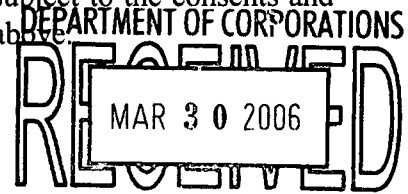


shop to a condition adequate for the conduct of your shop's business, subject to the consents and approvals you are required to obtain from us as in specified in Section 6 above.



### **13. Relationship of the Parties; Indemnification.**

13.01 Even though you will operate your shop under the *Churro Station* name, you are an independent contractor.

13.02 (a) Nothing in this Agreement or in our franchise relationship makes you our agent, partner, or joint venturer. Similarly, we are not your agent, partner, or joint venturer for any purpose.

(b) You acknowledge that our licensor is a separate entity that is not responsible or liable for our acts or omissions. If we have our licensor perform any services for us, it does so as an independent contractor. You hereby waive and release any claims you may have or later acquire against our licensor based solely on its relationship with us and not on its own actions or inactions.

13.03 Neither of us is liable for the debts, liabilities, taxes, duties, obligations, defaults, compliance, intentional acts, negligence, errors, or omissions of the other.

13.04 (a) Each of the parties to this Agreement guarantees that they will not intentionally do anything to give anyone the impression that they are other than franchisor and franchisee.

(b) If you do anything, or if you fail to act in any way, that causes us to be exposed to any liability or to incur any expense merely because of our relationship, you must indemnify and hold us harmless against any liability, cost, or expense, including attorneys' fees, in the matter unless we actually did something to participate in a significant manner in the conduct giving rise to the liability.

(c) If you claim that we did participate in the conduct giving rise to the liability and it is subsequently shown that we did not do so, you must reimburse us for all of our costs, expenses, and liabilities, including the reasonable attorneys' fees, we incurred to show that we did not participate in any significant way in the conduct or inaction that gave rise to the liability.

13.05 None of your employees are to be considered our employees and none of our employees are to be considered your employees.

13.06 As used in this Section 13, "we" also means our licensor and our other affiliates and our and their officers, directors, shareholders, members, employees, agents, or others for whose conduct we, or they, are responsible.

13.07 You agree to post, display, include, and otherwise promptly use and maintain all signs and/or notices we specify, and any that are required by applicable law, indicating the status of the parties and our relationship, including notices on stationery, business cards, signs, in advertising, promotional, and public relations material, and so forth.

13.08 (a) You agree to defend, indemnify, and hold harmless us and our officers, directors, shareholders, members, agents, employees, successors, and assigns, and our licensor, affiliates, and their officers, directors, shareholders, members, agents, employees, successors, and assigns, against all losses, liabilities, damages, costs, and expenses, including reasonable attorneys' fees, resulting directly or indirectly from, or in any way pertaining to, the design, construction, fixturing, decorating, stocking, use, occupancy, maintenance, repair, operation, sales, policies, procedures, practices, actions, hiring practices, personnel policies, employment practices, or any other activities of your shop and business, including your intentional acts and negligence and those of your agents, officers, directors, partners, shareholders, members, employees, and any others for whose conduct you are responsible. However, we shall be responsible for, and will indemnify you against, any loss, costs, or damage resulting solely from your compliance with our written policies, procedures, and directives but only as long as you have fully complied with our requirements at the times and in the manner we require.

(b) You also are responsible for any loss, damage, cost, and expense, including attorneys' fees, that arise out of the representations you made in obtaining this franchise.

(c) The foregoing indemnity provisions are not limited by the insurance requirements of Section 12 above, or by any other provisions of this Agreement.

13.09 If we ever learn about a matter against which you have indemnified us, we will notify you about it and you agree to defend us against it. However, if the claim is one that may affect more than one *Churro Station* shop, we can take over the defense of the matter with counsel of our choosing. In that case, you will still be responsible for all of the costs and expenses involved in defending the matter, including attorneys' fees.

13.10 If you are defending us, and/or another indemnified party, in any action, you agree not to settle the matter until we, and the other indemnified party or parties, if any, approve the terms of the settlement. You cannot commit us, or any of the other indemnified parties, to making any expenditure or taking or withholding any action as a part of any settlement without our, and their, prior written consent.

#### **14. Use and Protection of the Licensed Commercial Symbols and Other Proprietary Property.**

14.01 (a) You are licensed to use only those trademarks, trade names, service marks, logotypes, symbols, and designs that we specify in writing from time to time even if they are less than all that we own or otherwise have the right to use.

(b) Your use of the names, marks, symbols, designs, logotypes, and other identifying items that are licensed to you, is nonexclusive and that we, our licensor, and our affiliates can use, and can license others to use, the names, marks, logotypes, symbols, and designs licensed to you in any manner, or at any place, except as may be limited by this Agreement.

14.02 From time to time we may license you to use additional trademarks, trade names, service marks, logotypes, symbols, designs, patents, copyrights, and/or other commercial property pursuant to the terms of this Agreement, but that license, or those licenses, will pertain only to those items, and only to the extent, we specify in writing in connection with the grant of the concerned license or licenses.

14.03 All of the trademarks, trade names, service marks, logotypes, symbols, designs, patents, copyrights, and/or all other commercial property licensed to you under this Agreement, whether presently licensed or that are licensed to you in the future (all of which are collectively referred to in this Section 14 as "the intellectual property"), must be used strictly in compliance with all of the terms and conditions of this Agreement, our manuals, and our other directives.

14.04 In the event you become aware of any claim of infringement resulting from, or other challenge to, your use of any of the intellectual property, you agree immediately to notify us of the facts concerning the claim or challenge. We have sole discretion as to what action to take, if any, regarding any claim or challenge concerning the intellectual property. You agree to join as a party to any such action, or to allow the action to be brought solely in your name, but only when, as, and if we require.

14.05 We will have sole control over each and every legal, administrative, and other action of any type concerning the intellectual property. In the event of any legal, administrative, or other action concerning the enforcement or defense of our rights in the intellectual property, we agree to bear the legal fees and court costs incurred in the handling of the matter.

14.06 We agree to pay all damages for which you are held liable in any proceeding involving your right to use the intellectual property but only on the condition that you have used the intellectual property in strict accordance with this Agreement, our manuals, and our other directives, have promptly notified us of any challenge to your use of the intellectual property, and fully cooperate with us in the handling of any proceeding concerning the intellectual property.

14.07 (a) We have sole discretion as to what legal, administrative, or other action to take, if any, against any third person or entity making unauthorized use of the intellectual property. You agree to cooperate fully with us in our handling of any such legal, administrative, or other proceeding.

(b) If we elect to take legal, administrative, or other action against a third party in any matter concerning the intellectual property, you agree to join as a party to the action, or to allow the action to be brought solely in your name, but only when, as, and if we require. We will bear all legal costs in connection with any such action.

14.08 (a) If it becomes advisable at any time in our sole discretion to modify or discontinue the use of any marks, names and/or other of the intellectual property, you agree to comply with our directives in that regard at the time and in the manner we indicate.

(b) In the event we require you to modify or discontinue the use of any marks, names, and/or any other part of the intellectual property, our sole obligation will be to reimburse you for your reasonable out of pocket costs in connection with that compliance, but only to the extent that such costs are for the replacement of tangible items bearing the concerned names, marks, and/or designs, and provided that your compliance is in accordance with our directives, such as in the liquidation of existing supplies of distinctively marked materials, the disposition of signs, the replacement of advertising and promotion material, and so forth. We will not be obligated to reimburse you for the replacement of any items bearing our names or marks as long as you have been given a reasonable time to use up items that are consumed in the normal operation of your *Churro Station* shop or to amortize the cost of such items that are not capable of such use.

(c) If we are required to use a name other than *Churro Station* for your shop because, in our judgment, another person has prior rights to that name in your market area, we both will seek to find a name for you to use to which we mutually agree. We each agree not to unreasonably withhold our consent to any name proposed by the other under these circumstances.

14.09 We have the right to require you to use one or more additional trademarks, service marks, logotypes, and/or other commercial symbols in connection with the operation of your shop. In that event, you agree to bear the cost of using such additional items in accordance with our directives.

14.10 (a) You agree to make no application for registration or other protection of any of the intellectual property, or any items similar to them, without our prior written consent and then only upon the terms and conditions we specify.

(b) You agree to take no action that will interfere with the intellectual property, our rights in it, or the use of it, by us, our licensor, our affiliates, and/or by those we authorize to use it and/or those so authorized by our licensor or affiliates.

(c) You agree not to contest the validity or ownership of any of the intellectual property or to assist anyone else in doing so.

14.11 If we so direct, you agree to give the notices, file the forms, and take any other action we reasonably require in connection with your use of the intellectual property.

14.12 In connection with your use of the intellectual property, you agree to show all of the symbols and to display all of the legends we specify indicating that any mark, name, logotype, or symbol is a trademark, service mark, copyright, or is otherwise subject to protection under the law, and is owned by us and/or by our licensor or affiliates.

14.13 Since it is essential to the goodwill and operation of *Churro Station* shops that competing shops are not aware of, and/or do not use, our trade secrets, including our marketing plans, supplier information, merchandising and promotional programs, financial data, operational practices and procedures, and other proprietary information as it currently exists and as it is developed in the future, you agree that if you have more than one *Churro Station* shop and you do

not renew the franchise of one or more of your shops when the original or renewal terms of that shop or those shops expire but are allowed by operation of law, or otherwise, to operate a business a principal activity of which is the sale of goods of a type similar to those sold in *Churro Station* shops, we can terminate your remaining *Churro Station* franchises without further obligation to you. These terminations will be considered terminations without default. In the event we terminate any of your franchises for this reason, you agree promptly to comply with all of the post-termination obligations set forth in Section 16 of this Agreement.

#### **15. Transfer of the Franchise and Any Interests In It and Our Right of First Refusal.**

15.01 (a) As noted above, anyone with any interest in this franchise, as well as anyone with any interest in any entity with any interest in this franchise, is referred to as "you" in this Agreement.

(b) When we refer to a "transfer" we also mean any assignment, sale, or other disposition, whether it occurs voluntarily or involuntarily.

(c) "Transfer" also means the transfer, issuance, or reacquisition of any shares in, or the merger, acquisition, recapitalization, consolidation, or other restructuring of any corporation, limited liability company, partnership, or other entity, that owns any interest in this franchise, in the franchised business, or in the property used in your *Churro Station* shop.

(d) When we refer to "this franchise", we mean this Agreement, the franchise and license granted by this Agreement, the franchised business, any ownership interest in any entity that owns any interest in this franchise, or in any significant part of the property that is used in the operation of your *Churro Station* shop.

15.02 (a) You agree to notify us before you take any action to market your shop or transfer some or all of your rights in this franchise. You should provide us at that time with your plan for marketing your shop including the means and methods you plan to employ in that regard.

(b) Before you undertake any marketing of your shop you must provide us with copies of any advertisements and materials you propose to use in that effort and must obtain our approval of all such advertisements and material, which consent will not be unreasonably withheld. The foregoing includes advertisements and notices you plan to place on the Internet or distribute by means of any other means of communication.

15.03 (a) You only can transfer this franchise with our prior written consent.

(b) In determining whether your proposed transferee is acceptable, we will consider, among other things, our standards at the time for new franchisees including the net worth, creditworthiness, background, training, personality, reputation, and business experience of the proposed transferee.

(c) Any purported transfer that we do not approve in advance in writing is not binding on us and is grounds for the termination of this Agreement.

(d) You agree not to use this Agreement as security for a loan, or otherwise encumber this franchise, without our prior written consent, which consent we can grant or withhold in our sole and absolute discretion.

15.04 Your proposed transferee must provide us with the information we reasonably request so that we can make the necessary investigation and determination of the acceptability of the proposed transferee. Until all of the information we reasonably request is provided, we are not obligated to take any action on the application of the proposed transferee.

15.05 (a) We can disapprove the proposed transfer if, in our sole and absolute judgment, the sales price to be paid by the transferee, or the other terms of the transaction, are such that the transferee's successful operation of the franchised business may be jeopardized.

(b) This provision is solely for our protection and is not intended to provide any assurance to the prospective transferee that our approval of the transfer in any way guarantees the transferee's success. You agree not to suggest anything to the contrary to anyone, including your prospective transferee.

(c) Since you may disagree with our decision to disapprove your proposed transferee or the transfer transaction, you hereby waive and release us from any claims that our refusal to approve the transfer is an unreasonable interference with your prospective advantage, is an interference with your contractual relations, or otherwise gives you or the proposed transferee any kind of claim. We would not review the application of the proposed transferee if you did not agree to this waiver and release.

15.06 (a) You agree that you will finalize the proposed transfer only when you receive our written approval of the prospective transferee and the transfer transaction, and following our decision not to purchase the interest or property proposed to be transferred under our right of first refusal described below.

(b) You agree to follow the transfer procedures set forth in our manuals and other directives, to provide us with the documents, and perform the other duties regarding the transfer called for by our manuals or other directives.

(c) You agree that we can require that the closing date of the transfer be delayed for a reasonable time to allow us to perform our duties concerning the transfer as set forth in our manuals, as well as those other actions we may elect to perform regarding the transfer.

15.07 (a) So that we can review your proposed transferee's qualifications, you agree to submit an application in the form we specify on behalf of the proposed transferee.

(b) Before you close any transfer transaction, you and the transferee must sign the transfer documents we require. We can condition our approval of the transfer on your agreement to any terms we feel are necessary to insure that the transferee performs his or her duties under the

Franchise Agreement that is signed in connection with the transfer. These terms can include requiring you to subordinate or defer any debt that you take back on the transfer to the transferee's faithful performance of the duties called for in his or her Franchise Agreement.

(c) Before you complete the transfer you agree to sign a general release of all claims against us, our, our licensor, our affiliates, and our, and their, officers, directors, shareholders, members, employees, agents, and any others with whose conduct we, and they, are chargeable.

15.08 (a) If any transfer results in the cumulative transfer of over 50% of the ownership of the original owner or owners of this franchise, or the ownership interests of the original owner or owners of any entity that owns a majority interest in this franchise, as a condition of our approving the proposed transfer, we can require that the person or entity who or which is the franchisee after the transfer sign the Franchise Agreement we are using for new *Churro Station* franchisees at the time of the transfer, even if there is no change in the entity that owns this franchise.

(b) Even though a new Franchise Agreement may be signed, we will not charge a new initial franchise fee and the term of the new agreement will be equal to the term remaining on this Agreement.

(c) We can request that you and the transferor guarantee the obligations of the transferee under the transferee's new Franchise Agreement. You and the transferor can decline to provide us with this guaranty but we can consider the absence of such an undertaking in deciding whether to approve the transfer.

15.09 (a) As a condition of our approving any transfer that results in the cumulative transfer of over 50% of the interest of the original owner or owners of this franchise, or the original owners of any entity that owns a majority interest in the franchise, to someone who is not then a *Churro Station* franchisee, you agree to pay us a transfer fee equal to 50% of the initial fee we are charging to new *Churro Station* franchisees at the time of the transfer.

(b) If the transferee is an existing *Churro Station* franchisee, rather than being 50% of the then-current initial fee, the transfer fee will be equal to 25% of that fee. We will not be required to provide any services in connection with a transfer to an existing *Churro Station* franchisee. However, the transferee must reimburse us for any costs that we incur in connection with the transfer, including any training we require the transferee to undertake, and travel, lodging, and related costs involved in any visits to the shop that we make related to the transfer if the amount of our expenses, including an allowance for the time of our employees, exceeds the amount of the transfer fee.

(c) If more than one *Churro Station* shop is being transferred at the same time to the same transferee as part of the same transaction, if the transferee is not then a *Churro Station* franchisee, the transfer fee will equal 50% of our then-current initial fee for the first shop being transferred, 25% of that fee for the second shop being transferred, and no additional fee if there are more than 2 shops being transferred.

(d) If no new *Churro Station* franchises are being offered at the time of the transfer, the transfer fees referred to above will be based on the initial fee that was being charged to 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.

(e) The required transfer fee or fees are payable within 10 days of when we notify you that we approve the transfer.

15.10 As a condition of our approvals, we can require the transferee to update the shop to comply with our standards at the time. We will advise your prospective transferee of what we will require in that regard at the time we approve the transfer.

15.11 (a) We can require the transferee to complete our training course, or such parts of it as we designate, to our reasonable satisfaction as a condition of our approval of the transfer.

(b) If the transferee is required to undertake our training course and does not complete it to our reasonable satisfaction, you may not complete the transfer.

(c) If the transferee does not complete our training course to our reasonable satisfaction, we can retain the entire transfer fee since we will have provided virtually all of the services we undertake on a transfer. If you have not yet paid the transfer fee, you agree to do so at the time we request.

(d) If we allow the transfer to take place before the transferee completes our training course, you agree to operate the shop for the transferee while he or she is attending our training course. If the transferee does not complete our training course to our reasonable satisfaction, you must retake the ownership of the shop and cancel the transfer.

(e) If a transfer results in the change in the managing agent, the provisions of Section 8.35 of this Agreement concerning the appointment of a successor managing agent will apply.

15.12 (a) You can transfer this Agreement to a corporation, limited liability company, or other entity, wholly-owned by those who owned the franchise before the transfer without our consent, payment of transfer fees, or signing a new Franchise Agreement. Such a transfer will not give us the right to exercise our right of first refusal or require you to upgrade your shop as in the case of other transfers. You must transfer the assets of your shop to that entity at the time you transfer this Agreement to it.

(b) Those owning the entity to which this franchise is transferred agree:

(i) They will own the entity in the same proportion as they currently own the franchise.

(ii) They are personally responsible for the entity's performance of the terms of this Agreement, and any other agreements between us, to the extent they were so responsible to us prior to the transfer.

(iii) Before the completion of the transfer they will sign the documents we require concerning the transfer, including personal continuing guarantees of the obligations of the new entity.

(iv) They will notify us before the transfer so that we can send whatever forms we want to have signed reflecting these obligations.

(v) The share or ownership certificates of the entity will contain a notice that there are restrictions on the transfer of the concerned ownership interest which are described in Section 15 of this Agreement.

(vi) If for any reason we are not notified before the transfer of the franchise, the failure of the owners of the entity to which this franchise is transferred to sign the documents we require will not affect their personal liability for the obligations of that entity.

15.13 (a) If a proposed transfer is only of interests among the original owners of any entity that owns any interest in this franchise, you still must notify us at or before the time of the transfer of the transfer and the resulting ownership interests. If the transfer results in the cumulative transfer of over 50% of the interests of the original owners of the concerned entity, it will be considered a transfer subject to the provisions of this Agreement.

(b) If the transfer involves less than the cumulative transfer of over 50% of the original interests in the entity, you need not obtain our approval prior to the transfer and we agree not to charge our transfer fees, require a new Franchise Agreement to be signed, exercise our right of first refusal, or require an upgrade to the shop. You must notify us of the transfer and the resulting ownership interests at or before the time of the transfer. The transferor must sign a release of all claims against us, our affiliates, and their officers, directors, shareholders, partners, members, or other others, if the transferor retains less than 5% of the entity after the transfer.

15.14 You do not have the right to grant a subfranchise under this Agreement or to franchise, license, or otherwise permit anyone else to use any of the licensed assets, other than allowing your employees to use the items we authorize in the normal course of your business.

15.15 You agree not to transfer a material portion of the property used in your *Churro Station* shop without our prior written consent.

15.16 We can transfer this Agreement in whole or in part without your consent. However, we agree that any such transfer will not interfere in a significant way with your receipt of the benefits granted to you by this Agreement.

15.17 (a) When there is a proposed transfer, you agree to notify us of its terms and conditions. You agree to tell us what interest is proposed to be transferred, the purchase price or other consideration that is to be received, any credit or financing terms that are being offered by the proposed transferor, the date the proposed transfer is to close, and all other pertinent information concerning the transaction. In addition, you agree to send us a copy of any contract, agreement, memorandum of sale, deposit receipt, letter of intent, and the like, concerning the proposed transfer as soon as it is signed. You also agree to inform us of any changes in the terms of the proposed transfer prior to its completion.

(b) After we receive all of the information and documents that we need concerning the proposed transfer, we will have 14 days within which to advise you whether we want to have the interest proposed to be transferred assigned to us on the same terms and conditions. However, we have the right to substitute equivalent cash for any noncash consideration that has been accepted.

(c) If we decide to purchase the interest proposed to be transferred, the transferor must cooperate with us to complete the transfer as agreed. We can extend the date for the completion of the transfer for up to 30 days beyond the date originally scheduled for the closing in order to allow the completion of the transaction in a manner more convenient to us.

(d) After we notify you that we have decided not to purchase the concerned interest, or following the time within which we could have exercised our right of first refusal, if there are any significant changes in the terms of the proposed transfer, you agree to notify us of those changes in writing. We then will have 10 days after we receive that notice within which to decide whether to purchase the interest being transferred on the revised terms and conditions.

(e) If the proposed transfer is not completed for any reason within 60 days after we decide not to purchase the interest proposed to be transferred, or 60 days after the expiration of the time within which we could have exercised our right of first refusal, a new right of first refusal begins as to that transaction as well as to any subsequent proposed transfers.

(f) If the proposed transfer involves more than 50% of the ownership of this franchise, or of any entity that owns a majority interest in this franchise, and we want to purchase the interest or interests being transferred, we have the right to require those who would hold the resulting minority interests to transfer their interests to us at a price proportionate to the price we are paying for the majority interest that we are buying. We will purchase the minority interest at the time and in the manner that we complete the purchase of the majority interest.

15.18 If we decide not to purchase the interest proposed to be transferred, the transfer can be completed on the terms and conditions proposed but only after we have approved the transferee, the terms of the transfer, and you, the transferor, and the transferee have satisfied all of the other transfer requirements of this Section 15.

15.19 (a) Your interest in this franchise is transferable by will or by intestate succession upon your death. Also transferable by will or by intestate succession is any interest you may have in any entity that owns any interest in this franchise.

(b) If the owner of any interest in this franchise, or in any entity with any interest in this franchise, is determined by a court of competent jurisdiction to be legally incompetent, his or her court-appointed guardian can transfer this franchise or the concerned interest.

(c) A transfer because of death or legal incompetence is subject to all of the conditions and requirements concerning transfers described in this Section 15. As such, among other things, we must approve the potential transferee, and, if the appropriate conditions apply, the transferee must satisfactorily complete our training course, transfer fees described above must be paid, the transferee must sign an updated Franchise Agreement, and our right of first refusal applies.

15.20 (a) If we do not approve a potential transferee who would otherwise take this franchise, or an interest in any entity owning any interest in this franchise, by will or intestate succession, your estate can sell this franchise, or the concerned interest, to a transferee acceptable to us within 6 months after the appointment of your executor, administrator, or personal representative. If an approved transfer of this franchise is not completed within the 6 month period, we have the right to terminate this Agreement.

(b) During any period following your death or incapacity, your estate must comply with the terms of this Agreement and must run your shop as this Agreement requires. This compliance is not excused or reduced because of your death or incapacity.

15.21 (a) If in our reasonable judgment, the shop is not being operated in accordance with this Agreement during any period following your death or declaration of incapacity, we can, but are not obligated to, take over the operation of the shop for the account of your estate and can deduct from the proceeds of the shop's operation, after the payment of wages and any other expenditures required by law, any amounts we incur in the operation of the business. This includes any transportation, lodging, living expense, salaries, and benefits of those we employ to operate your shop during this period.

(b) If we do take over the operation of the shop under these circumstances, we can discontinue our operation of the shop at any time and turn it back to your estate's personal representative.

(c) Our operation of the shop will not forgive any violation of this Agreement occurring before or after the period during which we operate the shop.

(d) You agree that we will not be liable for any losses occurring during any period that we operate the shop unless we are guilty of gross negligence or willful misconduct.

15.22 (a) If a court of competent jurisdiction orders you to transfer all, or any part of, your interest in this franchise, in any entity which owns any interest in this franchise, or in a substantial

portion of the assets used in your shop, to your spouse, domestic partner, or their equivalent, that order will constitute a proposed transfer of this franchise and will cause the transfer to be subject to all of the terms and conditions concerning transfers described in this Section 15.

(b) If we approve the transfer and the person to whom the transfer is being made has completed all necessary training and has been active in the operation of the shop for at least one year, we will not require the transferee to complete further training nor will we charge a transfer fee in connection with the transfer. However, the transferee must reimburse us for any costs we incur in connection with the transfer, including an allowance for the time of our employees. All of the other conditions concerning a transfer set forth in this Section 15 will apply except our right of first refusal.

(c) If we do not approve the transfer, we have the right to terminate this Agreement and also have the right to purchase some or all of the physical assets of the shop at their fair market value, as described in Section 16.08 below.

## **16. Defaults, Cures, Termination and Remedies.**

16.01 We can terminate this Agreement without giving you notice or an opportunity to correct the concerned condition of default under any of the following circumstances:

(a) If you, or any entity with any interest in this franchise, is declared bankrupt or judicially determined to be insolvent, if all or a substantial part of your shop assets or property, or that of the concerned entity, is assigned to or for the benefit of any creditor or creditors, or if you or the concerned entity admits an inability to pay debts as they become due;

(b) If we mutually agree in writing to terminate this Agreement;

(c) If you, or the owner of any interest in any entity that owns any interest in this franchise, has made a material misrepresentation relating to the acquisition of this franchise, or if you, or any such owner, engages in conduct that reflects upon the operation and/or reputation of your *Churro Station* shop or the *Churro Station* system in a materially adverse manner;

(d) If you fail to comply with any material federal, state, or local law or regulation applicable to the operation of your shop and fail to cure any such violation within the time period allowed for the cure of the noncompliance following notice of the violation;

(e) If during any 12 month period you receive 2 or more notices of valid defaults under material provisions of this Agreement, whether or not the defaults were cured within the time limits allowed in such notices;

(f) If your shop, this Agreement, or a material portion of your shop property is seized, taken over, or foreclosed by a government official in the exercise of his or her duties, or seized, taken over, or foreclosed by a creditor, lienholder, or anyone else, whether by foreclosure, attachment, or otherwise, and the property is not restored to you or the concerned entity within 5 days of the foreclosure, attachment, execution, or seizure, or if any judgment against you or the

concerned entity remains unsatisfied for at least 30 days unless an appropriate appeal bond has been filed;

(g) If you or any partner, officer, director, shareholder, member, or owner of any entity that owns any interest in this franchise is convicted of a felony of any type, or any other criminal misconduct that is relevant to, or reflects adversely upon, your shop or the *Churro Station* system;

(h) If you fail to pay any fees, charges, or other amounts due to us, or to any of our affiliates, when they are due, but in any event within 5 days after receiving notice that such fees, charges, or other amounts are past due;

(i) If we make a reasonable determination that continued operation of your shop will result in an imminent danger to public health or safety;

(j) Except as otherwise provided in this Agreement, if anyone who is required to complete our training course fails to complete that course at the time and in the manner required.

(k) If you intentionally underreport your gross receipts in any amount for any period or underreport your gross receipts in the amount of 10% or more for any reporting period, whether or not the underreporting is intentional;

(l) If you, or any partner, shareholder, member, or owner of any entity that owns any interest in this franchise, attempts or purports to sell, transfer, assign, or otherwise dispose of all or any part of this Agreement, his or her interest in the concerned entity, or any material portion of the property used in connection with your shop, except as allowed by this Agreement, or if you, or any such person attempts or purports to license, subfranchise, assign, authorize, or otherwise permit any third person or entity to use or participate in any way the rights, assets, business, or property licensed to you under this Agreement or that you use in connection with your shop except as allowed by this Agreement;

(m) If you abandon your shop by failing to operate it for 5 consecutive days during which you are required by this Agreement to keep the shop in operation, or if you fail to operate it for any lesser period after which, under the facts and circumstances, it is not unreasonable for us to conclude that you do not intend to continue its operation, unless that failure is caused by fire, flood, earthquake, or other similar cause beyond your control, but not including your inability to operate the business, whether financial or otherwise, or if at any time you expresses an unwillingness or inability to go forward with any of your obligations under this Agreement;

(n) If the transfer or sale of the rights of a deceased or incompetent person who has any interest in this franchise, or in any entity that owns any such interest, is not accomplished within the time periods and in the manner required by this Agreement;

(o) If you lose your right to occupy your shop premises because you have committed an uncured default under your lease; or

(p) If you disclose or use any of our trade secrets, other proprietary information, or intellectual property, except as permitted by this Agreement.

16.02 (a) In addition to the grounds for immediate termination set forth in Section 16.01 above, we can terminate this Agreement immediately if you violate any other agreement between us, or any agreement between you and any of our affiliates, including any other Franchise Agreement between us, and that violation is not cured within the time period allowed by the concerned agreement.

(b) If the term of your lease expires, or if your right to possession of your shop premises is otherwise lost without you being at fault, we will not terminate this Agreement as long as you relocate and reopen your *Churro Station* shop, at a location and under occupancy terms we find acceptable, within 90 days from the date on which your prior lease terminated. The provisions of Sections 5 and 6 above, and the other provisions of this Agreement, apply to the relocation of your *Churro Station* shop, including the payment of our relocation fee.

(c) If this Agreement is terminated because you are unable to relocate your shop have made a good faith effort to relocate your shop within the required time period, and have not refused to accept any new site that we have found for you, the termination of this Agreement will not be deemed to be a termination because of a default and the liquidated damages provisions of subsection 16.15 of this Agreement will not apply.

16.03 (a) If you have committed any other violation of this Agreement and that violation does not result in the immediate termination of this Agreement, you must correct the default to our reasonable satisfaction within 20 days after we give you notice of the condition that constitutes the violation and the corrective action that you must take to cure the default, if any corrective action is possible. If the default is of such a nature that more than 20 days are reasonably required to cure the violation, we will give you such additional time that we feel is reasonably necessary to cure the default. However, you agree to start your corrective action within the 20 day period and proceed with the cure diligently to its completion.

(b) If you do not correct a default under this Agreement within any time period allowed for its cure, the termination of this Agreement will occur without further notice as of the expiration of the time within which you were allowed to cure the default.

16.04 If we decide not to enforce, or are prevented by law from enforcing, any of the immediate termination provisions of Sections 16.01 or 16.02 above, the provisions of subsection 16.03 will apply to the concerned default.

16.05 If you maintain that we have committed serious violation of any material term of this Agreement, you agree to give us written notice of the claimed default. We will then have 20 days after our receipt of that notice, plus such additional time as reasonably necessary, within which to correct any actual condition of default. If we do not cure the default within the designated time period, you can pursue all rights allowed to you by applicable law.

16.06 (a) Upon the termination of this Agreement for any reason, including its expiration at the end of its term, you must, without delay:

- (i) bring all accounts with us and our affiliates current;
- (ii) stop using our trade names, trademarks, service marks, logotypes, commercial symbols, trade dress, designs, patents, copyrighted items, confidential information, trade secrets, proprietary material, and other intellectual property;
- (iii) discontinue the use of any color schemes, interior and exterior decoration, signs, displays, advertising and promotional material, and all other items that are distinctive to the *Churro Station* system. In this regard, you agree to remove at your own cost and expense all furniture, décor, equipment, trade fixtures, and other items, reasonably associated with *Churro Station* shops;
- (iv) send us all of our manuals and all other material obtained from or through us or that you received by virtue of being a *Churro Station* franchisee;
- (v) obtain a new telephone listing and telephone number and, at our election, assign your previous telephone listing and telephone number, as well as all Internet-related items described in Section 8.43 above, to us in the manner we specify;
- (vi) cancel any fictitious business name or equivalent registrations or listings indicating that you are in any way affiliated with the *Churro Station* system; and
- (vii) notify all of your suppliers, customers, utilities, landlords, creditors, and concerned others, including those with which you have placed advertisements, that you are no longer affiliated with the *Churro Station* system.

(b) You also agree not to identify yourself, any present or future business in which you may have an interest, or any entity that owned any interest in this franchise, as having been associated with the *Churro Station* system. This provision will not prevent you from responding to inquiries about your employment history but, rather, is intended to prevent you from indicating your former affiliation with us to the public.

16.07 Until you have completed all of the duties described in Section 16.06 above, you agree to pay us on a monthly basis an amount equal to the monthly average of the royalty and advertising fees you paid over the 12 month period just prior to the termination or expiration of this Agreement. You acknowledge that this obligation does not permit you to continue to use our names, marks, trade dress, shop format, or other unique or identifying characteristics or to carry any merchandise which is identified in any way with *Churro Station* shops.

16.08 (a) On the termination of this Agreement for any reason, including its expiration at the end of its term, we have the right to purchase from you any or all equipment, decor, furniture, fixtures, and any or all other tangible property used in the operation of your *Churro Station* shop. If we so choose, you agree to sell us your entire *Churro Station* shop.

(b) We will pay you the fair market value of the assets we purchase from you. The fair market value of the items is to be determined as of the date this Agreement came to an end without any allowance for any claimed going business value, goodwill, or any other intangible asset, and without consideration that the shop is or was a *Churro Station* shop.

(c) We will notify you whether we will purchase some or all of the assets of your *Churro Station* shop during the period from 60 days before to 30 days after the termination, cancellation, expiration, or nonrenewal of this Agreement. If we give you this notice, you agree to meet with us promptly to try to agree on the fair market value of the assets we propose to purchase.

(d) If we cannot agree on the fair market value of the assets we propose to purchase within 20 days after we give you notice of our desire to purchase those assets, we each must appoint a professional business appraiser who will separately determine the fair market value of the concerned assets. The appraisers will be instructed to make and deliver their appraisals to us both within 20 days of their appointment. If we cannot agree on the fair market value of the concerned assets within 10 days of the delivery of the appraisals, the two appraisers will be instructed to appoint a third party arbitrator who will be instructed to pick within 20 days after his or her appointment which of the appraisals he or she deems to be closest to the fair market value of the concerned assets and that value shall then be the purchase price of the assets. The arbitrator can hold such hearings as he or she may determine to assist at arriving at a decision. Each of us will bear the cost of our own appraiser, attorneys, and expert witnesses, and shall divide equally the cost of the third party arbitrator and any expert witnesses called exclusively by the third party arbitrator. If either of us fails to appoint an appraiser within the required time period, the determination of fair market value by the single appointed appraiser shall be the purchase price.

(e) Once the fair market value of the assets we propose to purchase has been determined, either by agreement or as set forth in subsection (d) above, we each agree to enter into a standard purchase and sale of assets agreement within 10 days after the purchase price has been determined. If we have not entered into such an agreement within 20 days after the purchase price is determined, the terms of the agreement can be determined by the Superior Court of California for the City and County of San Francisco and will be deemed complete and binding as of the date specified by the court, whether or not the agreement is signed by either or both of us. Unless we mutually agree otherwise, we will have the right to allocate the purchase price among the assets we purchase and will pay any resulting sales tax on the transaction. We will divide equally any costs imposed in connection with the court proceeding, any escrow fees, and any costs related to searching for liens and encumbrances on the assets we are purchasing, including those on the real property on which your shop is located if we are taking over your lease. You will be responsible for prompt compliance with the Bulk Sale law to the extent it applies to the transaction and will bear the costs of that compliance. Each side will bear its own attorneys' fees in the transaction.

(f) Transfer of the assets we purchase will occur not later than 20 days after the purchase and sale agreement is completed or upon completion of compliance with the Bulk Sale law, if required, unless the purchase and sale agreement states otherwise.

(g) Unless we otherwise agree in writing, our election to purchase some or all of the assets of your shop, and the purchase procedure set forth above, will not extend the term of this Agreement, will not waive or cure any default that has resulted in the termination of this Agreement, nor will it extend any period within which you have had the opportunity to correct any condition of default.

(h) If we elect to purchase any or all of the physical assets of your shop as described above, we will pay you the purchase price for those assets in cash at the closing of the transaction, less any amounts you owe us or any of our affiliates, and less any of your indebtedness that we assume as part of the purchase price.

16.09 Upon the termination of this Agreement for any reason, including its expiration at the end of its term, we have the option to have you assign your lease to us. If we do so, you will not be entitled to any compensation on account of the transfer.

16.10 (a) If we require an assignment of your lease, you agree promptly to bring the shop premises into full compliance with the requirements of the lease and with all laws, statutes, ordinances, rules, regulations, orders, and the like, applicable to the premises. You also agree to bring all accounts with, and other obligations to, the lessor current as of the date on which we take over the premises.

(b) If we assume your lease, you agree to indemnify us against all losses and costs attributable to the period of your possession of the premises. Following our taking over possession of the premises, we agree to indemnify you against all losses and costs attributable to the period of our possession of the premises, except to the extent that any of those losses or costs are the result of any of your actions or inactions during, or attributable to, your period of occupancy.

(c) If we are notified by the lessor at any time after we take over the lease that you have overpaid any costs or expenses attributable to your period of occupancy, we will refund those amounts to you to the extent that we have gained the benefit of such overpayments, such as by receiving credits for future payments we are required to make under the lease. To the extent you have underpaid any costs or expenses attributable to your period of occupancy, you agree to pay us those amounts promptly upon being notified of them.

16.11 In addition to the remedies set forth in this Agreement, in the event of your default we will have all other remedies available to us at law or in equity.

16.12 Upon the termination, nonrenewal, or expiration of this Agreement for any reason, no payment is due to you on account of any goodwill, going business value, equity, or for any other intangible assets claimed to have resulted from your operation or ownership of the shop, or otherwise.

16.13 Any creation, or increase in the value, of any goodwill associated with the trademarks, service marks, logotypes, symbols, and any other intellectual property we have licensed to you that you claim resulted from your operation of the shop belongs to us and you hereby assign any such increase to us without cost.

16.14 All of the provisions of this Agreement that apply by their terms, or by implication, after this Agreement ends will survive the termination or expiration of this Agreement.

16.15 (a) If this Agreement is terminated because you default, we will lose your royalty and, if our national or regional advertising fund has been established, advertising fees, as well as the goodwill we would have received from your operation of the shop before the scheduled expiration of this Agreement. Therefore, since the extent of the actual loss to us that will occur for these reasons will be extremely difficult to determine, if this Agreement is terminated because you default, you agree pay to us in equal monthly installments an amount equal to the monthly royalty and, if our advertising fund or funds have been established, advertising fees, that would have become due following the termination of this Agreement, as defined below. The monthly payments shall begin on the first day of the month following the month during which this Agreement was terminated and shall continue until we have established another company-owned or franchised *Churro Station* shop within your protected territory.

(b) The term "the monthly royalty and advertising fees that would have become due" means an amount determined by taking your gross receipts for the 12 months immediately before the date of the termination of this Agreement, applying the royalty and advertising fee percentage rates called for by this Agreement to your gross receipts and dividing that number by 12. If your *Churro Station* shop has been open less than 12 months prior to the termination of this Agreement, the actual gross receipts of the shop for the time it actually was open, annualized as appropriate, is to be used in the concerned calculation.

(c) If this Agreement is terminated because you default before your shop opens for business, we can use the gross receipts of a shop we reasonably consider to be equivalent to your shop as the basis for the foregoing calculation.

16.16 In addition to any liquidated damages you are required to pay pursuant to subsection 16.15, should you default under this Agreement, you agree to pay us immediately all royalties, advertising fees, and other amounts due to us under this Agreement as of the date of termination, in addition to all other damages caused to us by virtue of your default.

16.17 After you have satisfied all of your payment and performance requirements following the termination or expiration of this Agreement, we both agree to sign a mutual release that will relieve us both from further liability to each other, except for the continuing obligations that apply following the termination or expiration of this Agreement, such as your promise not to use or reveal our trade secrets and your agreement not to compete with *Churro Station* shops for the period, and in the areas, described in Section 17 below.

## **17. Covenants Not to Compete.**

17.01 You agree that as long as this Agreement is in effect, you will not be an owner, employee, consultant, officer, director, shareholder, member, partner, or otherwise participate in or own a business, or any interest in any entity that owns a business, at any location a principal activity of which is the sale of goods of a type similar to those sold in *Churro Station* shops.

17.02 (a) Except as otherwise provided in this Agreement, for 2 years following the expiration, termination, nonrenewal, or transfer of this Agreement, you agree not be an owner, employee, consultant, officer, director, shareholder, member, partner, or otherwise participate in or own a business, or any interest in any entity that owns a business, at any location a principal activity of which is the sale of goods or services of a type similar to those provided by *Churro Station* shops within the area that was granted to you as a protected territory and within 5 miles of any *Churro Station* shop then existing or one that is under construction.

(b) The foregoing prohibition will not apply to your passive ownership of 5% or less of the shares in a public corporation regardless of the nature of its business.

17.03 You agree that at no time will you or any person or entity over whom or which you have control make any unauthorized disclosure or use of our trade secrets, intellectual property, or other proprietary material, including the contents of our manuals, any financial information concerning any *Churro Station* shop or the *Churro Station* system, as well as any other proprietary information which you obtained from or through us or in connection with the operation of your *Churro Station* shop.

17.04 You agree not to attempt to persuade or induce any of our employees, the employees of our licensor, those of our affiliates, or the employees of any other *Churro Station* franchisee to leave their employment during the term of this Agreement, any renewals or extensions hereof, and within one year thereafter.

17.05 You agree that the foregoing covenants survive the expiration, termination, nonrenewal, or transfer of this Agreement and that they will apply whether this Agreement terminated at the end of its term, by the default of either party, or for any other reason.

17.05 If a court or arbitration tribunal determines that the foregoing covenants cannot be enforced as written in the jurisdiction in which your shop is located, the court or arbitration tribunal is hereby authorized to alter the terms of the covenants to the extent required to permit the covenants to be enforced to the greatest extent possible in the concerned jurisdiction.

## **18. Dispute Resolution; Arbitration.**

18.01 In the event of any controversy or claim between us arising out of, or related to, this Agreement, its inducement, its execution, or a claimed breach, and we cannot resolve the dispute between us, we both agree to refer the matter to mediation in San Francisco, California, to, and under the mediation rules of, the dispute resolution firm JAMS. The mediation will be limited to one day. The costs of the mediation service will be shared equally between us.

18.02 (a) If the mediation does not result in a resolution of the dispute, the parties agree to resolve the matter by referring the matter to binding arbitration before a single neutral arbitrator provided by, and under the auspices and rules of, JAMS, except to the extent set forth in Sections 18.03 and 18.06 below.

(b) The decision of the arbitrator in the matter shall be final and binding upon the parties to the arbitration and a judgment on the award of the arbitrator may be entered in any court having jurisdiction of the matter.

(c) If for any reason JAMS is not available to conduct the mediation or the arbitration, the parties shall refer the matter to the American Arbitration Association and the matter shall be subject to its mediation and commercial arbitration rules.

18.03 The parties agree that the foregoing arbitration provisions will not apply to the portion of any dispute that involves claims by more than one *Churro Station* franchisee, those for which class action certification is possible, those involving the validity of our trademarks, service marks, logotypes, or other commercial symbols, or disputes involving claims under state or federal antitrust and/or other trade regulation laws.

18.04 The parties will share equally the fees and costs charged by the mediator, the arbitrator, and the dispute resolution service.

18.05 Each party to any mediation or arbitration proceeding will bear his, her, or its own costs and expenses in the matter, including attorneys' and expert witness fees, even if the arbitrator determines one of us to be the "prevailing party".

18.06 Nothing in this Section 18, or elsewhere in this Agreement, will prevent either of us, without prior resort to the mediation and arbitration procedure set forth above, from seeking a temporary restraining order, a preliminary, and a permanent injunction to prevent or remedy any irreparable injury or damage, including, on our part, to our trademarks, trade names, service marks, logotypes, commercial symbols, goodwill, trade secrets, or other of our intellectual or proprietary property, or to the *Churro Station* system.

18.07 The parties agree that the venue of any legal action, mediation, or arbitration involving this Agreement, or any of the transactions concerning it, its inducement, execution, interpretation, or breach, shall be in San Francisco, California. You hereby consent to the jurisdiction of the courts and mediation and arbitration tribunals located in San Francisco, California, and agree to be subject to them.

## **19. Modification of This Agreement.**

19.01 This Agreement can be modified only by a written agreement signed by the parties.

19.02 We can modify our manuals, our operating procedures, and all other aspects of the *Churro Station* system, whether those manuals, procedures, or aspects now exist or are developed

at a later time. You agree to adhere to those changes at such times and in the manner we require, subject to the specific limitations contained in this Agreement.

## **20. Notices and Approvals.**

20.01 (a) In order to be effective, all notices, approvals, and consents required by this Agreement, or related to it, must be in writing. By giving a facsimile number and or an electronic mail address to the other party, the party providing that number or address consents that notices, approvals, and consents can be transmitted to them electronically as long as the method of electronic communication creates a record that can be retained, retrieved, and reviewed by the recipient and can be directly reproduced on paper through an automated process.

(b) Notices, approvals, and consent shall be deemed to have been received by the addressee at the earlier of when delivered to the addressee, when an acknowledgment of receipt is signed by the addressee or an agent of the addressee, the next weekday when sent to the addressee by facsimile transmission or by electronic mail, the next weekday after deposit with a recognized overnight express delivery service, or 4 days after the deposit in the United States mail, when sent by certified mail, postage prepaid, and properly addressed to the party to whom or which the notice is being sent.

20.02 For purposes of notices, approvals, consents, payments, receipts, or other communications, the parties designate the addresses listed at the beginning of this Agreement.

20.03 Any party can change his, her, or its address by giving written notice of the change to the other party as provided above.

## **21. Consumer Price Index Adjustment.**

21.01 Whenever in this Agreement any charge, fee, or other payment is to be adjusted by the Consumer Price Index, that adjustment will be based upon any increase between the date of this Agreement, or such other time as may be set forth in the provision requiring such adjustment, and the date on which the concerned payment is due in the Consumer Price Index for All Urban Consumers (base year 1982-84=100) for San Francisco-Oakland-San Jose, California, published by the United States Department of Labor, Bureau of Labor Statistics, most immediately preceding the concerned dates.

21.02 In no case will any adjustment occurring by virtue of this Section 21 result in the charge, fee, or other payment that is subject to adjustment being adjusted below the original amount of the concerned charge, fee, or other payment.

21.03 If the Index designated in Section 21.01 above is changed so that the base year or area differs from that in effect on the date of this Agreement, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Agreement, including any extensions or renewals hereof, such other government index or computation with

which it is replaced shall be used in order to obtain substantially the same result as would have been obtained had the Index not been discontinued or revised.

## **22. Heirs, Successors, and Assigns.**

22.01 This Agreement is binding upon, and inures to the benefit of, the parties and their heirs, successors, representatives, and assigns, except to the extent, and only on the conditions and in the manner, more specifically set forth elsewhere in this Agreement, including the transfer requirements of Section 15 above.

## **23. Waivers.**

23.01 The failure by either party to enforce any right that he, she, or it may have, or to declare any default by the other party, shall not be deemed to be a waiver or abandonment of that right or default unless the concerned right or default is waived by a written document signed by the party who is waiving the right or default.

23.02 The waiver of any right or default in one instance shall not be deemed to be a continuing waiver of the concerned right or default or a waiver of the concerned right or default, or any other right or default, in any other instance.

23.03 The acceptance of money or other performance by either party shall not constitute a waiver of any right or default other than the one to which the payment or performance pertains, and then only to the extent of the payment or performance accepted by the other party.

## **24. Severability.**

24.01 The invalidity or unenforceability of any portion of this Agreement shall not affect the validity of any other portion of this Agreement and, unless the substantial performance of this Agreement taken as a whole is impaired by such a finding, this Agreement shall remain in full force and effect.

24.02 Any invalidity or unenforceability of any portion of this Agreement in any jurisdiction shall not invalidate that portion, or any other portion, in any other jurisdiction.

## **25. Covenant of Further Assurances.**

25.01 Whenever in our sole judgment it is advisable to execute any other and further documents necessary or desirable to carry out the purposes of this Agreement, you agree to execute those documents promptly, provided that they do not substantially alter your rights or increase your duties under this Agreement.

25.02 You agree to respond promptly and accurately to all inquiries from our accountants, auditors, lenders, and others we authorize, concerning the status of this Agreement, the status and amounts of any accounts between us, and/or any other matters pertaining to the rights and obligations of the parties to this Agreement.

## 26. Governing Law.

26.01 (a) This Agreement and its interpretation shall be governed by the laws of the state of California, except for the noncompetition provisions of Section 17 which shall be governed by the laws of the state where your shop is located.

(b) Even though California law has been selected for the interpretation of this Agreement, if your shop is not located in California, California's choice of law and conflicts of law rules will not apply. You also agree that the California Franchise Investment Law, beginning at *California Corporations Code* Section 31000, the California Franchise Relations Act, beginning at *California Business and Professions Code* Sections 20000, as well as the other substantive statutory laws of California dealing with anything other than the interpretation of contracts, whether they now exist or are enacted at a later time, will not apply unless their jurisdictional requirements are met independently and not merely because of the reference to California law in this Agreement.

26.02 If a court or arbitration tribunal of competent jurisdiction determines that some or all of this Agreement must be governed by the laws of a state other than the state or states described in subsection 26.01(a) above, then the laws of that other state will govern the interpretation of this Agreement to the extent required by that court or tribunal.

26.03 If applicable law requires there to be terms other than, or in addition to, the terms contained in this Agreement, then the required terms will be considered to be a part of this Agreement, but only to the extent necessary to prevent the invalidity of this Agreement, or any of its provisions, or to prevent the imposition of any civil or criminal penalties or liability.

26.04 To the extent permitted by the laws of the state whose laws govern this Agreement, you hereby waive any provisions of law or regulations that render any portion of this Agreement altered, invalid, or unenforceable in any respect.

26.05 To the extent the law governing this Agreement permits, we both agree to the following:

(a) Common law damages arising out of this Agreement, its inducement, execution, or breach are waived;

(b) Neither party shall be entitled to punitive or exemplary damages against the other;

(c) Any claim either of us may have against the other will expire one year from the date the claim arises, unless through the exercise of reasonable diligence the complaining party could not have learned of the claim, in which case the one year period of limitations will begin when the complaining party learns of the claim, or through the use of reasonable diligence could have learned of the claim.

## **27. Counterparts.**

27.01 If more than one copy of this Agreement is signed by the parties, all of those copies, taken together, will represent only one agreement.

## **28. Headings and Gender.**

28.01 The headings used in this Agreement are for convenience only and are not to be used in construing the provisions of this Agreement.

28.02 As used in this Agreement, the male or female gender shall include the other and the neuter. The singular shall include the plural and the plural shall include the singular, as appropriate.

## **29. Miscellaneous.**

29.01 Time is of the essence in this Agreement.

29.02 The parties agree that in entering into this Agreement they intend to confer no benefit or right on any person or entity not a party to this Agreement except as specified regarding our licensor and our affiliates. Except for the benefits extended to our licensor and our affiliates, the parties agree that no third party shall have any right to claim any benefit or right as a third party beneficiary under any provision of this Agreement.

29.03 You are not entitled to claim any rights or benefits, including those of a third party beneficiary, under any contract, understanding, or agreement between us and any other person or entity, unless that contract, understanding, or agreement specifically refers to you by name or to a class to which you belong, and specifically grants rights or benefits to you or to the concerned class.

29.04 No fees, charges, royalties, advertising fees, or other payments of any kind you make to us, or any that are made by someone else for your account, are refundable in whole or in part except as may be otherwise set forth in this Agreement.

## **30. Inventions, Discoveries, and Ideas**

30.01 If you develop, or anyone affiliated with you develops, any inventions, discoveries, concepts, procedures, and/or ideas related to *Churro Station* shops or any concepts, processes, practices, techniques, procedures, products, services, or merchandise related your shop, you agree to advise us promptly in writing of the invention, discovery, procedure, or idea.

30.02 Except as otherwise limited by law, all inventions, discoveries, concepts, procedures, and ideas that you, your employees, or your agents develop in connection with *Churro Station* shops are our property.

30.03 It is solely within our complete and absolute discretion whether to authorize the use and/or dissemination of the invention, discovery, concept, procedure, or idea, and, if we do so, the manner of their use.

30.04 You agree not to implement any invention, discovery, concept, procedure, or idea until we authorize you to do so in writing.

30.05 No compensation will be due and payable to you, or to any person or entity affiliated with you, on account of any invention, discovery, concept, procedure, or idea developed by you or by such person or entity whether or not we use, disseminate, authorize, or otherwise employ such invention, discovery, concept, procedure, and/or idea.

### **31. Accord and Satisfaction.**

31.01 No payment you make, any payment made by anyone for your account, or any payment to any person or entity affiliated with us, in an amount less than that required to be paid shall be deemed to be anything except a payment on account, regardless of any endorsement to the contrary contained on any such payment or in any oral or written communication transmitted in connection with the payment.

31.02 Neither by endorsing nor accepting any check nor by accepting any amount from you, or any amount paid on your behalf, are we bound by a claim that such endorsement or acceptance was an accord and satisfaction for less than the full amount due.

31.03 Payments made to us, or to our affiliates, shall be applied first to any administration charges, late charges, and/or interest owing, and then to the earliest of the principal amounts due unless your agreement with our affiliates specifies that the payment is to be applied otherwise.

31.04 Any payment to us, or to our affiliates, and the acceptance of any such payment, shall not prejudice, or be deemed to be a waiver of, our right, or that of our affiliates, to require full payment and performance of all of your duties and obligations under this Agreement or any other agreement under which the concerned obligation arose.

### **32. Joint and Several Liability.**

32.01 If two or more persons, corporations, partnerships, limited liability companies, or other entities, or any combination of them, sign this Agreement, the liability of each is joint and several.

### **33. Our Right to Act.**

33.01 If you fail to perform any duty or obligation required under this Agreement, we have the right, but not the obligation, to perform that duty or obligation on your behalf, for your account, and/or in your name. If we elect to do so, you agree immediately to pay us all costs and expenses we incur in that performance.

33.02 All sums required to be paid to us pursuant to Section 33.01 that are not immediately paid will subject to the late charge set forth in Section 11.06(a) of this Agreement.

33.03 No performance we undertake on your behalf will be a waiver or release of any claims we may have against you because of your failure to perform the concerned duty or obligation.

### **34. Entire Agreement.**

34.01 This Agreement, and the Franchise Offering Circular that accompanied this Agreement, contain the entire understanding between us and encompass all representations on which we both have relied.

34.02 This Agreement supersedes all negotiations, agreements, representations, promises, commitments, inducements, assurances, conditions, and covenants between us whether direct, indirect, or implied, and whether oral or written, except for those contained in this Agreement and in the Franchise Offering Circular accompanying this Agreement.

34.03 You acknowledge that we have made no promises that are not contained in this Agreement, the Franchise Offering Circular that accompanied this Agreement, and in any addendum, amendment, or exhibit to this Agreement that we have signed, including promises or representations concerning your potential for success, the profitability of your shop, or concerning any further or additional rights you may have.

34.04 You acknowledge that we have advised you that there can be no guaranty or assurance of sales levels, profitability, or success in your shop and that your ability and dedication to your *Churro Station* business is crucial to your success.

34.05 Except for any additional representations contained in the Franchise Offering Circular that accompanied this Agreement, we both agree that this Agreement is intended to be the entire integration of all of our understandings of every type concerning the matters related to the subject matter of this Agreement, whether those understandings arose before or at the time we signed this Agreement.

34.06 We both agree that no agreements, representations, negotiations, understandings, promises, commitments, inducements, assurances, terms, conditions, or covenants of any kind or nature exist between us except those set forth in this Agreement or contained in the Franchise Offering Circular that accompanied this Agreement, whether pertaining to this Agreement or to any future, further, or additional rights of the parties, or otherwise. To the extent that there may be any agreements, representations, negotiations, understandings, promises, commitments, inducements, assurances, terms, conditions, covenants, or the like, not contained in this Agreement or the Franchise Offering Circular accompanying this Agreement, we both agree that they are waived.

34.07 YOU ACKNOWLEDGE THAT WE HAVE ADVISED YOU THAT YOU MUST INSURE THAT ALL PROMISES AND REPRESENTATIONS FOR PRESENT AND FUTURE RESULTS AND RIGHTS, WHETHER ABSOLUTE OR CONTINGENT, ARE CONTAINED IN THIS AGREEMENT OR THEY MAY BE LOST.

\_\_\_\_\_ CHURRO STATION FRANCHISES, LLC

\_\_\_\_\_ By \_\_\_\_\_

Signature \_\_\_\_\_ Its \_\_\_\_\_

\_\_\_\_\_ Title

Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

**to *Churro Station* Franchise Agreement**

**Location and Protected Territory**

Immediately upon its execution by the parties, this Exhibit A becomes a part of the Franchise Agreement dated \_\_\_\_\_, between CHURRO STATION FRANCHISES, LLC and \_\_\_\_\_.

We both agree that the location for your shop is:

\_\_\_\_\_  
\_\_\_\_\_

The protected territory granted in connection with your shop is described as follows:

This EXHIBIT A is signed on \_\_\_\_\_.

\_\_\_\_\_

CHURRO STATION FRANCHISES, LLC

Signature

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

## EXHIBIT B

### to *Churro Station* Franchise Agreement

#### Shop-Opening Schedule

If this Agreement covers more than one *Churro Station* shop, you agree to comply with the following shop-opening schedule.

Total number of shops covered by the Franchise Agreement \_\_\_\_\_.

Number of shops to be open by date indicated:

DATE:					
Number of Shops to be opened by indicated date					

Exhibit A to the Franchise Agreement should be amended, or a new Exhibit A completed and signed, for each new shop to show the address of the shop and its protected territory.

This EXHIBIT B is signed on \_\_\_\_\_.

\_\_\_\_\_ CHURRO STATION FRANCHISES, LLC

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name