charge the Advertising Fund for the time, overhead, and expenses of our employees to the extent that they work on advertising, promotion, or public relations activities designed to enhance the image or sales of *Churro Station* shops. Alternatively, we can charge the Advertising Fund up to 10% of the amounts collected by the fund to cover our overhead and expenses as they relate to advertising, promotion, and public relations matters designed to enhance the business of *Churro Station* shops.

9.07 We have the right to establish national and regional advertising councils to advise us on our national and regional advertising, promotion, and public relations programs. If we establish such a council, or such councils, we have the right to determine its, or their, rules. You agree to follow those rules and, if we so request, to participate in the activities of those councils in the manner and to the extent we require.

9.08 (a) In our discretion, we can establish regional advertising associations and/or programs in addition to the activities of the Advertising Fund. If we do so, you agree to pay toward such programs and associations the amounts we indicate, which amounts will not exceed 2% of your gross receipts. Payments to a regional advertising program and/or association will be in addition to the payments you are required to make to the Advertising Fund.

(b) We agree that any *Churro Station* shops that we own and operate within the concerned region will contribute a like percentage of their gross receipts to these programs and/or associations.

9.09 We will have the right to terminate the Advertising Fund, or to turn its functions over to an outside agency, at any time after its inception. If we terminate the Advertising Fund and do not replace it with a similar entity, we can have you use the money you would otherwise contribute to the fund for local or regional advertising, promotion, or public relations purposes. If we turn the functions of the Advertising Fund over to an outside agency, we can require you to pay that agency the amounts you would otherwise contribute to the Advertising Fund. Even if we have an advertising agency perform some or all of the functions of the Advertising Fund, we will still have the right to approve any advertising, promotion, and public relations material and activities suggested by the agency.

9.10 As used in this Agreement, the term "gross receipts" means the total amount you receive from all sources as a result of your operation of your shop or in connection with your use of the licensed assets, whether those amounts are received in cash or on credit, as well as the retail value of all barter transactions. "Gross receipts" includes the amount received from all orders taken and goods or services sold wherever the orders are taken, the goods or services are sold, the orders are filled, or the goods or services are delivered. Credit transactions are considered made when the transaction giving rise to the extension of credit occurs and not when, or if, you receive payment or when title to the goods passes. Credit card and other credit transactions result in "gross receipts" in

the full amount of customers' purchases without any allowance for bad debts, uncollectable accounts, or credit card fees and charges. "Gross receipts" does not include any of the following:

(a) The selling price of any goods returned to you by customers, or the price charged for any services provided to customers, to the extent you give any credit, discount, refund, or similar allowance. An exchange of merchandise does not result in an exclusion from "gross receipts" except to the extent of any accompanying credit, discount, refund, or other allowance;

(b) Items returned to their source for credit or other allowance;

(c) Amounts or credits received on claims for loss or damage to merchandise or other shop assets;

(d) Proceed from the sale of gift certificates, gift cards, or similar transactions until they are redeemed at your shop;

(e) Sales taxes, use taxes, value added taxes, consumption taxes, or other taxes determined or imposed on the sale of merchandise or services by a governmental entity, but only to the extent that the taxes are added to the selling price of merchandise or services and are separately stated to, and collected from, customers;

(f) Sales of equipment, trade fixtures, or similar property not constituting merchandise of your shop.

(g) Transfers of merchandise to or from other *Churro Station* shops when those transfers are made only for the convenient operation of the concerned shops as long as the receiving shop reports the sale of such merchandise as required by this Agreement.

9.11 All exemptions allowed by subsection 9.10 must be separately stated and shown on your reports of gross receipts.

## **10. Advertising and Promotion.**

10.01 (a) Over the course of each year, you agree to spend an amount equal to at least 1% of your gross receipts on the local advertising and promotion of your *Churro Station* shop. This amount is in addition to the money you pay to the Advertising Fund and any regional advertising association or program. Your local advertising expenses must be shown on the financial statements and reports you send to us.

(b) You agree to advertise monthly in local Spanish language newspapers and/or on Spanish language radio and/or television stations.

(c) The cost of any advertising you place in any Yellow Pages, or other directory, will not apply to the local advertising requirement described in subsection 10.01(a) above.



10.02 If the shopping center in which your *Churro Station* shop is located requires you to participate in its advertising and promotion activities, one-half of the amounts you spend on those activities will apply to the local advertising requirement described in subsection 10.01(a) above.

10.03 If you do not spend the amount you are required to spend for local advertising during any year, the difference between what you do spend and the amount that you should have spent must be paid to us for deposit into the Advertising Fund. If the Advertising Fund, or a similar program, is not operating at the time we receive such payments from you, we agree to use the amount you pay only for advertising, promotion, and public relations activities.

10.04 You agree to engage in grand opening advertising, promotion, and public relations activities in the manner and at the time we prescribe or approve. We agree that the cost of the activities we dictate will not exceed \$2,000.00 without your prior consent. The amount you spend on your grand opening activities will not count against your other advertising obligations described in this Agreement.

10.05 (a) For the good of the entire *Churro Station* system, all of your advertising, promotion, and public relations activities, including your participation in charitable events and donations you want to make to charities, must be consistent with our image, and must reflect favorably on *Churro Station* shops, products, and the *Churro Station* system. Therefore, you agree to submit to us prior to use copies of all advertising, promotion, and public relations plans, material, and programs you want to use or participate in, and describe to us by what media your advertising will be published, the amount you plan to spend for each advertisement, the nature of each promotional, charitable, or public relations event, item, and program, and all other relevant information, including any further information we request.

(b) You agree not to use any advertisement or material, implement any program or plan, or make any donation, without our prior consent, except to the extent we have provided you with the concerned item or have previously approved your program, plan, or donation. Once we give you our consent, you agree to employ the advertisement, material, program, plan, or make the donation, only in the way we have approved.

(c) We will have 5 business days after you submit your material, program, or plans to us in which to approve or disapprove the submission. We can extend this approval period for a reasonable time following the receipt of the requested information if we require additional information concerning your material, plans, and program. If we do not disapprove any such material, programs, or plans within 5 business days of our receipt of the items, plus such additional time as we may reasonably require, the items will be considered approved.

(d) For the protection of our trademarks and service marks, we have complete and absolute discretion in deciding whether to approve your advertising, promotion, and public relations material, plans, programs, and donations and/or to require you to stop using any such material, or implementing any program or plan, or making such donation, even if we have previously approved it.

10.06 (a) If we develop any signs, point of purchase material, advertising photostats, display material, brochures, handouts, or other advertising or promotional material for use by *Churro Station* shops, you agree to purchase these items in the reasonable amounts we specify and to use them as we require. We can mark up the cost of any of these items in a reasonable amount to pay for our development, administrative, and handling costs.

(b) If we develop any material for display in *Churro Station* shops soliciting new *Churro Station* franchisees, you agree to display such material for the duration, at the location or locations, and in the manner we require. You will not be compensated for displaying this material.

#### **11. Records, Accounting, Audits, Trade Accounts, Security Interest, and Late Charges.**

11.01 (a) You agree that you will maintain a separate business bank account into which you will deposit all of the proceeds from the operation of your *Churro Station* business and from which you will pay all of its expenses. You agree not to use that account for any other purpose.

(b) You agree to maintain current and accurate books, records, accounts, tax returns, and all related back-up material showing the results of the operation of your *Churro Station* shop, including all of the books and records that we list in our manuals and other directives. You agree to use the chart of accounts and accounting software that we specify. You agree to maintain all such materials at your principal place of business unless we otherwise approve

(c) You agree to retain all cash register tapes, charge account records, sales slips, merchandise orders, return vouchers, tax returns, sales tax reports, and all of your other business records and related back-up material for at least as long as required by law or 3 years following the end of the year to which the items pertain, whichever period is greater. You agree to make all such items available to our representatives at such times and in such locations as we may reasonably specify.

11.02 (a) You agree at your expense to provide us with reports on your operations and such other data as we specify in our manuals and as we otherwise direct. We can require data to be transmitted to us by telephone, by electronic transmission, or by other means.

(b) In addition to the monthly reports you send us with your royalty payments, you agree at your expense to send us a profit and loss (income) statement for the prior month in the form we specify within 10 days after the end of each month. Also at that time, you agree to send us an itemized report of your purchases, showing what you purchased, from whom the purchases were made, the amount of your purchases for each item and vendor for the month reported. We can change the reports we require you to submit from time to time.

(c) Within 20 days after the end of every 6 month beginning with the month you open for business, you also agree to send us a balance sheet showing your financial condition for the 6-month period.

(d) Within 20 days after the end of each calendar year, you agree to send us a balance sheet and income statement showing the required information as of the year just ended.

(e) If you have repeatedly underreported your gross receipts or failed to provide the financial statements or reports required by this Agreement, we can require that at your expense your financial statements must be prepared by an independent certified public accountant. If we direct that an independent certified public accountant prepare your financial statements, we will indicate on what basis those statements have to be presented, such as on a compilation, review, or audited basis. We can change these requirements whenever we feel that it is necessary in order to get timely and accurate financial statements from you.

11.03 You agree to send us copies of your state and local sales tax returns as soon as you file them. You also agree to send us copies of your federal and state income tax returns promptly upon their filing, but only to the extent those returns pertain to your *Churro Station* business.

11.04 (a) We have the right to inspect and/or audit your books and records at any reasonable time at your shop, or at such other location as may be mutually agreed upon between us.

(b) If the inspection or audit reveals an understatement of gross receipts for any month in an amount of 5% or more, or if an audit is necessary because you have not complied with the financial reporting or record keeping requirements of this Agreement, our manuals, or our directives, you agree to pay the costs of the inspection or audit as soon as we advise you of those costs. These costs can include the costs and expenses we incurred for our employees, accountants, attorneys, or any others with whom we have incurred costs in connection with the inspection and/or audit.

(c) Regardless of whether you have to pay the costs of the audit, you agree to pay all sums that are shown to be due because of any understatement of gross receipts or any other underpayment plus any late charge that results from the nonpayment. If the inspection or audit shows an overpayment to us of any amounts, the amount of the overpayment will be applied to the next amounts due us.

11.05 If we discover by inspection, audit, or otherwise that you have intentionally underreported your gross receipts for any period in any amount, or have underreported your gross receipts in the amount of 10% or more for any period, whether or not the underreporting was intentional, we have the right to terminate this Agreement in addition to having all of our other rights and remedies under this Agreement and those available to us under applicable law.

11.06 (a) All amounts that you owe us that are past due shall be subject to a late charge in the amount of 1½% per month. If that amount is not allowed by applicable law, the late charge will be equal to the highest lawful rate on loans between businesses in the state whose law governs this Agreement.

(b) Neither because we impose, nor because you pay, a late charge does such payment waive, or otherwise affect, any right or remedy that we have under this Agreement or under law because of the late payment, except as may be set forth elsewhere in this Agreement.

11.07 It is very important that shops in the *Churro Station* system have good trade relations with their suppliers so that we can try to get the best prices and good service from them. Therefore, you agree to pay your vendors, contractors, and suppliers promptly. If you have a dispute with any of them, you agree to attempt in good faith to resolve the dispute promptly and fairly.

11.08 (a) In order to secure your compliance with the payment provisions of this Agreement, and those in any other agreements between us and between you and any of our affiliates, you agree that we and our affiliates have a security interest in the assets of your *Churro Station* shop under the provisions of the Uniform Commercial Code, whether those assets are now owned or are acquired at a later date.

(b) In order to perfect this security interest, you agree to sign a financing statement reflecting our security interest, and that of our affiliates, as such times as we request. We will pay for the filing of the financing statements.

(c) We agree that our security interest will be subordinate to any purchase money security interest you give for property acquired after the date of this Agreement.

## **12. Insurance and Damage or Destruction of Your Shop**

12.01 (a) Before you begin the construction of your shop, you agree to procure, and, while this Agreement is in effect, maintain, commercial general liability insurance on the form we approve. Your insurance must cover your premises and operations, products and completed operations, contractual liability, property damage, and personal injury liability in the minimum amount of \$1,000,000.00 for each occurrence. This coverage may be obtained with a combined single limit for bodily injury and property damage. You must also obtain and maintain automobile liability insurance, including coverage for all owned, hired, and nonowned vehicles, in a minimum amount of \$1,000,000.00 combined single limit for each accident. In addition, you must obtain and maintain a general aggregate ("umbrella") liability policy in the minimum amount of \$2,000,000.00.

(b) Your liability insurance policies must be written on an "occurrence" and not on a "claims made" basis.

12.02 You also agree to obtain and maintain throughout the term of this Agreement insurance on your leasehold improvements, furniture, fixtures, equipment, décor, and the other physical assets of your shop, including fire and extended coverage insurance on a replacement cost basis, in amounts adequate to reconstruct, redecorate, resupply, and reopen your shop in the event of a covered loss.

12.03 Your insurance policies must comply with the following requirements:

(a) Your insurance carrier must have and maintain a Best rating of at least "A-7" or its equivalent.

(b) Your insurance policies must not contain a coinsurance clause.

(c) The deductible portion of any claim or loss under any of your insurance policies cannot exceed \$5,000.00 without our prior written consent.

(d) Your insurance policies must be written as primary policies regardless of whatever other policies you carry, or those carried by us or our affiliates.

12.04 In addition to the insurance coverage described above, you agree to carry such other and additional insurance as may be required by the lease of your shop and that required by your lender or equipment lessor, if any. You also must carry workers' compensation and employer's liability insurance as required by law. Employer's liability insurance shall be obtained in an amount of not less than \$1,000,000.00 per accident for bodily injury by accident and \$1,000,000.00 per employee for bodily injury by disease, with a \$1,000,000.00 policy limit by disease.

12.05 We have the right to require from time to time that you carry different limits and/or different types of insurance coverage if we believe it is prudent in our reasonable judgment. You must comply with our requirements promptly upon receipt of written notice of any such requirements.

12.06 You acknowledge that the limits on your insurance policies do not limit your liability to us under your indemnification obligations under Section 13 of, or your other obligations under, this Agreement.

12.07 (a) You agree at your expense to name us, our licensor, and those of our affiliates we may specify, and our and their officers, directors, shareholders, members, and employees as additional insureds on all of your policies of liability insurance, including your general liability, vehicle liability, and umbrella liability policies, as long as that can be done at no more than minimal cost to you.

(b) We can designate other entities and/or persons to be named as additional insureds on your insurance policies from time to time and you agree to include such persons or entities on such policies at your expense.

(c) You agree to have your insurance carriers provide to each additional insured a certificate of insurance evidencing the required coverage.

(d) All of your insurance policies must specify that the insurance carrier will give 30 days prior written notice to each additional insured under that policy if the policy in which such persons or entities are named is to be canceled or not renewed.

(e) You agree to provide us with copies of those of your insurance policies that we request.

12.08 (a) If during the term of this Agreement all or part of your shop is damaged or destroyed by fire or other casualty, then, except as provided below, you must repair, restore, or rebuild your shop to the extent allowed by, and in compliance with, the terms of your lease and applicable law.

(b) If you are allowed to rebuild your shop under the terms of your lease and by applicable law, the term of this Agreement will be extended for a period of time equal to the time your shop was closed due to the damage or destruction, but not in excess of 12 months from the date of the damage or destruction.

(c) All of the proceeds of any insurance payable on account of the damage or destruction must be used to pay for restoring your shop. The restoration of your shop must comply with our standards at the time for the construction of new *Churro Station* shops.

(d) To the extent prevented by circumstances beyond your reasonable control, except for your financial inability to proceed unless that is caused by a delay in the receipt of your insurance proceeds, you agree to begin the restoration of your shop within 90 days after the damage or destruction occurs and to proceed with the reconstruction and reopening of your shop with due diligence.

12.09 If during the term of this Agreement your shop is totally destroyed, is damaged by an uninsured casualty in excess of 50% of its replacement cost, or the cost of repairing and restoring your shop is in excess of 110% of the proceeds of your insurance coverage, you have the option to terminate this Agreement by giving us written notice of your election to terminate within 60 days after the damage or destruction. If your insurance coverage is less than you are required to carry under this Agreement, the foregoing option to terminate this Agreement will not apply and you will be required to rebuild and restore your shop unless the destruction is total.

12.10 (a) If your shop, or the premises in which it is located, is taken in an eminent domain, condemnation, compulsory acquisition, or similar proceeding for any public or quasi-public use or purpose, or is sold under the threat of such an action, and if it is not feasible or prudent in our reasonable judgment to use the remaining portion for the operation of a *Churro Station* shop, this Agreement shall terminate as of the date of the taking. In the event that this Agreement is terminated for this reason, you agree to pay us out of the compensation you receive as restitution for the taking, or from the proceeds of the sale, an amount equal to the payments required by Sections 9.01 and 9.03 above, for the 12 months immediately preceding the date of the termination of this Agreement or the actual time your shop was open, if it was open less than 12 months.

(b) If the taking is only partial and the remaining portion of your shop is sufficient in our reasonable judgment to continue the operation of your shop, you agree promptly to restore your