

**ELEPHANT & CASTLE INTERNATIONAL, INC.**  
**UNIFORM FRANCHISE OFFERING CIRCULAR**  
**EXHIBIT C: AREA DEVELOPMENT AGREEMENT**

**ELEPHANT & CASTLE INTERNATIONAL, INC.**  
1190 Hornby Street, 12th Floor  
Vancouver, British Columbia, Canada V6Z 2K5  
(604) 684-6451  
Fax: (604) 684-8595

**ELEPHANT & CASTLE® RESTAURANTS  
AREA DEVELOPMENT AGREEMENT**

**Area Developer**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Area Code and Telephone

\_\_\_\_\_  
Area Code and Fax

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_, 200\_\_\_\_\_  
Date of Area Development Agreement

**ELEPHANT & CASTLE INTERNATIONAL, INC.**

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**ELEPHANT & CASTLE INTERNATIONAL, INC.  
AREA DEVELOPMENT AGREEMENT**

**THIS AREA DEVELOPMENT AGREEMENT** (this "Agreement") is made, entered into and effective this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between Elephant & Castle International, Inc., a Texas corporation with its principal office at 1190 Hornby Street, 12th Floor, Vancouver, British Columbia, Canada V6Z 2K5 (~~hereinafter referred to as "Elephant & Castle"~~), and \_\_\_\_\_

(~~hereinafter referred to as the "Area Developer"~~).

**RECITALS**

**Elephant & Castle® Restaurant System.** Elephant & Castle has developed over time at significant cost and investment a distinctive restaurant system for operating and franchising restaurants under the name "Elephant & Castle®" which incorporate an Anglo/British style pub restaurant and Tudor/Victorian decor, and which serve a wide variety of high-quality food and beverage items featuring English-style dishes, including fish and chips, shepherds pie, "bangers and mash," and Old Country soups and desserts (the "Restaurant System"). The Restaurant System contains distinctive concepts including, without limitation, special seasonings, recipes and menu items; unique cooking styles and methods; food line management systems; distinctive building and interior design, decor and furnishings; specific standards, specifications and procedures for operations; quality, consistency and uniformity requirements for the foods, beverages, products and services offered to the public; methods, procedures and requirements for operations, quality and inventory control, and training and assistance; and advertising and promotional programs.

**Elephant & Castle Marks.** Elephant & Castle has widely and extensively publicized the name "Elephant & Castle®" to the public as an organization of restaurant businesses operating under the Restaurant System. Elephant & Castle has the right and authority to license the use of the name "Elephant & Castle®," the Elephant & Castle® logo, and other trademarks, trade names, service marks, logos, commercial symbols, phrases, slogans and tag lines which are now owned or which will be developed by Elephant & Castle (~~hereinafter referred to as the "Marks"~~). Elephant & Castle will continue to develop, use, and control the use of the Marks in order to identify for the public the source of foods, products and services marketed under the Restaurant System, and to represent to the public the high standards of quality, appearance, cleanliness and service of the Restaurant System.

**Development of Elephant & Castle® Restaurants.** The Area Developer desires to enter into Franchise Agreements with Elephant & Castle to develop, own and operate Elephant & Castle® Restaurants (~~hereinafter referred to as the "Elephant & Castle® Restaurants" or the "Restaurants"~~) in the area set forth in Article 2 in conformity with the Restaurant System and the uniformity requirements and quality standards established and promulgated from time to time by Elephant & Castle. The Area Developer understands and acknowledges the importance of the high standards of quality, appearance, cleanliness and service established by Elephant & Castle, and the necessity of operating the Area Developer's Restaurants in strict conformity with the standards and specifications established by Elephant & Castle.

**Right to Use Marks and Restaurant System.** Elephant & Castle is willing to provide the Area Developer with the recipes, cooking and food preparation techniques, food line management

systems, menu content and design, decor and color schemes, intellectual property, and other operational, marketing, advertising, promotional and business information, experience and "know how" related to the Restaurant System. The Area Developer acknowledges that it would take substantial capital and human resources to develop a restaurant business similar to an Elephant & Castle® Restaurant and, consequently, the Area Developer desires to acquire the right to use the Marks and the Restaurant System and to own and operate Elephant & Castle® Restaurants pursuant to the terms and conditions set forth in this Agreement. The Area Developer acknowledges that Elephant & Castle would not grant the Elephant & Castle® Restaurant area franchise to the Area Developer or provide the Area Developer with the business information and "know how" about the Restaurant System unless the Area Developer agreed to comply with all of the terms and conditions of this Agreement and agreed to pay the Development Fee, the Initial Fees, the Opening Assistance Fees, the Continuing Fees and all other fees specified in this Agreement and the Franchise Agreements.

**Review of Agreement.** The Area Developer has had a full and adequate opportunity to read and review this Agreement and to be thoroughly advised of the terms and conditions of this Agreement by an attorney or other personal representative, and has had sufficient time to evaluate and investigate the Restaurant System, the financial requirements and the risks associated with the Restaurant System.

Pursuant to the above Recitals and in consideration of the mutual promises and covenants set forth in this Agreement, Elephant & Castle and the Area Developer agree and contract as follows:

## **ARTICLE 1 DEFINITIONS**

For purposes of this Agreement, the following words will have the following definitions:

**1.1 Dollars**

"Dollars" will mean United States of America dollars.

**1.2 Entity**

"Entity" will mean a corporation, limited liability company, partnership, limited partnership or any other type of legal entity formed in compliance with applicable law.

**1.3 1.2 FF&E**

"FF&E" will include furniture, furnishings, décor, supplies, inventory, machinery, technology and equipment.

**1.4 1.3 Franchise Agreement**

"Franchise Agreement" will mean the then-current standard Elephant & Castle® franchise agreement.

**1.5 1.4 Marks**

"Marks" will include the name "Elephant & Castle®," the Elephant & Castle® logo and such other trademarks, trade names, service marks, logos, commercial symbols, phrases, slogans, and tag lines as Elephant & Castle has or may develop for use in connection with Elephant & Castle® Restaurants.

**1.6 1.5 Month**

"Month" will mean a calendar month.

**1.7 1.6 Ownership Interest**

~~"Ownership Interest" will mean the share(s) of (a) capital stock if the Area Developer is a corporation, a (b) membership interest if the Area Developer is a limited liability company, a (c) partnership interest if the Area Developer is a general partnership, (d) limited or general partnership interests interest if the Area Developer is a limited partnership and will include all other types and means of ownership of, (e) proprietorship interest if the Area Developer is an individual and the sole Owner of the Area Developer, and (f) every other type of ownership in the Area Developer as defined by the applicable laws of the state in which the Owner(s) of the Area Developer formed the Entity that is the Area Developer.~~

**1.8 1.7 Owner**

~~"Owner" will mean any person or entity that owns shares of capital stock in the Area Developer if the Area Developer is a corporation, a membership interest in the Area Developer if the Area Developer is a limited liability company, a partnership interest in the Area Developer if the Area Developer is a partnership, a limited or general partnership interest if the Area Developer is a limited partnership and will include all other persons or entities owning any other type or means of Ownership Interest. "Owner" will mean any person or Entity that has an Ownership Interest in the Area Developer.~~

**1.9 1.8 Personal Guarantors**

"Personal Guarantors" will mean the individuals who sign the Personal Guaranty attached to this Agreement.

**1.10 1.9 Quarter**

"Quarter" will mean three consecutive calendar months.

**1.11 1.10 Restaurant System**

"Restaurant System" will mean the distinctive foods, beverages, food products, and other products and services which are associated with the trademarks, trade names, service marks, copyrights, distinctive interior and exterior building designs, decor, furnishings, menus, uniforms, slogans, signs, logos, commercial symbols and color combinations of Elephant & Castle. "Restaurant System" will include all of the quality, consistency and uniformity requirements; the standards, specifications and procedures for product and services, operations, cleanliness, sanitation, control, training, advertising and promotion, service, appearance; and, all instructions, procedures, methods and specifications promulgated by Elephant & Castle.

**1.12 1.11 Transfer**

"Transfer" will mean to sell (sale), assign (assignment), trade, transfer, pledge, bequeath (bequest), lease, sublease or otherwise dispose of.

**1.13 1.12 Travel Expenses**

"Travel Expenses" will mean lodging, food, automobile rental, transportation costs and all other related travel expenses.

**1.14 1.13 Terms Defined in Franchise Agreement**

Capitalized terms used but not defined in this Agreement will, if defined in the Franchise Agreement, have the meanings ascribed to such terms in the Franchise Agreement.



## ARTICLE 2 GRANT OF DEVELOPMENT RIGHTS; TERRITORY

### 2.1 Territory

Elephant & Castle hereby grants to the Area Developer, for the term of this Agreement, the right to enter into Franchise Agreements with Elephant & Castle for the development and operation of Elephant & Castle® Restaurants to be located within the "Territory" defined as the geographical area described and delineated as follows: \_\_\_\_\_

\_\_\_\_\_

The Territory may be further described in a map attached hereto as Exhibit A and signed by both the Area Developer and Elephant & Castle.

### 2.2 Exclusivity

The rights and privileges granted to the Area Developer in this Agreement are expressly limited to the Territory and are expressly subject to the terms and conditions of this Agreement. During the term of this Agreement, Elephant & Castle will not grant to any other person or entity Entity the right to open or operate Elephant & Castle® Restaurants utilizing the Restaurant System or the Marks within the Territory, and will not establish another franchised or company-owned Elephant & Castle® Restaurant within the Territory. Notwithstanding the foregoing, Elephant & Castle will have the absolute right to: (a) develop other restaurant business concepts under other brand names even if the locations for the concepts are within the Territory; (b) develop Elephant & Castle® Restaurants in the Territory if they are located at or within an airport terminal, a stadium or arena or other venue for semi-professional or professional sports, or a college or university campus; (c) market, distribute and sell, on a wholesale or retail basis, clothing, goods, foods, products or any other items sold under any of the Marks, by direct sale, mail order, infomercials, telemarketing, e-commerce or by any other marketing or distribution method, even if such sales take place in, or are made to distributors, retailers or consumers who are located in the Territory; and, (d) advertise, promote and participate in special promotional activities which take place in the Territory including, without limitation, parades, holiday celebrations, cooking, recipe or restaurant competitions, sporting events, and fund-raising and charitable events, and sell any product or service, including any product or service sold under any of the Marks, in connection with such participation.

### 2.3 Use of Marks

The Area Developer will have the right to use the Marks only in the Territory and only in connection with the development of Elephant & Castle® Restaurants. The Area Developer will only use the Marks designated by Elephant & Castle in writing and only in the manner authorized and permitted by Elephant & Castle.

### 2.4 Conditions

The Area Developer hereby undertakes the obligation to develop Elephant & Castle® Restaurants using the Restaurant System in the Territory in strict compliance with the terms and conditions of this Agreement for the entire term of this Agreement. The rights and privileges granted to the Area Developer by Elephant & Castle under this Agreement are applicable only in the Territory, are personal in nature, and may not be used elsewhere, in any other area or through any channel of distribution other than the Restaurant locations developed by the Area Developer.

## **2.5 Personal License**

The Area Developer will not have the right to franchise, subfranchise, license or sublicense its rights under this Agreement. The Area Developer will not have the right to Transfer this Agreement or its rights under this Agreement, except as specifically provided for in this Agreement.

## **ARTICLE 3 TERM OF AGREEMENT**

This Agreement will be in effect for a term ending \_\_\_\_\_ years after the date set forth on Page D-1 of this Agreement, or on the date the Area Developer has completed development of \_\_\_\_\_ Elephant & Castle® Restaurants in the Territory as required under the Development Schedule set forth in Article 5.1, whichever is earlier. This Agreement will not be enforceable until it has been signed by both the Area Developer and Elephant & Castle, and until this Agreement has been delivered to the Area Developer. At the end of the term of this Agreement, the Area Developer's exclusive development rights with respect to the Territory will automatically terminate, and the Area Developer will not have the right to renew or extend the term of this Agreement.

## **ARTICLE 4 FEES PAYABLE TO ELEPHANT & CASTLE**

### **4.1 Development Fee**

On the date this Agreement is executed by the Area Developer, the Area Developer will pay Elephant & Castle a nonrefundable Development Fee of \$ \_\_\_\_\_ (the "Development Fee"). The Development Fee is payment to Elephant & Castle for granting the Area Developer the exclusive rights, as set forth in this Agreement, to develop Elephant & Castle® Restaurants in the Territory. In no event will the Development Fee be refunded to the Area Developer.

### **4.2 Initial Fees**

In addition to the Development Fee, the Area Developer will sign a Franchise Agreement and pay Elephant & Castle an Initial Fee of \$25,000 for each Elephant & Castle® Restaurant that the Area Developer is required to open and operate in the Territory pursuant to the Development Schedule set forth in Article 5.1 of this Agreement. The Area Developer will pay Elephant & Castle the Initial Fee set forth in this Article, even if the Initial Fee that is then charged to franchisees by Elephant & Castle is different from the Initial Fee specified herein.

### **4.3 Payment of Initial Fees**

The Area Developer will pay Elephant & Castle the Initial Fee set forth in Article 4.2 of this Agreement on or before the date the Area Developer executes the Franchise Agreement for each Restaurant required to be opened and operated in the Territory pursuant to this Agreement. A Franchise Agreement must be executed by the Area Developer for each Restaurant to be opened and operated by the Area Developer in the Territory on or before the date on which construction or remodeling begins for each Restaurant.

### **4.4 Continuing Fees**

During the term of each Franchise Agreement signed by the Area Developer pursuant to this Agreement, the Area Developer will pay Elephant & Castle monthly "Continuing Fees," as defined in the Franchise Agreement, equal to 5% of each Restaurant's "Gross Sales," as defined in the Franchise Agreement. Commencing with the seventh calendar month after the

date of the Franchise Agreement for each Restaurant in the Territory, the Area Developer will pay Elephant & Castle a monthly Continuing Fee equal to the greater of: (a) 5% of the Area Developer's monthly Gross Sales for the preceding month; or (b) \$4,000. The Area Developer will pay Elephant & Castle the monthly Continuing Fees for each of its Elephant & Castle® Restaurants as set forth above, even if the Continuing Fee then charged to franchisees by Elephant & Castle at the time the Area Developer signs a subsequent Franchise Agreement is different. For each of its Elephant & Castle® Restaurants, the Area Developer will pay the monthly Continuing Fee as specified in, and in accordance with the other terms and conditions of, the Franchise Agreement for that Restaurant.

**ARTICLE 5  
DEVELOPMENT SCHEDULE**

**5.1 Development Schedule**

The Area Developer acknowledges and agrees that a material provision of this Agreement is that the following number of Elephant & Castle® Restaurants must be opened and continuously operating in the Territory during the term of this Agreement in accordance with the following Development Schedule:

Restaurant Number	Date by Which Franchise Agreement Must be Signed	Date by Which the Elephant & Castle® Restaurant Must be Opened and Continuously Operating for Business in the Territory	Cumulative Number of Elephant & Castle® Restaurants Required to be Open and Continuously Operating for Business in the Territory as of Date in Preceding Column
1	Date of this Agreement		1
2			2
3			3

For purposes of determining compliance with the Development Schedule set forth in this Article, only the Area Developer's Elephant & Castle® Restaurants actually open and continuously operating for business in the Territory as of a given date will be counted toward the number of Elephant & Castle® Restaurants required to be open and continuously operating for business in the Territory.

## **5.2 Reasonableness of Development Schedule**

The Area Developer represents that it has conducted its own independent investigation and analysis of the prospects for the establishment of Elephant & Castle® Restaurants within the Territory, approves of the foregoing Development Schedule as being reasonable and viable, and recognizes that failure to achieve the results described in the foregoing Development Schedule will constitute a material breach of this Agreement.

## **5.3 Failure to Comply with Development Schedule**

The Area Developer's failure to comply with the above Development Schedule will constitute a material breach of this Agreement by the Area Developer. However, the Area Developer will have the right to one 60 day extension of any deadline set forth in the Development Schedule upon giving written notice to Elephant & Castle, before the expiration of the deadline, stating that the Area Developer will not be able to meet the deadline due to construction delays or similar circumstances beyond the reasonable control of the Area Developer. If the Area Developer at any time during the term of this Agreement is not in compliance with the Development Schedule (i.e., does not have the required number of Elephant & Castle® Restaurants open and operating in the Territory as of the dates specified in Article 5.1 and has not given Elephant & Castle written notice of an extension in accordance with the preceding sentence), then Elephant & Castle will have the right to terminate this Agreement immediately upon notice to the Area Developer. Termination of this Agreement as a result of the Area Developer's failure to meet the Development Schedule set forth above will not affect the individual Franchise Agreements for the Elephant & Castle® Restaurants opened and operated in the Territory pursuant to this Agreement which were signed by the Area Developer and Elephant & Castle prior to termination of this Agreement; however, upon termination of this Agreement, all rights to open and operate additional Elephant & Castle® Restaurants in the Territory and all other rights granted to the Area Developer under this Agreement will immediately revert to Elephant & Castle, without affecting those obligations of the Area Developer that continue beyond the termination of this Agreement.

## **5.4 Effect of Termination or Expiration**

If this Agreement is terminated by Elephant & Castle because of the Area Developer's failure to meet the Development Schedule set forth above or upon the expiration of the term of this Agreement, the rights and duties of Elephant & Castle and the Area Developer will be as follows: (a) the Area Developer will have no rights to open additional Elephant & Castle® Restaurants within the Territory; (b) the Area Developer will continue to pay all required fees and to operate its Elephant & Castle® Restaurants opened and operated in the Territory pursuant to the terms of the applicable Franchise Agreements signed by the Area Developer prior to the date of the termination or expiration of this Agreement, and will in all other respects continue to comply with such Franchise Agreements; (c) Elephant & Castle will have the absolute right to develop Elephant & Castle® Restaurants in Territory or to contract with other persons for development of additional Elephant & Castle® Restaurants in the Territory; and (d) the Area Developer will have no right to obtain a refund of any moneys paid to Elephant & Castle pursuant to this Agreement.

# **ARTICLE 6 OBLIGATIONS OF AREA DEVELOPER**

## **6.1 Compliance with Applicable Laws**

The Area Developer will, at its expense, comply with all applicable federal, state, city, local and municipal laws, ordinances, rules and regulations pertaining to the operation of the Area

Developer's Elephant & Castle® Restaurants including, without limitation: all laws relating to zoning, land use and the construction and remodeling of the Area Developer's Restaurants; all health, food service and liquor licensing laws; all health and safety regulations; all environmental laws; all laws relating to employees, including all wage and hour laws, employment laws, workers' compensation laws, discrimination laws, sexual harassment laws, and disability discrimination laws. The Area Developer will, at its expense, be absolutely and exclusively responsible for determining the licenses and permits required by law for the Area Developer's Elephant & Castle® Restaurants, and for qualifying for, and obtaining and maintaining, all such licenses and permits.

## **6.2 Execution of Franchise Agreements**

For each Restaurant opened, owned, and operated for business by the Area Developer in the Territory, the Area Developer (and, if applicable, the Area Developer's Owners and Personal Guarantors) must execute an Elephant & Castle® Franchise Agreement. If the Area Developer fails to provide Elephant & Castle with an executed Franchise Agreement at the times specified in Article 4.3 and Article 5.1 of this Agreement, it will be deemed a material breach of this Agreement and Elephant & Castle will have the right to terminate this Agreement. The Area Developer will comply with all of the terms and conditions of each Franchise Agreement executed in accordance with this Agreement.

## **6.3 Payments Required by Franchise Agreements**

During the term of each Franchise Agreement signed by the Area Developer pursuant to this Agreement, the Area Developer will be required to spend monies for items such as Opening Assistance Fees, grand opening advertising, other fees, costs and expenses. Unless otherwise specified in this Agreement, the Area Developer will pay all such required fees and expenses as established in, and in accordance with the terms and conditions of the applicable Franchise Agreement for each of the Area Developer's Elephant & Castle® Restaurants opened and operated by the Area Developer pursuant to this Agreement.

## **6.4 Local Advertising Expenditures**

During the term of each Franchise Agreement signed by the Area Developer pursuant to this Agreement, the Area Developer will make "Local Advertising Expenditures," as defined in the Franchise Agreement, equal to at least 2% of each Restaurant's quarterly Gross Sales to enhance recognition of the Marks in the Territory. The Area Developer will make quarterly Local Advertising Expenditures for each of its Elephant & Castle® Restaurants at the rate set forth above, even if the rate specified in a subsequent Franchise Agreement signed by the Area Developer is different. For each of its Elephant & Castle® Restaurants, the Area Developer will make quarterly Local Advertising Expenditures as specified in, and in accordance with the other terms and conditions of, the Franchise Agreement for that Restaurant.

## **6.5 Modifications to Franchise Agreement**

The Area Developer acknowledges that the terms, conditions and economics of the Elephant & Castle® Franchise Agreement may be modified from time to time by Elephant & Castle and that reasonable modifications and amendments to the Franchise Agreement will not alter the Area Developer's obligations under this Agreement.

## **6.6 Default Notices and Significant Correspondence**

The Area Developer will deliver to Elephant & Castle, immediately upon receipt by the Area Developer or delivery at any of the Area Developer's Elephant & Castle® Restaurants, an exact copy of all: (a) notices of default received from the landlord of any of the Area Developer's Elephant & Castle® Restaurants or any mortgagee, trustee under any deed of trust, contact for

deed holder; lessor or any other party with respect to any of the Area Developer's Elephant & Castle® Restaurants; (b) notifications or other correspondence relating to any legal proceeding or lawsuit relating in any way to any of the Area Developer's Elephant & Castle® Restaurants; (c) consumer complaints or claims; (d) employee complaints or claims; and (e) inspection reports or any other notices, claims, reports, warnings, citations from or by any governmental authority, including any health or safety authority, relating to any of the Area Developer's Elephant & Castle® Restaurants. Upon a written request from Elephant & Castle, the Area Developer will provide such additional information as may be required by Elephant & Castle regarding the subject matter of the correspondence or other writings received by the Area Developer or delivered at any of the Area Developer's Elephant & Castle® Restaurants.

## **ARTICLE 7 TRANSFER**

### **7.1 Transfer by Elephant & Castle**

This Agreement may be unilaterally Transferred by Elephant & Castle to a person or entity Entity without the approval of the Area Developer and will inure to the benefit of the successors and assigns of Elephant & Castle. Elephant & Castle will provide the Area Developer with written notice of any such Transfer, and the assignee will be required to fully perform all obligations of Elephant & Castle under this Agreement.

### **7.2 Transfer by Area Developer to Owned or Controlled Entity**

If the Area Developer is an individual or a partnership, this Agreement may be Transferred by the Area Developer to a corporation or limited liability company that is owned or controlled by the Area Developer without paying any Transfer Fee, provided that: (a) the Area Developer and the Owners who own the voting Ownership Interests of the assignee Entity sign or have signed a personal guaranty in the form attached to this Agreement; (b) the Area Developer furnishes prior written proof to Elephant & Castle substantiating that the assignee Entity will be financially able to perform all of the terms and conditions of this Agreement; and (c) none of the Owners operate, franchise, develop, manage or control any Anglo-British style pub or related restaurant concept that is in any way similar to or competitive with Elephant & Castle® Restaurants. The Area Developer will give Elephant & Castle 15 days prior written notice of the Transfer of this Agreement to a corporation, or limited liability company owned or controlled by the Area Developer; however, the Transfer of this Agreement will not be valid or effective until Elephant & Castle has received the documents which its attorneys deem reasonably necessary to properly and legally document the Transfer of this Agreement to the corporation or limited liability company as provided herein.

### **7.3 Transfer by Individual in Event of Death or Permanent Disability**

If the Area Developer is an individual, then in the event of the death or permanent disability of the Area Developer, this Agreement may be Transferred by the Area Developer to any designated person or beneficiary without the payment of any Transfer Fee. However, the Transfer of this Agreement to the transferee, assignee or beneficiary of the Area Developer will be subject to the applicable provisions of Article 7.6, and will not be valid or effective until Elephant & Castle has received the properly executed legal documents which its attorneys deem necessary to properly and legally document the Transfer of this Agreement. The transferee, assignee or beneficiary must agree to be unconditionally bound by the terms and conditions of this Agreement and to personally guarantee the performance of the Area Developer's obligations under this Agreement. Furthermore, the transferee, assignee or beneficiary must complete the initial training program then prescribed by Elephant & Castle. The training will be conducted by Elephant & Castle at an approved location designated by

Elephant & Castle. There will be no charge to the transferee, assignee or beneficiary for the initial training program, but the transferee, assignee or beneficiary will be solely responsible for all expenses incurred by the transferee, assignee or beneficiary in connection with attending the training program, including salary, fringe benefits, payroll taxes, unemployment compensation, workers' compensation insurance, Travel Expenses, and all other expenses.

#### **7.4 Sale of Ownership Interests to Public**

If the Area Developer is a corporation or limited liability company and intends to sell any Ownership Interests to the public under any foreign, federal or state securities laws, then the Area Developer will provide Elephant & Castle with written notice of the proposed public offering and with a copy of the proposed placement memorandum, offering circular or prospectus for its review at least 20 days prior to the time that any such document is filed with any foreign or state securities commission or the Securities and Exchange Commission. The Area Developer's Owner(s), prior to the public offering will, at all times, retain ownership of at least a 51% of the Ownership Interests of the Area Developer. Elephant & Castle will have the absolute right to attend all "due diligence" meetings held in preparation for the offer to sell Ownership Interests to the public, and the Area Developer will give Elephant & Castle at least five business days prior written notice of such meetings. The Area Developer will pay Elephant & Castle \$20,000 for the legal, accounting and related due diligence costs incurred by Elephant & Castle in connection with any public offering. This amount will be payable in full within 30 days after the date on which the Area Developer provides written notice of the proposed public offering to Elephant & Castle and will be payable even if the Area Developer is unable to complete the public offering. The Area Developer will not offer any Ownership Interests using or under the name "Elephant & Castle@," or any similar name. The Area Developer will not have the right to sell any Ownership Interests to the public or to any other person or ~~entity~~Entity until the Area Developer has complied in all respects with the applicable provisions of this Agreement.

#### **7.5 Elephant & Castle's Warrant**

The Area Developer hereby agrees to grant to Elephant & Castle, effective upon the sale of any Ownership Interests to the public, a warrant or an option (a "Warrant") to purchase for a period of five years up to 5% of the Ownership Interests purchased in such offering at an exercise price equal to the purchase price of the Ownership Interests in such offering. The Warrant will contain customary anti-dilution provisions, incidental or "piggyback" registration rights and a cashless conversion right whereby Elephant & Castle will have the right to require the Area Developer to convert the Warrant into Ownership Interests using the current market value of the Ownership Interests without payment by Elephant & Castle of any cash exercise price at any time prior to its expiration as provided for in this provision.

#### **7.6 Transfer by Area Developer**

This Agreement and the rights granted to the Area Developer pursuant to this Agreement may be Transferred by the Area Developer only with the prior written approval of Elephant & Castle. Elephant & Castle will not unreasonably withhold its written consent to any Transfer of this Agreement, if the Transfer does not violate Article 7.9 of this Agreement and if the Area Developer and/or the transferee area developer comply with the following conditions: (a) the Area Developer has provided written notice to Elephant & Castle of the proposed Transfer of this Agreement at least 90 days prior to the transaction; (b) all of the Area Developer's monetary obligations due to Elephant & Castle have been paid in full, and the Area Developer is not otherwise in default under this Agreement; (c) the Area Developer has executed a written agreement, in a form satisfactory to Elephant & Castle, in which the Area Developer agrees to observe all applicable provisions of this Agreement, including the provisions with obligations and covenants that continue beyond the expiration or termination of this Agreement, including

the covenants not to compete contained in Article 10 of this Agreement; (d) Elephant & Castle and the Area Developer have executed a joint and mutual release, in a form satisfactory to Elephant & Castle, of any and all claims against Elephant & Castle or the Area Developer and of any and all claims against their officers, directors, shareholders, Owners, agents and employees, in their corporate and individual capacities, arising from, in connection with, or as a result of this Agreement, including, without limitation, all claims arising under any federal or state franchising laws or any other federal, state or local law, rule or ordinance; provided, however, that Elephant & Castle and the Area Developer may exclude from the coverage of the release any prior or concurrent written agreements between them; (e) the transferee area developer has demonstrated to the satisfaction of Elephant & Castle that he, she or it meets the managerial, financial and business standards required by Elephant & Castle for new area developers, possesses a good business reputation and credit rating, and possesses the aptitude and ability to operate the Elephant & Castle® Restaurants in an economic and businesslike manner (as may be evidenced by prior related business experience or otherwise); (f) the transferee area developer and all parties having a legal or beneficial interest in the transferee area developer including, if applicable, the transferee area developer's Owners and Personal Guarantors, execute the transfer and assignment agreement between Elephant & Castle, the Area Developer and the transferee area developer and such other ancillary agreements as Elephant & Castle or its legal counsel may require to Transfer this Agreement and the Area Developer's rights and obligations under this Agreement to the transferee area developer; (g) the transferee area developer has purchased or otherwise acquired a valid liquor license and a valid food service license for the Elephant & Castle® Restaurants developed pursuant to this Agreement; and (h) the transferee area developer and its employees have successfully completed the initial training program then prescribed by Elephant & Castle.

#### **7.7 Acknowledgment of Restrictions**

The Area Developer acknowledges and agrees that the restrictions on Transfer imposed herein are reasonable and necessary to protect the Restaurant System and the Marks, as well as the reputation and image of Elephant & Castle, and are for the protection of Elephant & Castle, the Area Developer and all other area developers and franchisees who own and operate Elephant & Castle® Restaurants. Any Transfer permitted by this Article will not be effective until Elephant & Castle receives a completely executed copy of all Transfer documents and Elephant & Castle consents to the Transfer in writing. Any attempted Transfer made without complying with the requirements of this Article will be void.

#### **7.8 Transfer Fee**

If this Agreement is Transferred to another person or entity, or if the Area Developer's Owners Transfer in the aggregate controlling interest in the Area Developer to a third party, then except as provided for in Article 7.2 or Article 7.3, the Area Developer will pay Elephant & Castle on or before the date of Transfer a Transfer Fee of \$5,000 to cover the costs incurred by Elephant & Castle in connection with the Transfer, including attorneys' fees, accountants' fees, out-of-pocket expenses, long distance telephone calls, administrative costs and the time of its employees and officers. The Transfer Fee also covers the cost to Elephant & Castle to provide the initial training program at the location designated by Elephant & Castle. However, the Transfer Fee does not cover the salaries or the expenses incurred by the transferee area developer and its employees in connection with attending the initial training program, including Travel Expenses, and payment of such salaries and expenses will be the sole responsibility of the transferee area developer.



### **7.9 Transfer to Competitor Prohibited**

The Area Developer and the Area Developer's Owners will not Transfer this Agreement to any person, partnership, corporation or ~~entity~~Entity that owns, operates, franchises, develops, consults with, manages, is involved in, or controls any Anglo-British style pub restaurant business that is in any way competitive with the Elephant & Castle® Restaurants. If Elephant & Castle refuses to permit a Transfer of this Agreement under this Article, then the Area Developer's and the Area Developer's Owners only remedy will be to have an arbitrator determine whether the proposed transferee is a competitor of Elephant & Castle.

## **ARTICLE 8 TERMINATION RIGHTS OF ELEPHANT & CASTLE**

### **8.1 Conditions of Breach**

In addition to its other rights of termination contained in this Agreement, Elephant & Castle will have the right to terminate this Agreement if: (a) the Area Developer fails to comply with the Development Schedule set forth in Article 5.1; (b) the Area Developer violates any material provision, term or condition of this Agreement; (c) the Area Developer, or any of its directors, officers or majority Owners, is convicted of, or pleads guilty to or no contest to, a charge of violating any law relating to the Area Developer's Elephant & Castle® Restaurants or to any felony; (d) the Area Developer fails to conform to the Restaurant System or the standards of uniformity and quality for the products and services promulgated by Elephant & Castle in connection with the Restaurant System; (e) the Area Developer fails to timely pay any of its uncontested obligations or liabilities due and owing to Elephant & Castle, suppliers, banks, purveyors, other creditors or to any federal, state or municipal government (including, if applicable, federal and state income, sales, property, withholding and unemployment taxes); (f) the Area Developer is determined to be insolvent within the meaning of applicable state or federal law, any involuntary petition for bankruptcy is filed against the Area Developer, or the Area Developer files for bankruptcy or is adjudicated a bankrupt under applicable state or federal law; (g) the Area Developer makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors; (h) any check issued by the Area Developer is dishonored because of insufficient funds (except where the check is dishonored because of bank error or an error in bookkeeping or accounting) or closed accounts; (i) the Area Developer fails to timely file any federal or state income or sales tax return or fails to timely pay any federal or state income or sales taxes; (j) the Area Developer is involved in any act or conduct which materially impairs the goodwill associated with the name "Elephant & Castle®," any other Marks or the Restaurant System; or (k) any Franchise Agreement between the Area Developer and Elephant & Castle is terminated by either party for any reason.

### **8.2 Notice of Breach**

Except as provided in Article 8.5 and Article 8.6 of this Agreement, Elephant & Castle will not have the right to terminate this Agreement until: (a) written notice setting forth the alleged breach in detail has been delivered to the Area Developer by Elephant & Castle; and (b) after receiving the written notice, the Area Developer fails to correct the alleged breach within the period of time specified by applicable law. If applicable law does not specify a time period to correct an alleged breach, then the Area Developer will have 30 days after receipt of the written notice to correct the alleged breach, except where the written notice states that the Area Developer is delinquent in the payment of any fees payable to Elephant & Castle pursuant to this Agreement, in which case the Area Developer will have 10 days after receipt of written notice to correct the breach by making full payment (including Administrative Fees and interest) to Elephant & Castle. If the Area Developer fails to correct the alleged breach set forth in the

written notice within the applicable period of time, then this Agreement may be terminated by Elephant & Castle as provided for in this Agreement. For the purposes of this Agreement, an alleged breach of this Agreement by the Area Developer will be deemed to be "corrected" if both Elephant & Castle and the Area Developer agree in writing that the alleged breach has been corrected.

### **8.3 Arbitration**

If the Area Developer notices arbitration in accordance with Article 12 of this Agreement within the time period established in Article 8.2 for correcting the alleged breach, then Elephant & Castle will not have the right to terminate this Agreement until the facts of the alleged breach have been submitted to arbitration, the arbitrator determines that the Area Developer has breached this Agreement and the Area Developer fails to correct the breach within the applicable time period. If the arbitrator determines that the Area Developer has violated or breached this Agreement as alleged by Elephant & Castle in the written notice given to the Area Developer, then unless applicable law specifies otherwise, the Area Developer will have 30 days from the date the arbitrator issues a written determination on the matter to correct the specified breach or violation of this Agreement, except where the Area Developer's breach is for failure to pay any fees or other payments to Elephant & Castle, in which case the Area Developer will have 10 days to make full payment, including all interest and Administrative Fees, to Elephant & Castle. If the Area Developer does timely correct the specified breach or violation of this Agreement, then this Agreement will remain in full force and effect. For the purpose of this Agreement, any controversy or dispute on the issue of whether the Area Developer has timely corrected the specified breach or violation of this Agreement will also be subject to arbitration as provided for herein. The time limitations set forth in this Article within which the Area Developer may demand arbitration of a dispute or controversy relating to the right of Elephant & Castle to terminate this Agreement for an alleged breach are mandatory. If the Area Developer fails to comply with the time limitations set forth in this Article, then Elephant & Castle may terminate this Agreement as provided for herein.

### **8.4 Notice of Termination**

Except as provided in Article 8.5 and Article 8.6, if Elephant & Castle has complied with the provisions of Article 8.2 and the Area Developer has not corrected the alleged breach set forth in the written notice within the applicable time period specified in this Agreement, then Elephant & Castle will have the absolute right to terminate this Agreement by giving the Area Developer written notice stating to the Area Developer that this Agreement is terminated and in that event the effective date of termination of this Agreement will be the day the written notice of termination is received by the Area Developer.

### **8.5 Immediate Termination Rights of Elephant & Castle**

Notwithstanding Article 8.2, Elephant & Castle will have the absolute right, unless precluded by applicable law, to immediately terminate this Agreement if: (a) the Area Developer fails to comply with the Development Schedule set forth in Article 5.1 and with Article 5.3; (b) the Area Developer or any of its directors, officers or majority Owners are convicted of, or plead guilty to or no contest to a charge of violating any law relating to the Area Developer's Elephant & Castle® Restaurants or to any felony; (c) the Area Developer is determined to be insolvent within the meaning of applicable state or federal law, any involuntary petition for bankruptcy is filed against the Area Developer, or the Area Developer files for bankruptcy or is adjudicated a bankrupt under applicable state or federal law; (d) the Area Developer makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors; (e) the Area Developer is involved in any act or conduct which materially impairs the goodwill associated with the Marks or the Restaurant System and the

Area Developer fails to correct the breach within 24 hours after receipt of written notice from Elephant & Castle of the breach; or (f) the Area Developer violates any provision, term or condition of this Agreement three or more times during a 12 month period, without regard to whether the violations were of a similar or different nature or whether the violations were corrected within the prescribed cure period after receipt of written notice of the violations.

#### **8.6 Notice of Immediate Termination**

Except as set forth in Article 8.5(e), if this Agreement is terminated by Elephant & Castle pursuant to Article 8.5 above, then Elephant & Castle will give the Area Developer written notice by personal service or prepaid registered or certified mail that this Agreement is terminated and in that event the effective date of termination of this Agreement will be the day the written notice of termination is received by the Area Developer. If this Agreement is terminated by Elephant & Castle pursuant to Article 8.5(e), then this Agreement will terminate on the first minute of the twenty-fifth hour after receipt of the written notice of termination if the Area Developer fails to correct the alleged breach within 24 hours after receiving the written notice of termination.

#### **8.7 Other Remedies**

Nothing in this Article will preclude Elephant & Castle from seeking other remedies or damages under state or federal laws, common law, or under this Agreement against the Area Developer including, but not limited to, attorneys' fees, punitive damages and injunctive relief. If this Agreement is terminated by Elephant & Castle pursuant to this Article, or if the Area Developer breaches this Agreement by a wrongful termination, then Elephant & Castle will be entitled to all damages from the Area Developer that Elephant & Castle has sustained and will sustain in the future as a result of the Area Developer's breach of this Agreement.

### **ARTICLE 9**

#### **AREA DEVELOPER'S OBLIGATIONS UPON TERMINATION OR EXPIRATION**

##### **9.1 Obligations upon Termination; Reversion of Rights**

Upon the expiration or termination of this Agreement for any reason, all rights to open and operate additional Elephant & Castle® Restaurants in the Territory and all other rights granted to the Area Developer pursuant to this Agreement will automatically revert to Elephant & Castle, and Elephant & Castle will have the right to develop the Territory or to contract with another area developer for the future development of the Territory. In addition, the Area Developer will immediately pay all amounts due and owing to Elephant & Castle under this Agreement and will comply with all other applicable provisions of this Agreement, including those provisions with obligations that continue beyond the expiration or termination of this Agreement.

##### **9.2 Franchise Agreements Not Affected**

The Area Developer will continue to operate the Elephant & Castle® Restaurants owned and operated by the Area Developer in the Territory pursuant to the terms of the applicable Franchise Agreements signed by the Area Developer and Elephant & Castle prior to the expiration or termination of this Agreement, and the rights and obligations of the Area Developer and Elephant & Castle with respect to the Area Developer's Elephant & Castle® Restaurants in the Territory will be governed by the terms of the applicable Franchise Agreements.

##### **9.3 Continuation of Obligations**

The indemnities and covenants contained in this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

**ARTICLE 10**  
**AREA DEVELOPER'S COVENANTS NOT TO COMPETE**

**10.1 Consideration**

The Area Developer, the Owners and the Personal Guarantors acknowledge that the Area Developer, its Owners or officers and employees will receive specialized training, marketing and advertising plans, business strategies, confidential recipe, cooking, and food preparation information, and trade secrets from Elephant & Castle pertaining to the Restaurant System and the operation of the Elephant & Castle® Restaurants. In consideration for this information, the Area Developer, the Owners and the Personal Guarantors will comply in all respects with the provisions of this Article. Elephant & Castle has advised the Area Developer that this provision is a material provision of this Agreement, and that Elephant & Castle will not enter into a development agreement with any person or entityEntity that owns or intends to own, operate or be involved in any business that competes directly or indirectly with Elephant & Castle® Restaurants; provided however, that Elephant & Castle may, under certain circumstances, exclude from the coverage of Article 10.2 and Article 10.3 existing operational restaurant(s) owned and operated by the Area Developer as of the date of this Agreement, and the Area Developer may, with the written consent of Elephant & Castle, continue to own and operate such restaurants during the term of this Agreement and thereafter.

**10.2 In-Term Covenant Not to Compete**

The Area Developer, the Owners and the Personal Guarantors will not, during the term of this Agreement, on their own account or as an employee, agent, consultant, affiliate, licensee, partner, officer, director, or shareholder of any other person, firm, entity, partnership or corporation, own, operate, lease, franchise, conduct, engage in, be connected with, have any interest in, or assist any person or entityEntity engaged in any Anglo-British style pub restaurant concept that is in any way similar to or competitive with Elephant & Castle® Restaurants, except with the prior written consent of Elephant & Castle.

**10.3 Post-Term Covenant Not to Compete**

The Area Developer, the Owners and the Personal Guarantors will not, for a period of 12 months after the termination or expiration of this Agreement on their own account or as an employee, principal, agent, independent contractor, consultant, affiliate, licensee, partner, officer, director or shareholder of any other person, firm, entity, partnership or corporation, own, operate, lease, franchise, conduct, engage in, be connected with, have any interest in or assist any person or entityEntity engaged in any Anglo-British style pub restaurant concept that is in any way similar to or competitive with Elephant & Castle® Restaurants which is located within the Territory, within 10 miles of the Territory, within 10 miles of any Elephant & Castle® Restaurant, or within any territory granted by Elephant & Castle or any affiliate of Elephant & Castle pursuant to a development agreement or other territorial agreement. The Area Developer, the Owners and the Personal Guarantors expressly agree that the time and geographical limitations set forth in this provision are reasonable and necessary to protect Elephant & Castle and its area developers if this Agreement expires or is terminated by either party for any reason, and that this covenant not to compete is necessary to permit Elephant & Castle the opportunity to resell and/or develop new Elephant & Castle® Restaurants within or near the Territory.

**10.4 Injunctive Relief**

The Area Developer, the Owners and the Personal Guarantors agree that the provisions of this Article are necessary to protect the legitimate business interest of Elephant & Castle and its area developers, including, without limitation, preventing the unauthorized dissemination of