

marketing, promotional and other confidential information to competitors of Elephant & Castle and its area developers, protecting recipes, cooking and food preparation techniques and other trade secrets, protecting the integrity of the franchise system of Elephant & Castle, preventing duplication of the Restaurant System by unauthorized third parties, and preventing damage to and/or loss of goodwill associated with the Marks. The Area Developer, the Owners and the Personal Guarantors also agree that damages alone cannot adequately compensate Elephant & Castle if there is a violation of this Article by the Area Developer, the Owners or the Personal Guarantors, and that injunctive relief against the Area Developer is essential for the protection of Elephant & Castle and its area developers. The Area Developer, the Owners and the Personal Guarantors agree therefore, that if Elephant & Castle alleges that the Area Developer, the Owners or the Personal Guarantors have breached or violated this Article, then Elephant & Castle will have the right to petition a court of competent jurisdiction for injunctive relief against the Area Developer, the Owners and the Personal Guarantors, in addition to all other remedies that may be available to Elephant & Castle. Elephant & Castle will not be required to post a bond or other security for any injunctive proceeding. If Elephant & Castle is granted ex parte injunctive relief against the Area Developer, the Owners or the Personal Guarantors, then the Area Developer, the Owners or the Personal Guarantors will have the right to petition the court for a hearing on the merits at the earliest time convenient to the court.

10.5 Severability

It is the desire and intent of the parties to this Agreement, including the Owners and the Personal Guarantors, that the provisions of this Article be enforced to the fullest extent permissible under the laws and public policy applied in each jurisdiction in which enforcement is sought. Accordingly, if any part of this Article is adjudicated to be invalid or unenforceable, then this Article will be deemed to modify or delete that portion thus adjudicated to be invalid or unenforceable, such modification or deletion to apply only with respect to the operation of this Article in the particular jurisdiction in which the adjudication is made. Further, to the extent any provision of this Article is deemed unenforceable by virtue of its scope or limitation, the parties to this Agreement, including the Owners and the Personal Guarantors, agree that the scope and limitation provisions will nevertheless, be enforceable to the fullest extent permissible under the laws and public policies applied in such jurisdiction where enforcement is sought.

10.6 Effect on Other Agreements

The covenants not to compete set forth in this Article will apply and be enforced independently of any covenant not to compete set forth in any other agreements between Elephant & Castle and any other party to this Agreement.

ARTICLE 11 INDEPENDENT CONTRACTORS; INDEMNIFICATION

11.1 Independent Contractors

Elephant & Castle and the Area Developer are each independent contractors and, as a consequence, there is no employer-employee or principal-agent relationship between Elephant & Castle and the Area Developer. The Area Developer will not have the right to and will not make any agreements, representations or warranties in the name of or on behalf of Elephant & Castle or represent that their relationship is other than that of franchisor and area developer. Neither Elephant & Castle nor the Area Developer will be obligated by or have any liability to the other under any agreements or representations made by the other to any third parties.

11.2 Operation of Elephant & Castle® Restaurants

The Area Developer will be solely responsible for the development and daily management and operation of its Elephant & Castle® Restaurants and will control, supervise and manage all the employees, agents and independent contractors who work for or with the Area Developer. The Area Developer will be responsible for the acts of its employees, agents and independent contractors, and will take all reasonable business actions necessary to ensure that its employees, agents and independent contractors comply with all federal, state and local laws, rules and regulations. Elephant & Castle will not have any right, obligation or responsibility to control, supervise or manage the Area Developer's employees, agents or independent contractors.

11.3 Indemnification

Elephant & Castle will not be obligated to any person or entity~~Entity~~ for any damages arising out of, from, in connection with, or as a result of the Area Developer's negligence, the Area Developer's wrongdoing or the operation of the Area Developer's Elephant & Castle® Restaurants. Therefore, the Area Developer will indemnify and hold Elephant & Castle harmless against, and will reimburse Elephant & Castle for, all damages for which Elephant & Castle is held liable and for all costs incurred by Elephant & Castle in the defense of any claim or action brought against Elephant & Castle arising from, in connection with, arising out of, or as a result of the Area Developer's negligence, the Area Developer's wrongdoing or the operation of the Area Developer's Elephant & Castle® Restaurants including, without limitation, attorneys' fees, investigation expenses, court costs, deposition expenses, and Travel Expenses. The Area Developer will indemnify Elephant & Castle, without limitation, for all claims and damages arising from, out of, in connection with, or as a result of: (a) any personal injury, property damage, commercial loss or environmental contamination resulting from any act or omission of the Area Developer or its employees, agents or representatives; (b) any failure on the part of the Area Developer to comply with any requirement of any laws or any governmental authority; (c) any failure of the Area Developer to pay any of its obligations to any person or entity; (d) any failure of the Area Developer to comply with any requirement or condition of this Agreement or any other agreement with Elephant & Castle; (e) any misfeasance or malfeasance by the Area Developer; and (f) any tort. Elephant & Castle will have the right to defend any claim made against it arising from, as a result of, in connection with or out of the development and operation of the Area Developer's Elephant & Castle® Restaurants.

11.4 Payment of Costs and Expenses

The Area Developer will indemnify Elephant & Castle for the costs and expenses incurred by Elephant & Castle to enforce the Area Developer's compliance with any term, condition or provision of this Agreement or to enjoin any violation of this Agreement by the Area Developer including, without limitation, attorneys' fees, expert witness fees, costs of investigation, court costs, litigation expenses, arbitration fees, costs and expenses, Travel Expenses, and deposition costs.

11.5 Continuation of Obligations

The indemnification and other obligations contained herein will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

ARTICLE 12 ARBITRATION

12.1 Mediation

Elephant & Castle and the Area Developer acknowledge that resolving disputes prior to commencing arbitration hearings or court proceedings is in the best interests of both parties. Therefore, the Area Developer and Elephant & Castle will, when practical, attempt to resolve disputes by non-binding mediation. The parties agree that they will act in good faith to settle any dispute between them; however, either party will have the right to decline to mediate the dispute.

12.2 Disputes Subject to Arbitration

Except as expressly provided to the contrary in Article 12.7 of this Agreement, all disputes and controversies between the Area Developer and Elephant & Castle, including allegations of fraud, misrepresentation and violation of any state or federal laws or regulations, arising under, as a result of, or in connection with this Agreement, the Territory or the Area Developer's Elephant & Castle® Restaurants are subject to and will be resolved exclusively by arbitration conducted in accordance with the Code of Procedure of the National Arbitration Forum.

12.3 Notice of Dispute

The party alleging the dispute must provide the other party with written notice setting forth the alleged dispute in detail. The party who receives written notice alleging the dispute will have 30 days after receipt of the written notice to correct, settle or compromise the dispute specified in the written notice. If the written notice alleges that the Area Developer is delinquent in the payment of any fees or other payments payable to Elephant & Castle, the Area Developer will have 10 days to make full payment (including interest and Administrative Fees) to Elephant & Castle.

12.4 Demand for Arbitration

If the dispute alleged by either party has not been corrected, settled or compromised within the time period provided for in this Agreement, then either party may demand arbitration by giving the other party written notice. Within 10 days after a written demand for arbitration has been delivered by the party demanding arbitration, either party will have the right to request that the office of the National Arbitration Forum, Post Office Box 50191, Minneapolis, Minnesota (www.arb-forum.com) initiate the procedures necessary to appoint an arbitrator. Either party will have the right to demand that the arbitration hearings be conducted by three arbitrators. The arbitrator(s) will be appointed as provided herein within 60 days after a written demand for arbitration has been made in accordance with the Code of Procedure of the National Arbitration Forum.

12.5 Venue and Jurisdiction

All arbitration hearings will take place at the general offices of Elephant & Castle in the United States or, if no such offices exist in the United States on the date the written notice of dispute is received, in Minneapolis, Minnesota, and will be held no later than 90 days after the arbitrator(s) has (have) been selected. Elephant & Castle and the Area Developer and its officers, directors and the Owners and the Personal Guarantors do hereby agree and submit to such personal jurisdiction in connection with any arbitration hearings hereunder and any suits brought to enforce the decision of the arbitrator(s), and do hereby waive any rights to contest such venue and jurisdiction and any claims that venue and jurisdiction are invalid.

12.6 Powers of Arbitrator(s)

The authority of the arbitrator(s) will be limited to making a finding, judgment, decision and award relating to the interpretation of or adherence to the written provisions of this Agreement. The Federal Rules of Evidence (the "Rules") will apply to all arbitration hearings and the introduction of all evidence, testimony, records, affidavits, documents and memoranda in any arbitration hearing must comply in all respects with the Rules and legal precedents interpreting the Rules. Both parties will have the absolute right to cross-examine any person who has testified against them or in favor of the other party. The arbitrator(s) will have no authority to add to, delete or modify in any manner the terms and provisions of this Agreement. All findings, judgments, decisions and awards of the arbitrator(s) will be limited to the dispute set forth in the written demand for arbitration, and the arbitrator(s) will have no authority to decide any other issues. The arbitrator(s) will not have the right or authority to award punitive damages to either Elephant & Castle or the Area Developer or their officers, directors, shareholders, Owners and Personal Guarantors, and Elephant & Castle and the Area Developer and their officers, directors, shareholders, Owners and the Personal Guarantors expressly waive their rights to plead or seek punitive damages. All findings, judgments, decisions and awards by the arbitrator(s) will be in writing, will be made within 60 days after the arbitration hearings have been completed, and will, except as provided for in Article 12.9 of this Agreement, be final and binding on Elephant & Castle and the Area Developer. The written decision of the arbitrator(s) will be deemed to be an order, judgment and decree and may be entered as such in any court of competent jurisdiction by either party 30 days thereafter, unless any party elects to pursue its rights under Article 12.9 of this Agreement.

12.7 Disputes Not Subject to Arbitration

The following disputes between Elephant & Castle and the Area Developer will not be subject to arbitration: (a) any disputes arising between Elephant & Castle and the Area Developer which are set forth in Article 13.1; (b) any dispute involving the Marks; (c) any dispute involving immediate termination of this Agreement by Elephant & Castle pursuant to Article 8.5 and Article 8.6 of this Agreement; and (d) any dispute involving enforcement of the covenants not to compete contained in Article 10 of this Agreement.

12.8 No Collateral Estoppel or Class Actions

Except as provided by Article 12.9, all arbitration findings, conclusions, orders and awards made by the arbitrator(s) will be final and binding on Elephant & Castle and the Area Developer; however, such arbitration findings, conclusions, orders and awards may not be used: (a) to collaterally estop either the Area Developer or Elephant & Castle from raising any like or similar issue or defense in any subsequent arbitration, litigation, court hearing or other proceeding involving third parties, including other area developers or franchisees; or (b) by any third party or other area developer to establish any fact, action, finding, violation or otherwise used by any third party or other area developer as evidence, in any arbitration, litigation, court hearing or other proceeding involving Elephant & Castle or the Area Developer. In any arbitration between them, neither Elephant & Castle nor the Area Developer may introduce as evidence, or otherwise use to establish any fact, action, finding or violation, any findings, conclusions, orders or awards resulting from any prior arbitration, litigation, court hearing or other proceeding involving the Area Developer and a third party, or Elephant & Castle and a third party or other area developers or franchisees. No party except Elephant & Castle, the Area Developer, and their officers, directors, shareholders, Owners and the Personal Guarantors will have the right to join in or participate in any arbitration proceeding arising under this Agreement, and therefore, the arbitrator(s) will not be authorized to permit class actions or to permit any other person or entity Entity to be involved in or be named as a party to any arbitration proceeding brought by either party under this Agreement.

12.9 De Novo Hearing on Merits

If the arbitrator(s) award(s) either Elephant & Castle or the Area Developer damages (including actual damages, costs and attorneys' fees) in excess of \$100,000 in any arbitration proceeding commenced pursuant to this Agreement, then the party who has been held liable by the arbitrator(s) will have the right to a de novo hearing on the merits by commencing an action in a court of competent jurisdiction in accordance with the provisions of this Agreement. If the party held liable by the arbitrator(s) commences a court action as provided for herein, then neither party will have the right to introduce the arbitrator's(s') decision or findings in any such court action and the arbitrator's(s') decision and findings will be of no force and effect and will not be final or binding on either Elephant & Castle or the Area Developer. If the party who has been held liable by the arbitrator(s) for over \$100,000 in damages fails to commence a court action within 30 days after receiving the arbitrator's(s') written award, then the arbitrator's(s') findings, judgments, decisions and awards will be final and binding on Elephant & Castle, the Area Developer and all other parties and may be entered as an order, decree and judgment in any court of competent jurisdiction by any party.

12.10 Confidentiality

All evidence, testimony, records, documents, findings, decisions, judgments and awards pertaining to any arbitration hearing between Elephant & Castle and the Area Developer will be secret and confidential in all respects. Elephant & Castle and the Area Developer will not disclose the decision or award of the arbitrator(s) and will not disclose any evidence, testimony, records, documents, findings, orders, or other matters from the arbitration hearing to any person or entity Entity except as required by law. Nothing herein will prevent either party from disclosing or using any information presented in any arbitration proceeding in any subsequent court hearing brought pursuant to Article 12.9.

12.11 Performance During Arbitration of Disputes

Elephant & Castle and the Area Developer will fully comply with all of the terms and conditions of this Agreement and will fully perform their respective obligations under this Agreement and the Franchise Agreements during the entire time of the arbitration process.

ARTICLE 13 ENFORCEMENT

13.1 Injunctive Relief

Elephant & Castle will have the right to petition a court of competent jurisdiction for the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement for any action relating to: (a) the Area Developer's improper use of the Marks or the Restaurant System; (b) the obligations of the Area Developer upon termination or expiration of this Agreement; (c) the Transfer of this Agreement, the Area Developer's Restaurants or the Ownership Interests of the Area Developer; (d) the Area Developer's violation of the covenants not to compete, and (e) any act or omission by the Area Developer or the Area Developer's employees that (1) constitutes a violation of any applicable law, ordinance or regulation, (2) is dishonest or misleading to the guests or customers of the Area Developer's Restaurants or other Elephant & Castle® Restaurants, (3) constitutes a danger to the employees, public, guests or customers of the Area Developer's Restaurants, or (4) may impair the goodwill associated with the Marks or the Restaurant System.

13.2 Severability

All provisions of this Agreement are severable and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein and partially valid and enforceable provisions will be enforced to the extent valid and enforceable. If any applicable law or rule of any jurisdiction requires a greater prior notice of the termination of this Agreement than is required hereunder or the taking of some other action not required hereunder, or if under any applicable law or rule of any jurisdiction, any provision of this Agreement is invalid or unenforceable under applicable law, then the prior notice or other action required by such law or rule will be substituted for the notice requirements hereof, or such invalid or unenforceable provision will be modified to the extent required to be valid and enforceable. Such modifications to this Agreement will be effective only in such jurisdiction.

13.3 Waiver

Elephant & Castle and the Area Developer may, by written instrument signed by Elephant & Castle and the Area Developer, waive any obligation of or restriction upon the other under this Agreement. Acceptance by Elephant & Castle of any payment by the Area Developer and the failure, refusal or neglect of Elephant & Castle to exercise any right under this Agreement or to insist upon full compliance by the Area Developer of its obligations hereunder, including, without limitation, any mandatory specification, standard or operating procedure, will not constitute a waiver by Elephant & Castle of any provision of this Agreement. Elephant & Castle will have the right to waive obligations or restrictions for other area developers under their development agreements without waiving those obligations or restrictions for the Area Developer and, except to the extent provided by law, Elephant & Castle will have the right to negotiate terms and conditions, grant concessions and waive obligations for other area developers of Elephant & Castle without granting those same rights to the Area Developer and without incurring any liability to the Area Developer whatsoever.

13.4 Payments to Elephant & Castle

The Area Developer will not, on grounds of the alleged nonperformance by Elephant & Castle of any of its obligations under this Agreement, any other contract between Elephant & Castle and the Area Developer, or for any other reason, withhold payment of any Initial Fees, Continuing Fees or any other fees or payments due Elephant & Castle pursuant to this Agreement or pursuant to any Franchise Agreement or any other contract or agreement with Elephant & Castle. The Area Developer will not have the right to "offset" or withhold any liquidated or unliquidated amounts, damages or other funds allegedly due to the Area Developer by Elephant & Castle against any Initial Fees, Continuing Fees or any other fees or payments due to Elephant & Castle under this Agreement, any Franchise Agreement or any other contract or agreement with Elephant & Castle.

13.5 Effect of Wrongful Termination

If either Elephant & Castle or the Area Developer takes any action to terminate this Agreement except as provided for under the terms of this Agreement then such actions will not relieve either party of, or release either party from, any of its obligations under this Agreement, and the terms and conditions of this Agreement will remain in full force and effect and the parties will be obligated to fully perform all terms and conditions until such time as this Agreement expires or is terminated in accordance with the provisions of this Agreement and applicable law, as determined by arbitration or a court of competent jurisdiction.

13.6 Cumulative Rights

The rights of Elephant & Castle hereunder are cumulative and no exercise or enforcement by Elephant & Castle of any right or remedy hereunder will preclude the exercise or enforcement

by Elephant & Castle of any other right or remedy hereunder or which Elephant & Castle is entitled by law to enforce.

13.7 Binding Agreement

This Agreement is binding upon the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest.

13.8 Joint and Several Liability

If the Area Developer consists of more than one person, their liability under this Agreement will be deemed to be joint and several.

13.9 No Oral Modification

No modification, change, addition, rescission, release, amendment or waiver of this Agreement and no approval, consent or authorization required by any provision of this Agreement may be made by any person except by a written agreement signed by a duly authorized officer or partner of the Area Developer and the President or a Vice President of Elephant & Castle.

13.10 Entire Agreement

This Agreement supersedes and terminates all prior agreements, either oral or in writing, between the parties involving the franchise relationship and therefore, representations, inducements, promises or agreements alleged by either Elephant & Castle or the Area Developer that are not contained in this Agreement will not be enforceable. The Recitals are part of this Agreement, which constitutes the entire agreement of the parties, and there are no other oral or written understandings or agreements between Elephant & Castle and the Area Developer relating to the subject matter of this Agreement. This Agreement will not supersede any written agreements or contracts that are signed concurrently with this Agreement.

13.11 Headings; Terms

The headings of the Articles are for convenience only and do not in any way define, limit or construe the contents of such Articles. The term "Area Developer" as used herein is applicable to one or more individuals, a corporation, a limited liability company, a partnership or a limited partnership, as the case may be, and the singular usage includes the plural, the masculine usage includes the neuter and the feminine, and the neuter usage includes the masculine and the feminine. References to "Area Developer," "assignee" and "transferee" which are applicable to an individual or individuals will mean the owner or owners of the equity or operating control of the Area Developer or any such assignee or transferee if the Area Developer or such assignee or transferee is a corporation, a limited liability company, a partnership or a limited partnership.

13.12 Venue and Jurisdiction

All litigation, court proceedings, arbitration proceedings, mediation proceedings, lawsuits, court hearings and other hearings initiated by the Area Developer or Elephant & Castle must and will be venued exclusively in the county and state in which Elephant & Castle's general offices in the United States are located or, if no such offices exist in the United States on the date the action is commenced, in Hennepin County, Minnesota. The Area Developer, each of its officers, directors and Owners, and the Personal Guarantors do hereby agree and submit to such personal jurisdiction for the purposes of any suit, proceeding or hearing brought to enforce or construe the terms of this Agreement or to resolve any dispute or controversy arising under, as a result of, or in connection with this Agreement or the Area Developer's Elephant & Castle® Restaurants, and do hereby agree and stipulate that any suits, proceedings and hearings will be exclusively venued and held in such venue. The Area Developer, each of its officers,

directors and Owners, and the Personal Guarantors waive any rights to contest such venue and jurisdiction and any claims that venue and jurisdiction are invalid.

13.13 Federal Arbitration Act

Any issue regarding arbitration will be governed by the Federal Arbitration Act and the federal common law of arbitration.

13.14 Contractual Statute of Limitations

Except as provided otherwise in this Agreement or by applicable law, any and all claims and actions arising out of or relating to this Agreement, the relationship of the Area Developer and Elephant & Castle, or the Area Developer's operation of the Restaurants brought by either party against the other, whether in arbitration or any other proceeding, will be commenced within one year from the occurrence of the facts giving rise to such claim or action, or such claim or action will be barred.

ARTICLE 14 NOTICES

All notices to Elephant & Castle will be in writing and will be made by personal service upon an officer or director of Elephant & Castle or sent by prepaid registered or certified mail addressed to the President of Elephant & Castle International, Inc., 1190 Hornby Street, 12th Floor, Vancouver, British Columbia, Canada V6Z 2K5, or such other address as Elephant & Castle may subsequently designate in writing, with a copy to G. Thomas MacIntosh, II, Attorney at Law, Krass Monroe, P.A., 8000 Norman Center Drive, Suite 1000, Minneapolis, Minnesota 55437-1178. All notices to the Area Developer will be made by personal service upon the Area Developer (or, if applicable, upon an officer or director of the Area Developer) or sent by prepaid registered or certified mail addressed to the Area Developer at address of the first Elephant & Castle® Restaurant opened by the Area Developer in the Territory, or such other address as the Area Developer may subsequently designate in writing. For the purposes of this Agreement, personal service will include service by a recognized overnight delivery service (such as Federal Express, Airborne Express or UPS) which requires a written receipt of delivery from the addressee.

ARTICLE 15 ACKNOWLEDGMENTS; DISCLAIMER

15.1 Disclaimer

Elephant & Castle does not warrant or guarantee to the Area Developer that the Area Developer will derive income or profit from the Elephant & Castle® Restaurants, or that Elephant & Castle will refund all or part of the Development Fee or Initial Fees or repurchase any of the FF&E supplied or sold by Elephant & Castle or by an approved or designated supplier if the Area Developer is in any way unsatisfied with its Restaurants. Elephant & Castle expressly disclaims the making of any express or implied representations or warranties regarding the revenues, earnings, income, profits, Gross Sales, business or financial success, or value of the Area Developer's Restaurants except as contained in Elephant & Castle's Uniform Franchise Offering Circular received by the Area Developer.

15.2 Acknowledgments by Area Developer

The Area Developer acknowledges that it has conducted an independent investigation of the Elephant & Castle® Restaurants and recognizes that the business venture contemplated by this Agreement involves business and economic risks. The Area Developer acknowledges that the

financial, business and economic success of the Area Developer's Elephant & Castle® Restaurants will be primarily dependent upon the personal efforts of the Area Developer, its management and its employees, and on economic conditions in the Territory where the Area Developer's Elephant & Castle® Restaurants are located and economic conditions in general. The Area Developer acknowledges that it has not received any estimates, projections, representations, warranties or guaranties, expressed or implied, regarding potential revenues, Gross Sales, income, profits, earnings, expenses, financial or business success, value of the Restaurants, or other economic matters pertaining to the Area Developer's Restaurants from Elephant & Castle or any of its agents that were not expressly set forth in the Uniform Franchise Offering Circular received by the Area Developer from Elephant & Castle (~~hereinafter referred to in this provision as "Representations"~~). The Area Developer further acknowledges that if it had received any such Representations, it would not have executed this Agreement, and that it would have promptly notified the President of Elephant & Castle in writing of the person or persons making such Representations, and provided to Elephant & Castle a specific written statement detailing the Representations made.

15.3 Other Area Developers

The Area Developer acknowledges that other area developers of Elephant & Castle have or will be granted development agreements at different times, for different areas, under different economic conditions and in different situations, and further acknowledges that the economics and terms and conditions of such other development agreements may vary substantially in form and in substance from those contained in this Agreement.

15.4 Receipt of Agreement and Uniform Franchise Offering Circular

The Area Developer acknowledges that it received a copy of this Agreement with all material blanks fully completed at least five business days prior to the date that this Agreement was executed by the Area Developer. The Area Developer further acknowledges that it received a copy of the Uniform Franchise Offering Circular at least 10 business days (14 days in Illinois and Iowa) prior to the date on which this Agreement was executed.

ARTICLE 16 AREA DEVELOPER'S LEGAL COUNSEL

The Area Developer acknowledges that this Agreement constitutes a legal document which grants certain rights to and imposes certain obligations upon the Area Developer. The Area Developer has been advised by Elephant & Castle to retain an attorney or advisor prior to the execution of this Agreement to review the Uniform Franchise Offering Circular, to review this Agreement in detail, to review all legal documents, to review the economics, operations and other business aspects of the Elephant & Castle® Restaurants, to determine compliance with franchising and other applicable laws, and to advise the Area Developer on economic risks, liabilities, obligations and rights under this Agreement and to advise the Area Developer on tax issues, financing matters, applicable state and federal laws, liquor laws, health and safety laws, environmental laws, employee issues, insurance, structure of the business, and other business matters. The name of the Area Developer's attorney or other advisor is:

Attorney's Name: _____
Name of Firm: _____
Address: _____
City, State, Zip Code: _____
Telephone Number: (_____) _____
Fax Number: (_____) _____

ARTICLE 17 GOVERNING LAW; STATE MODIFICATIONS

17.1 Governing Law; Severability

Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §1051, *et seq.*), this Agreement and the relationship between Elephant & Castle and the Area Developer will be governed by the laws of the state in which the Territory is located. If the Territory is located in more than one state, then this Agreement and the relationship of the parties will be governed by the laws of the state in which the Area Developer's principal place of business is located. The provisions of this Agreement which conflict with or are inconsistent with applicable governing law will be superseded and/or modified by such applicable law only to the extent such provisions are inconsistent. All other provisions of this Agreement will be enforceable as originally made and entered into upon the execution of this Agreement by the Area Developer and Elephant & Castle.

17.2 Applicable State Laws

If applicable, the following states have statutes which may supersede the provisions of this Agreement in the Area Developer's relationship with Elephant & Castle in the areas of termination and renewal of the Franchise: Arkansas [Stat. Section 70-807], California [Bus. & Prof. Code Sections 20000-20043], Connecticut [Gen. Stat. Section 42-133e, *et seq.*], Delaware [Code Section 2552], Hawaii [Rev. Stat. Section 482E-1], Illinois [815 ILCS 705/19-20], Indiana [Stat. Section 23-2-2.7], Michigan [Stat. Section 19.854(27)], Minnesota [Stat. Section 80C.14], Mississippi [Code Section 75-24-51], Missouri [Stat. Section 407.400], Nebraska [Rev. Stat. Section 87-401], New Jersey [Stat. Section 56:10-1], South Dakota [Codified Laws Section 37-5A-51], Virginia [Code 13.1-557-574-13.1-564], Washington [Code Section 19.100.180], and Wisconsin [Stat. Section 135.03]. These and other states may have court decisions which may supersede the provisions of this Agreement in the Area Developer's relationship with Elephant & Castle in the areas of termination and renewal of the Franchise.

17.3 State Law Modifications

If the Area Developer's Territory includes any one of the states indicated below in this Article, or if the laws of any such state are otherwise applicable, then the designated provisions of this Agreement will be amended and revised as follows:

(a) **California.** If this Agreement is governed by the laws of the State of California, then: (1) the covenant not to compete upon termination or expiration of this Agreement contained in Article 10.3 may be unenforceable, except in certain circumstances provided by law; and (2) provisions of this Agreement giving Elephant & Castle the right to terminate in the event of the Area Developer's bankruptcy may not be enforceable under federal bankruptcy laws (11 U.S.C. Sec. 101, *et seq.*).

(b) **Illinois.** If this Agreement is governed by the laws of the State of Illinois, then: (1) any provision of this Agreement that designates jurisdiction or venue in a forum outside the State of Illinois is void, provided that this Agreement may provide for

mediation or arbitration in a forum outside Illinois; (2) Article 13.14 of this Agreement is amended to provide that the periods of limitation contained in Section 27 of the Illinois Franchise Disclosure Act (the "Illinois Act") are applicable to any action maintained by the Area Developer to enforce any liability created by the Illinois Act; and (3) any condition, stipulation or provision of this Agreement requiring the Area Developer to waive compliance with any provision of the Illinois Act is void; therefore, any acknowledgments or other language contained in Article 13.10, Article 15.2 and Article 15.4 of this Agreement which waive compliance with the Illinois Act are deleted from this Agreement.

(c) **Indiana.** If this Agreement is governed by the laws of the State of Indiana, then: (1) Article 7.6(d) of this Agreement may be inapplicable; (2) the post-term covenant not to compete contained in Article 10.3 of this Agreement will be enforceable only within the Territory; (3) Article 10.4 and Article 13.1 of this Agreement will be amended to provide that a court of competent jurisdiction will determine whether Elephant & Castle will be entitled to injunctive relief in any injunctive proceeding commenced by Elephant & Castle against the Area Developer; (4) the designation of jurisdiction and venue contained in Article 13.12 of this Agreement is inapplicable; provided, however, that such inapplicability in the State of Indiana will not be construed to mean that such venue is improper, or that the Area Developer, its officers, directors, Owners and the Personal Guarantors are not subject to such jurisdiction, or jurisdiction in any other state; (5) arbitration hearings will be conducted in Indianapolis, Indiana, or at a mutually agreed upon location; (6) the Area Developer does not, by signing this Agreement, waive its rights under Indiana law with respect to any representations made by Elephant & Castle prior to the date of this Agreement; (7) notwithstanding any provision of this Agreement to the contrary, the Area Developer will have up to two years to bring an action against Elephant & Castle for a violation of the Indiana Deceptive Franchise Practices Act, and up to three years from the date of discovery to bring an action against Elephant & Castle for a violation of the Indiana Franchise Disclosure Law; (8) notwithstanding any provisions of this Agreement to the contrary, a court of competent jurisdiction will determine whether Elephant & Castle will be required to post a bond or other security, and the amount of such bond or other security, in any injunctive proceeding commenced by Elephant & Castle against the Area Developer; (9) Elephant & Castle will not establish a franchisor-owned restaurant that is substantially identical to an Elephant & Castle® Restaurant within the Territory; and (10) Article 11.3 of this Agreement will be amended to exclude from the Franchisee Area Developer's indemnification obligations liability caused by the Franchisee Area Developer's proper reliance on or use of procedures or materials provided by Elephant & Castle or caused by Elephant & Castle's negligence.

(d) **Maryland.** In accordance with the laws of the State of Maryland: (1) Article 7.6(d) of this Agreement requiring the execution of a joint and mutual release as a condition to the Transfer of this Agreement will be deleted from this Agreement and, as a consequence, will not be applicable to the Area Developer or Elephant & Castle; (2) notwithstanding anything to the contrary in Article 13.12 of this Agreement, the Area Developer will have the right to commence any litigation, lawsuit or court proceeding alleging claims arising under the Maryland Franchise Registration and Disclosure Law (the "Maryland Law") in the State of Maryland; (3) the acknowledgments made by the Area Developer contained in Article 15 of this Agreement will not be construed to act as a waiver of the Area Developer's rights under the Maryland Law; and (4) any claims

arising under the Maryland Law must be brought within three years after the date of this Agreement.

(e) **Minnesota.** If this Agreement is governed by the laws of the State of Minnesota, then: (1) except in certain circumstances specified by law, Elephant & Castle must give the Area Developer at least 180 days prior written notice of nonrenewal of the Franchise; (2) Article 8.2 will be amended to require that, except as set forth in Articles 8.5 and 8.6, in the event Elephant & Castle gives the Area Developer written notice that the Area Developer has breached this Agreement, such written notice will be given to the Area Developer at least 90 days prior to the date this Agreement is terminated by Elephant & Castle, and the Area Developer will have 60 days after such written notice within which to correct the breach specified in the written notice; (3) notwithstanding any provisions of this Agreement to the contrary, a court of competent jurisdiction will determine whether Elephant & Castle will be required to post a bond or other security, and the amount of such bond or other security, in any injunctive proceeding commenced by Elephant & Castle against the Area Developer, the Owners or the Personal Guarantors; (4) Article 7.6(d) of this Agreement will be inapplicable; and (5) in accordance with Minn. Stat. Sec. 80C.17, Subd. 5, the Area Developer will have no more than three years after the cause of action accrues to commence an action pursuant to Minn. Stat. Sec. 80C. 17.

(f) **New York.** If this Agreement is governed by the laws of the State of New York, then: (1) Article 7.1 of this Agreement will be amended to provide that Elephant & Castle may not assign this Agreement unless, in its reasonable judgment, the assignee will be able to perform Elephant & Castle's obligations under this Agreement; (2) Article 11.1 of this Agreement will be amended to provide that the Area Developer will not be required to indemnify Elephant & Castle against claims arising out of Elephant & Castle's breach of contract, negligence or other civil wrong; (3) any modifications to the Manual made by Elephant & Castle will not unreasonably increase the Area Developer's obligations under this Agreement and will not place an excessive economic burden on the Area Developer's operations; and (4) Article 7.6(d) of this Agreement is hereby amended to provide that all rights arising in the Area Developer's favor from the provisions of Article 33 of the GBL of the State of New York and the regulations issued thereunder shall remain in force, it being the intent of this provision that the non-waiver provisions of Sections 687.4 and 687.5 of the GBL be satisfied.

(g) **North Dakota.** If this Agreement is governed by the laws of the State of North Dakota, then: (1) the covenant not to compete upon termination or expiration of this Agreement contained in Article 10.3 of this Agreement may be unenforceable, except in certain circumstances provided by law; (2) arbitration hearings will be conducted in Fargo, North Dakota, or at a mutually agreed upon location; and (3) the consent by the Area Developer to jurisdiction and venue contained in Article 13.12 is inapplicable; provided, however, that such inapplicability in the State of North Dakota will not be construed to mean that such venue is improper, or that the Area Developer, its officers, directors, Owners and the Personal Guarantors are not subject to such jurisdiction, or jurisdiction in any other state.

(h) **Rhode Island.** If this Agreement is governed by the laws of the State of Rhode Island, then any provision of this Agreement which restricts jurisdiction or venue to a

forum outside the State of Rhode Island is void with respect to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.

(i) **South Dakota.** If this Agreement is governed by the laws of the State of South Dakota, then: (1) Article 8 of this Agreement will be amended to provide that if the Area Developer breaches the provisions of this Agreement, including the failure to meet performance or quality standards or to pay any fees or other payments payable to Elephant & Castle pursuant to this Agreement, Elephant & Castle will provide the Area Developer with at least 30 days written notice and an opportunity to cure prior to the termination of this Agreement by Elephant & Castle; (2) the covenant not to compete upon termination or expiration of this Agreement contained in Article 10.3 of this Agreement may be unenforceable, except in certain circumstances provided by law; (3) any provision of this Agreement which designates jurisdiction or venue outside of the State of South Dakota or requires the Area Developer to agree to jurisdiction or venue in a forum outside of the State of South Dakota is void with respect to any cause of action which is otherwise enforceable in the State of South Dakota; (4) pursuant to SDCL §37-5A-86, any acknowledgment provision, disclaimer, integration clause or provision having a similar effect in this Agreement will not negate or act to remove from judicial review any statement, misrepresentation or action that violates Chapter 37-5A or a rule or order under Chapter 37-5A; (5) arbitration hearings will be conducted in Sioux Falls, South Dakota, or at a mutually agreed upon location; and (6) provisions of this Agreement which require that actions be commenced within one year and that limit the parties' rights to recover punitive, exemplary, incidental, indirect, special or consequential damages may not be enforceable under South Dakota law.

(j) **Washington.** If this Agreement is governed by the laws of the State of Washington, then: (1) in the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW, will prevail; (2) a release or waiver of rights executed by the Area Developer will not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after this Agreement is in effect and where the parties are represented by independent counsel; (3) any provision of this Agreement which unreasonably restricts or limits the statute of limitations period for claims under the Washington Franchise Investment Protection Act, rights or remedies under the Washington Franchise Investment Protection Act, such as a right to a jury trial, may not be enforceable; and (4) Transfer Fees are collectible by Elephant & Castle to the extent that they reflect Elephant & Castle's reasonable estimated or actual costs in effecting a Transfer.

17.4 **Severability**

The severability provisions of this Agreement will pertain to all of the applicable laws which conflict with or modify the provisions of this Agreement including, but not limited to, the provisions of this Agreement specifically addressed in Article 17.3 above.

IN WITNESS WHEREOF, Elephant & Castle, the Area Developer and the Area Developer's Owners have respectively signed this Agreement effective as of the day and year first above written.

In the Presence of:

Elephant & Castle International, Inc.

In the Presence of:

By _____

Its _____

"Area Developer"

The undersigned Owners of the Area Developer hereby agree to be bound by the terms and conditions of this Agreement.

| In the Presence of: | Owners | Percentage of Ownership |
|---------------------|--------|-------------------------|
| _____ | _____ | _____ % |
| _____ | _____ | _____ % |
| _____ | _____ | _____ % |
| _____ | _____ | _____ % |

PERSONAL GUARANTY

THIS PERSONAL GUARANTY (this "Personal Guaranty") is made and entered into by and between Elephant & Castle International, Inc., a Texas corporation ("Elephant & Castle"), and the undersigned personal guarantors (the "Personal Guarantors").

WHEREAS, Elephant & Castle and _____ (the "Area Developer") have entered into an Area Development Agreement for the operation of franchised "Elephant & Castle® Restaurants" in a defined Territory (the "Area Development Agreement").

WHEREAS, it is the desire of the undersigned Personal Guarantors to personally guaranty the obligations of the Area Developer under the Area Development Agreement and to be individually, jointly and severally bound by the terms and conditions of the Area Development Agreement.

NOW, THEREFORE, in consideration of the execution of the Area Development Agreement by Elephant & Castle, and for other good and valuable consideration, the undersigned, for themselves, their heirs, successors, and assigns, do individually, jointly and severally hereby become surety and guaranty for the payment of all amounts and the performance of the covenants, terms and conditions of the Area Development Agreement, including the covenants not to compete, to be paid, kept and performed by the Area Developer.

The undersigned, individually and jointly, hereby agree to be personally bound by each and every condition and term contained in the Area Development Agreement, including the covenants not to compete, and agree that this Personal Guaranty should be construed as though the undersigned and each of them executed a development agreement containing the identical terms and conditions of the Area Development Agreement.

If any default should at any time be made therein by the Area Developer, then the undersigned, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to pay to Elephant & Castle all monies due and payable to Elephant & Castle under the terms and conditions of the Area Development Agreement.

In addition, if the Area Developer fails to comply with any other terms and conditions of the Area Development Agreement, then the undersigned, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to comply with the terms and conditions of the Area Development Agreement for and on behalf of the Area Developer.

If the Area Developer is at any time in default on any obligation to pay monies to Elephant & Castle or any subsidiary or affiliate of Elephant & Castle, whether for fees, merchandise, products, FF&E or other products purchased by the Area Developer from Elephant & Castle or any subsidiary or affiliate of Elephant & Castle, or for any other indebtedness of the Area Developer to Elephant & Castle or any subsidiary or affiliate of Elephant & Castle, then the undersigned, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to pay all such monies due and payable from the Area Developer to Elephant & Castle or any subsidiary or affiliate of Elephant & Castle upon default by the Area Developer.

The maximum individual liability that each Personal Guarantor will incur under this Personal Guaranty is \$250,000.

It is further understood and agreed by the undersigned that the provisions, covenants and conditions of this Personal Guaranty will inure to the benefit of the successors and assigns of Elephant & Castle.

Except as precluded by applicable law, all litigation, actions or proceedings pertaining to this Personal Guaranty will be brought and venued in accordance with Article 13.12 of the Area Development Agreement.

PERSONAL GUARANTORS

Individually

Percentage of Ownership Interest _____%

Address

City State Zip Code

Telephone

Individually

Percentage of Ownership Interest _____%

Address

City State Zip Code

Telephone

Individually

Percentage of Ownership Interest _____%

Address

City State Zip Code

Individually

Percentage of Ownership Interest _____%

Address

City State Zip Code

Telephone

Individually

Percentage of Ownership Interest _____%

Address

City State Zip Code

Telephone

Individually

Percentage of Ownership Interest _____%

Address

City State Zip Code

Telephone

Telephone