

**ELEPHANT & CASTLE INTERNATIONAL, INC.**  
**UNIFORM FRANCHISE OFFERING CIRCULAR**  
**EXHIBIT B: FRANCHISE AGREEMENT**

**ELEPHANT & CASTLE INTERNATIONAL, INC.**  
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**ELEPHANT & CASTLE® RESTAURANT  
FRANCHISE AGREEMENT**

<b>Franchisee</b>	<b>Franchised Location</b>
_____ Name	_____ Street
_____ Street	_____ City, State, Zip Code
_____ City, State, Zip Code	_____ Telephone
_____ Telephone	_____ Fax
_____ Fax	_____ E-Mail Address
_____ E-Mail Address	Franchised Restaurant No. _____

\_\_\_\_\_, 200\_\_\_\_\_  
Date of Franchise Agreement

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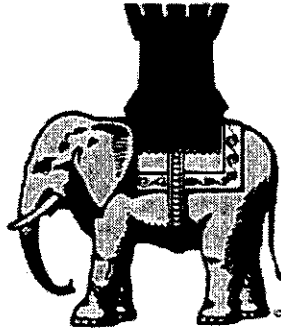
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The following information will have to be completed by Elephant & Castle and the Franchisee prior to the time that this Agreement is signed by the parties:

Article	Page	Information Required	Completed	Person Completing Information
N/A	F-1	Date of Agreement	_____	_____
N/A	F-1	Name of Franchisee	_____	_____
N/A	F-1	Business Structure of Franchisee	_____	_____
2.1	F-4	Franchised Location	_____	_____
27	F-47	Name, address and telephone number of Franchisee's attorney or advisor	_____	_____
N/A	F- <del>49</del> 51	Signature of Elephant & Castle	_____	_____
N/A	F-4951	Signature(s) of Franchisee	_____	_____
N/A	F-4951	Signature(s) of Owners and percentage of Ownership Interest (if applicable)	_____	_____
N/A	F- <del>51</del> 53	Signature(s) of Personal Guarantors and percentage of Ownership Interest (if applicable)	_____	_____
N/A	F- <del>52</del> 54	Completion of Authorization to Honor Electronic Transfer of Fund	_____	_____

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**ELEPHANT & CASTLE INTERNATIONAL, INC.  
FRANCHISE AGREEMENT**

**THIS FRANCHISE 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 offices at 1190 Hornby Street, 12th Floor, Vancouver, British Columbia, Canada V6Z 2K5 (hereinafter referred to as "Elephant & Castle"), and \_\_\_\_\_, a(n) \_\_\_\_\_ (hereinafter referred to as the "Franchisee");

**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.

**Operation of Elephant & Castle® Restaurant.** The Franchisee desires to develop, own and operate an Elephant & Castle® restaurant (hereinafter referred to as the "Elephant & Castle® Restaurant" or the "Restaurant") at the location set forth in Article 2 in compliance with the Restaurant System and with all of the quality, consistency and uniformity standards and specifications as established and promulgated from time to time by Elephant & Castle. The Franchisee 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 Franchisee's Restaurant 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 Franchisee 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 Franchisee acknowledges that it would take substantial capital and human resources to develop a restaurant business similar to the Elephant & Castle® Restaurant and, consequently, the Franchisee desires to acquire the right to use the Marks and the Restaurant System and to own and operate an Elephant & Castle® Restaurant pursuant to the terms and conditions set forth in this Agreement. The Franchisee acknowledges that Elephant & Castle would not grant the Elephant & Castle® Restaurant Franchise to the Franchisee or provide the Franchisee with the business information and "know how" about the Restaurant System unless the Franchisee agreed to comply with all of the terms and conditions of this Agreement and agreed to pay the Initial Fee, the Continuing Fees and all other fees specified in this Agreement.

**Review of Agreement.** The Franchisee 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 Franchisee agree and contract as follows:

## ARTICLE 1 DEFINITIONS

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

### **1.1 Designated Market Area**

"Designated Market Area" will mean each television market exclusive of another based upon a preponderance of television viewing hours as defined by the A.C. Nielsen ratings service or such other ratings service as may be designated by Elephant & Castle.

### **1.2 Dollars**

"Dollars" will mean United States of America dollars.

### **1.3 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.

### **1.41.3 FF&E**

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

### **1.51.4 Franchise**

"Franchise" will mean the right granted by Elephant & Castle to the Franchisee authorizing the Franchisee to operate an Elephant & Castle® Restaurant at the Franchised Location in conformity with the Restaurant System using the name "Elephant & Castle®" and the other Marks.

### **1.61.5 General Manager**

"General Manager" will mean the individual responsible for the overall management and operation of the Franchisee's Elephant & Castle® Restaurant including, but not limited to, administration, basic operations, marketing, customer and community relations, record keeping, employee staffing and training, inventory control, hiring and firing, food preparation and maintenance of the Franchised Location.

### **1.71.6 Gross Sales**

"Gross Sales" will mean the total dollar sales from all customers of the Franchisee's Elephant & Castle® Restaurant, and will include all cash and credit sales made by the Franchisee of every kind and nature made at, from, by or in connection with the Franchisee's Elephant & Castle® Restaurant business including, but not limited to, all dollars and income received from the sale of: ~~(a)~~(a) foods, food products and food items; ~~(b)~~(b) alcoholic and non-alcoholic beverages and drinks; ~~(c)~~(c) admission or cover charges; ~~(d)~~(d) telephones, vending machines, pool tables, dart board machines, video games and all other amusement games; ~~(e)~~(e) slot machines and gaming machines; ~~(f)~~(f) net fees received from automated teller machines; ~~(g)~~(g) lotteries, lottery tickets and pull tabs; ~~(h)~~(h) hats, shirts, T-shirts, sweatshirts and other clothing; ~~(i)~~(i) cigars, cigarettes, tobacco products, candies and gum; ~~(j)~~(j) catering; ~~(k)~~(k) room service; ~~(l)~~(l) banquets; ~~(m)~~(m) carry-out items; ~~(n)~~(n) any and all other foods, products, products and services; ~~(o)~~(o) all off-premises sales of foods, food products and all other products and services offered in connection with the Franchisee's Elephant & Castle® Restaurant; and ~~(p)~~(p) all sales, use or gross receipts tax rebates; and ~~(q)~~(q) all business interruption insurance payments made to the Franchisee. "Gross Sales" will not include any

sales, use or gross receipts tax imposed by any federal, state, municipal or governmental authority directly upon sales, if the amount of the tax is added to the selling price and is charged to the customer, a specific record is made at the time of each sale of the amount of such tax, and the amount of such tax is paid to the appropriate taxing authority by the Franchisee; the amount of all discounts and coupons issued to the public by the Franchisee and which are taken or redeemed at the Franchisee's Elephant & Castle® Restaurant provided that a specific record is made each time a customer takes a discount or redeems a coupon of the amount of the reduction in the menu price as a result of such discount taken or coupon redeemed; and, the amount of all employee meal discounts (e.g., manager meals) taken by employees of the Franchisee at the Franchisee's Elephant & Castle® Restaurant provided that a specific record is made each time an employee takes an employee meal discount of the amount of the reduction in menu price as a result of such discount.

**1.84.7- Management Team**

"Management Team" will include the Franchisee (or the Franchisee's Operating Partner), the Franchisee's General Manager, the Franchisee's Kitchen Manager and up to three Assistant Managers.

**1.94.8- 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.

**1.104.9- Month**

"Month" will mean a calendar month.

**1.114.10- Ownership Interest**

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

**1.124.11- Owner**

~~"Owner" will mean any person or entity that owns shares of capital stock in the Franchisee if the Franchisee is a corporation, a membership interest in the Franchisee if the Franchisee is a limited liability company, a partnership interest in the Franchisee if the Franchisee is a partnership, a limited or general partnership interest if the Franchisee 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 Franchisee.

**1.134.12- Personal Guarantors**

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

**1.141.13- Quarter**

"Quarter" will mean three consecutive calendar months.

**1.151.14- 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.

**1.161.15- Transfer**

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

**1.171.16- Travel Expenses**

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

## ARTICLE 2 GRANT OF FRANCHISE

**2.1 Franchised Location**

Elephant & Castle hereby grants the Franchisee the personal right to operate one Elephant & Castle® Restaurant in conformity with the Restaurant System using the name "Elephant & Castle®" and other specified Marks at the following single location \_\_\_\_\_

which is referred to as the "Franchised Location."

**2.2 Exclusive Area**

Except as provided to the contrary in this Article, the Franchisee will receive an "Exclusive Area" consisting of the area within a three mile radius of the Franchised Location; provided, however, that if the Franchisee's Elephant & Castle® Restaurant is located in any of the top 40 Metropolitan Statistical Areas in the United States as determined by the United States Department of Commerce, then the Franchisee will receive an Exclusive Area consisting of the area within a one-half mile radius of the Franchised Location. The Franchisee's Exclusive Area is exclusive to the extent that Elephant & Castle will not franchise, license, develop, own or operate ("develop") an Elephant & Castle® Restaurant in the Exclusive Area. Notwithstanding the foregoing, Elephant & Castle will have the absolute right to: ~~(a)~~(a) develop other restaurant business concepts under other brand names even if the locations for the concepts are within the Exclusive Area; ~~(b)~~(b) develop Elephant & Castle® Restaurants in the Exclusive Area 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)~~(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 to distributors, retailers, or consumers who are located in the Exclusive Area; and ~~(d)~~(d) advertise,

promote and participate in special events and promotional activities which take place in the Exclusive Area 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 Undetermined Franchised Location**

If the Franchised Location has not yet been determined as of the date of this Agreement, then the geographic area in which the Franchisee's Restaurant is to be located will be described or otherwise defined in an exhibit signed by the parties and attached to this Agreement. When the address of the Franchised Location is determined, it will be inserted into this Agreement and initialed by the parties.

### **2.4 Lease or Purchase of Franchised Location**

The Franchisee will not sign any lease, purchase agreement or obtain any related rights to possession, occupancy or ownership of the Franchised Location prior to the date set forth on Page F-1 of this Agreement. If the Franchisee leases the Franchised Location, then the Franchisee will use its best efforts to negotiate a lease term that coincides with the term of this Agreement.

### **2.5 Relocation**

The Franchisee may, with the prior written approval of Elephant & Castle, relocate the Franchised Location if ~~(a)~~(a) the proposed new location does not compete with any Elephant & Castle® Restaurant operated by Elephant & Castle or any other franchisee, ~~(b)~~(b) the proposed new location is within the Franchisee's Exclusive Area, and ~~(c)~~(c) the proposed new location does not infringe upon and is not located within the exclusive area of another Elephant & Castle® franchisee, area franchisee, master franchisee or subfranchisee. The new location of the Restaurant, including the real estate and the building, must comply with all applicable provisions of this Agreement and with the then-current image, decor and specifications of Elephant & Castle. Within 10 days after receipt by the Franchisee of Elephant & Castle's written approval of the relocation of the Franchised Location, the Franchisee will pay to Elephant & Castle a Relocation Fee of \$5,000.

### **2.6 Conditions**

The Franchisee hereby undertakes the obligation to operate the Elephant & Castle® Restaurant using the Restaurant System at the Franchised Location 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 Franchisee by Elephant & Castle under this Agreement are applicable only to the single location designated as the Franchised Location, are personal in nature, and may not be used elsewhere, at any other location or through any channel of distribution other than the Restaurant location operated by the Franchisee.

### **2.7 Personal License**

The Franchisee will not have the right to franchise, subfranchise, license or sublicense its rights under this Agreement. The Franchisee 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

### 3.1 Term

The term of this Agreement will be for 20 years, commencing on the date set forth on Page F-1 of this Agreement. This Agreement will not be enforceable until it has been signed by both the Franchisee and Elephant & Castle.

### 3.2 Term of Lease

If the term of the lease for the Franchised Location (excluding any renewal terms) is for a term that is longer than the term of this Agreement, then the term of this Agreement will be automatically extended to coincide with the initial term of the Franchisee's lease for the Franchised Location; provided, however, that if the Franchisee, or any of the Franchisee's Owners, owns, either directly or indirectly, the Franchised Location, including the business premises, the real estate or the building, then the term of this Agreement will be for 20 years.

### 3.3 Reacquisition Option

At the end of the term of this Agreement, the Franchisee will have the right and option to reacquire the Franchise for the Franchised Location for one additional 10 year term, provided that the Franchisee has complied with all material terms and conditions of this Agreement and has agreed to and has complied in all respects with the following conditions: ~~(a)~~(a) the Franchisee has given Elephant & Castle written notice at least one year prior to the end of the term of this Agreement of its intention to reacquire the Franchise for the Franchised Location; ~~(b)~~(b) all monetary obligations owed by the Franchisee to Elephant & Castle have been paid or satisfied prior to the end of the term of this Agreement, and have been timely met throughout the term of this Agreement; ~~(c)~~(c) the Franchisee has agreed, in writing, to remodel, modernize and redecorate the Franchised Location, and to replace and modernize the FF&E used in the Franchisee's Restaurant so that the Franchisee's Restaurant will reflect the image portrayed by the then-current image, decor and specifications of Elephant & Castle (the "Modernization") and has agreed to make such capital expenditures as are necessary to complete the required Modernization; ~~(d)~~(d) as of the date the Franchisee exercises its option to reacquire the Franchise for the Franchised Location, the Franchisee either owns the Franchised Location, or the Franchisee has the right to lease the Franchised Location for a term that coincides with the term of the then-current standard Elephant & Castle® franchise agreement; ~~(e)~~(e) the Franchisee's Management Team has completed the required training designated by Elephant & Castle for new franchisees to ensure that the Franchisee is in conformity with the then-current qualifications and operational requirements established by Elephant & Castle; and ~~(f)~~(f) the Franchisee agrees to execute and comply with the then-current standard franchise agreement being offered to new franchisees by Elephant & Castle, subject further to the provisions of Article 3.4 of this Agreement.

### 3.4 Terms of Option

The Franchisee will have the option to reacquire the Franchise for the Franchised Location under the same terms and conditions as are then being offered to other franchisees under the then-current standard Elephant & Castle® franchise agreement; provided, however, that the term of the franchise agreement executed by the Franchisee to reacquire the Franchise will be for 10 years, as specified in Article 3.3 of this Agreement. The Franchisee will be required to pay Elephant & Castle a Reacquisition Fee equal to 25% of the Initial Fee specified in the then-current standard Elephant & Castle® franchise agreement, which will be payable in full on the date the Franchisee signs the then-current standard franchise agreement executed pursuant to

this option. The Reacquisition Fee is payment, in part, to Elephant & Castle for: ~~(a)~~(a) training at the time of the reacquisition for the Franchisee's Management Team (but not payment for the Travel Expenses, salaries, fringe benefits and all other expenses of any persons attending such training, which will be paid by the Franchisee); ~~(b)~~(b) providing the Franchisee with the then-current standards relating to the image of Elephant & Castle® Restaurants, including decor, fixtures, furniture and sign specifications; ~~(c)~~(c) providing the Franchisee with the then-current specifications for the FF&E to be used in the operation of the Restaurant; and ~~(d)~~(d) administrative and out-of-pocket expenses incurred by Elephant & Castle in connection with the reacquisition, including employee salaries, attorneys' fees and long-distance telephone calls. The Franchisee will be required to pay the Continuing Fee and all other fees at the rates specified in the then-current standard franchise agreement. The Franchisee will also pay any additional fees specified or provided for by the terms of the then-current standard franchise agreement. The Franchisee acknowledges that the terms, conditions and economics of future franchise agreements of Elephant & Castle may, at that time, vary in substance and form from the terms, conditions and economics of this Agreement.

## **ARTICLE 4 INITIAL FEE; APPROVAL OF FRANCHISEE**

### **4.1 Initial Fee**

The Franchisee will pay Elephant & Castle an Initial Fee of \$35,000, which will be payable in full on the date the Franchisee signs this Agreement. The Initial Fee payable by the Franchisee is payment, in part, to Elephant & Castle for the costs incurred by Elephant & Castle to operate its business, including costs for general sales and administrative expenses, Travel Expenses, long distance telephone calls, training, opening costs, marketing costs, legal and accounting fees, compliance with franchising and other laws, and the initial services rendered to the Franchisee as described in this Agreement.

### **4.2 Termination of Franchise**

Elephant & Castle will have the right to terminate this Agreement at any time within 120 days after the date of this Agreement if: ~~(a)~~(a) any required or other financial, personal or other information provided by the Franchisee to Elephant & Castle is materially false, misleading, incomplete or inaccurate; ~~(b)~~(b) the Franchisee has not purchased or leased a site for the Franchised Location or has done so in a manner not in compliance with Article 2.4 and Article 11 of this Agreement; ~~(c)~~(c) the Franchisee fails to apply for and obtain a valid license for the service of food for its Elephant & Castle® Restaurant from the appropriate governmental agencies; ~~(d)~~(d) the Franchisee fails to apply for and obtain a valid liquor license for its Elephant & Castle® Restaurant from the appropriate governmental authorities; or ~~(e)~~(e) a member of the Franchisee's Management Team fails to complete the training program described in Article 16.1 of this Agreement.

### **4.3 Payment of Costs**

If this Agreement is terminated by Elephant & Castle pursuant to Article 4.2, then Elephant & Castle will retain 50% of the Initial Fee paid by the Franchisee as payment for the administrative and out-of-pocket expenses incurred by Elephant & Castle including, but not limited to, executives' and employees' salaries, salespersons' commissions, attorneys' fees, accountants' fees, Travel Expenses, training costs, legal compliance, marketing costs and long distance telephone calls.



## ARTICLE 5 CONTINUING FEE

### **5.1 Amount of Continuing Fee; Date Payable**

In addition to the Initial Fee payable by the Franchisee, the Franchisee will pay Elephant & Castle a monthly Continuing Fee equal to the greater of: ~~(a)~~(a) 5% of the Franchisee's monthly Gross Sales for the preceding month; or ~~(b)~~(b) \$4,000. The monthly Continuing Fee will be paid to Elephant & Castle by the Franchisee by the 10th of each month for the preceding month. The minimum monthly Continuing Fee of \$4,000 will not be applicable until seven calendar months after the date of this Agreement, and as a consequence, beginning on the 10<sup>th</sup> day of the seventh calendar month after the date of this Agreement, the Franchisee will pay Continuing Fees for the preceding month equal to the greater of the amounts set forth above.

### **5.2 Interest on Unpaid Continuing Fees**

If the Franchisee fails to remit the Continuing Fee due to Elephant & Castle as provided for in Article 5.1, then the amount of the unpaid and past due Continuing Fee will bear simple interest at the lesser of the maximum legal rate allowable by applicable law or 18% simple interest per annum. The Franchisee will pay Elephant & Castle an Administrative Fee of \$75 for each delinquent Continuing Fee payment within 10 days after the delinquent Continuing Fee was due. The Franchisee will also reimburse Elephant & Castle for any and all costs incurred by Elephant & Castle in the collection of unpaid and past due Continuing Fee payments including, but not limited to, attorneys' fees, deposition costs, expert witness fees, investigation costs, accounting fees, filing fees and Travel Expenses.

### **5.3 Reports**

The Franchisee will maintain an accurate written record of the daily Gross Sales for the Franchisee's Elephant & Castle® Restaurant and other information specified by Elephant & Castle, and will submit monthly reports for the Franchisee's Restaurant using the forms and formats that Elephant & Castle prescribes in writing. The monthly reports will be e-mailed or faxed to Elephant & Castle by the 10th day of each month for the preceding month. The monthly reports will be signed by the Franchisee and will include the Franchisee's monthly Gross Sales, the monthly Continuing Fee payment as calculated by the Franchisee, and such other information as may be required by Elephant & Castle.

### **5.4 Franchisee's Obligation to Pay**

The Continuing Fee payable to Elephant & Castle under this Article will be calculated and paid to Elephant & Castle by the Franchisee each month during the entire term of this Agreement, and the Franchisee's failure to pay the monthly Continuing Fee to Elephant & Castle will be deemed to be a material breach of this Agreement. The Franchisee's obligation to pay Elephant & Castle the Continuing Fee pursuant to the terms of this Agreement will be absolute and unconditional, and will remain in full force and effect until the term of this Agreement has expired or until this Agreement has been terminated in accordance with the terms and conditions set forth in this Agreement and applicable law. The Franchisee will not have the "right of offset" and, as a consequence, the Franchisee will timely pay all Continuing Fees due to Elephant & Castle under this Agreement regardless of any claims or allegations the Franchisee may allege against Elephant & Castle.

### **5.5 Pre-Authorized Bank Debits**

The Franchisee will, from time to time during the term of this Agreement, execute such documents as Elephant & Castle may request to provide the Franchisee's unconditional and

irrevocable authority and direction to its bank authorizing and directing the Franchisee's bank to pay and deposit directly to the account of Elephant & Castle, and to charge to the account of the Franchisee, the amount of the monthly Continuing Fee payable by the Franchisee pursuant to this Agreement on the 10th day of each month for the Continuing Fee due for the preceding month. The authorization will be in the form attached as an exhibit to this Agreement and will permit Elephant & Castle to designate the amount to be debited or drafted from the Franchisee's account and to adjust such amount from time to time to the amount of the monthly Continuing Fee payable to Elephant & Castle by the Franchisee, as calculated by the Franchisee in the report of monthly Gross Sales submitted by the Franchisee pursuant to Article 5.3 of this Agreement. If the Franchisee fails at any time to provide the monthly reports required under Article 5.3, then Elephant & Castle will have the absolute right to debit the Franchisee's bank account for the same amount as the most recent debit to the Franchisee's bank account that was based on actual Gross Sales provided by the Franchisee. The Franchisee will, at all times during the term of this Agreement, maintain a balance in its account at its bank sufficient to allow the appropriate amount to be debited from the Franchisee's account for payment of the Continuing Fee payable by the Franchisee for deposit in the account of Elephant & Castle.

## **ARTICLE 6 LOCAL ADVERTISING**

### **6.1 Local Advertising Expenditures**

Each quarter for the entire term of this Agreement, the Franchisee will spend at a minimum for approved local advertising for its Elephant & Castle® Restaurant an amount equal to 2% of the quarterly Gross Sales of the Franchisee's Elephant & Castle® Restaurant (the "Local Advertising Expenditures"). For the purposes of this Article, local advertising will include television, radio, newspaper, billboards, magazine, direct mail and other print advertising, which has been approved by Elephant & Castle prior to broadcast, publication or distribution.

### **6.2 Reports of Local Advertising Expenditures**

Within 10 days after the end of each quarter, the Franchisee will, in a form prescribed by Elephant & Castle, furnish Elephant & Castle with an accurate accounting of the Franchisee's Local Advertising Expenditures during the quarter just ended. If the Franchisee has failed to spend the required amount for the Local Advertising Expenditures, then the Franchisee will deposit with Elephant & Castle the difference between the amount that should have been spent by the Franchisee for the Local Advertising Expenditures and the amount actually spent, and this amount will be spent by Elephant & Castle for advertising and promotion in the Franchisee's Designated Market Area in a manner deemed appropriate by Elephant & Castle in its sole discretion.

### **6.3 Telephone Directory Listings**

The Franchisee will continually list and advertise in the "Yellow Pages" in the Franchisee's market area under the heading "Restaurant" and/or other listings designated by Elephant & Castle in writing. The format, size and content of the listings and advertising will conform in all respects to the standards established by Elephant & Castle and specified in the Standard Operations Manual. The Franchisee will also take all steps necessary to be listed in the "White Pages" for the Franchisee's market area. Expenditures made by the Franchisee for Yellow Pages or White Pages advertising may be applied to the Local Advertising Expenditures set forth in Article 6.1 of this Agreement.

#### **6.4 Grand Opening Advertising**

The Franchisee will spend, within the period of time from 90 days prior to the day of the grand opening to 11:00 p.m. on the day of the grand opening, a minimum of \$5,000 for grand opening advertising of the Franchisee's Elephant & Castle® Restaurant. Payments, rebates, or allowances received by the Franchisee from vendors and used by the Franchisee in connection with advertising and promoting the grand opening of the Franchisee's Elephant & Castle® Restaurant may be applied to the minimum grand opening expenditure requirement set forth in this Article. The Franchisee's expenditures for grand opening advertising will not be applied to the Local Advertising Expenditures requirement set forth in Article 6.1 of this Agreement.

### **ARTICLE 7 FINANCIAL STATEMENTS**

#### **7.1 Monthly Financials and Annual Financial Statements**

The Franchisee will, at its expense, prepare a monthly and year-to-date balance sheet and profit and loss statement for the Franchisee's Restaurant (the "Monthly Financials"). The Franchisee will also prepare, at its expense, annual financial statements, consisting of a balance sheet, profit and loss statement, statement of cash flows and explanatory footnotes, for the Franchisee's Restaurant (the "Financial Statements"). All Monthly Financials and annual Financial Statements provided to Elephant & Castle pursuant to this Article will be in substantially the form prescribed by Elephant & Castle in writing, will conform to the standard chart of accounts prescribed by Elephant & Castle and will be prepared in accordance with generally accepted accounting principles applied on a consistent basis.

#### **7.2 Due Date; Verification of Monthly Financials and Financial Statements**

The Monthly Financials for the Franchisee's Restaurant will be delivered to Elephant & Castle within 20 days after the end of the month. The Franchisee's annual Financial Statements will be delivered to Elephant & Castle within 90 days after the Franchisee's fiscal year end. The Monthly Financials and the annual Financial Statements must be verified by the Franchisee's Chief Financial Officer.

#### **7.3 Substantiation of Monthly Financials and Financial Statements**

Within three business days after receiving a written request from Elephant & Castle, the Franchisee will provide Elephant & Castle with originals or exact copies of all documents, records and other materials including, but not limited to, cash register tapes, customer checks, point-of-sale system records, payroll records and purchasing and expense records, requested by Elephant & Castle to substantiate the Monthly Financials and the Financial Statements submitted by the Franchisee pursuant to this Article. Elephant & Castle will maintain the confidentiality of all information, documents, records and other materials submitted by the Franchisee to Elephant & Castle pursuant to this Article. However, if the information, documents, records or other materials are relevant to any issue in any mediation, arbitration or court proceeding between Elephant & Castle and the Franchisee, then Elephant & Castle may disclose the information, documents, records or other materials in such proceeding.

#### **7.4 Sales and Income Tax Returns**

Within 15 days after receipt of a written request from Elephant & Castle, the Franchisee will furnish Elephant & Castle with exact copies of all state sales tax returns and all state and federal income tax returns filed by the Franchisee relating to the operation of the Franchisee's Elephant & Castle® Restaurant.

### **7.5 Audit Rights**

Within three business days after receiving written notice from Elephant & Castle, the Franchisee and the Franchisee's accountants will make all of their computer and hand prepared records and ledgers, the sales ledger, work papers, books, bank statements, federal and state income tax returns, federal and state sales tax returns, daily cash register tapes, accounts, and other financial information relating to Gross Sales, food and liquor costs, and labor costs (the "Financial Records") available to Elephant & Castle during business hours for review and audit by Elephant & Castle or its designee. If the Financial Records are computerized, then the Franchisee will grant Elephant & Castle or its designees the absolute right to access the Franchisee's computer and software programs containing the Financial Records and the absolute right to copy the Financial Records to a computer disk or to any portable or other computer owned or controlled by Elephant & Castle. The Financial Records for each fiscal year will be kept in a secure place by the Franchisee and will be available for audit by Elephant & Castle for at least five years. The Franchisee will provide Elephant & Castle with adequate facilities to conduct the audit. Elephant & Castle will maintain the confidentiality of all information, documents, records and other materials reviewed or copied by Elephant & Castle during an audit conducted by Elephant & Castle pursuant to this Article. However, if the information, documents, records or other materials are relevant to any issue in any mediation, arbitration or court proceeding between Elephant & Castle and the Franchisee, then Elephant & Castle may disclose the information, documents, records or other materials in such proceeding.

### **7.6 Payment of Audit Costs**

If an audit of the Franchisee's Financial Records reveals any deficiencies in the Continuing Fees payable to Elephant & Castle, then the Franchisee will, within five days after receipt of an invoice from Elephant & Castle indicating the amounts owed, pay to Elephant & Castle any deficiency owed to Elephant & Castle, together with interest as provided for herein. If an audit by Elephant & Castle results in a determination that the Franchisee's Gross Sales were understated by more than 1% in any year or in any month, then the Franchisee will, within 15 days after receipt of an invoice from Elephant & Castle, pay Elephant & Castle all costs and expenses (including employee salaries, Travel Expenses, and audit fees) that Elephant & Castle incurred for the audit of the Franchisee's Financial Records.

### **7.7 Refusal to Submit Records or Permit Audit**

The Franchisee's failure or refusal to provide the documents, records or other materials requested by Elephant & Castle to substantiate the Monthly Financials or the Financial Statements in accordance with Article 7.3 or to produce the Financial Records in accordance with Article 7.5 will be grounds for the immediate termination of this Agreement by Elephant & Castle.

## **ARTICLE 8 QUALITY CONTROL, UNIFORMITY AND STANDARDS**

### **8.1 Quality and Service Standards**

Elephant & Castle will develop, from time to time, uniform standards of quality, cleanliness and service regarding the business operations of the Franchisee's Elephant & Castle® Restaurant to protect and maintain (for the benefit of Elephant & Castle and all of its franchisees) the distinction, valuable goodwill and uniformity represented and symbolized by the Marks and the Restaurant System. Accordingly, to ensure that all Elephant & Castle® franchisees will maintain and adhere to the uniformity requirements and quality standards for the foods, products and services associated with the Marks and the Restaurant System, the Franchisee agrees to maintain the uniformity and quality standards required by Elephant & Castle for all

foods, products and services associated with the Marks and the Restaurant System and agrees to the terms and conditions contained in this Article to assure the public that all Elephant & Castle® Restaurants will be uniform in nature and will sell and dispense quality foods, products and services.

### **8.2 Identification of Restaurant**

The Franchisee will operate the Restaurant so that it is clearly identified and advertised as an Elephant & Castle® Restaurant. The style and form of the words "Elephant & Castle®" and the other Marks used in any advertising, marketing, public relations or promotional program must have the prior written approval of Elephant & Castle. The Franchisee will use the name "Elephant & Castle®," the approved logos and all graphics commonly associated with the Restaurant System and the Marks which now or hereafter may form a part of the Restaurant System, on all paper supplies, furnishings, advertising, public relations and promotional materials, signs, stationery, business cards, linens, towels, napkins, aprons, menus, food and beverage containers, placemats, uniforms, clothing and other materials in the identical combination and manner as may be prescribed by Elephant & Castle in writing. The Franchisee will, at its expense, comply with all legal notices of registration required by Elephant & Castle or its attorneys and will, at its expense, comply with all trademark, trade name, service mark, copyright, patent or other notice markings that are required by Elephant & Castle or by applicable law.

### **8.3 Compliance with Standards**

The Franchisee will use the Marks and the Restaurant System in strict compliance with the moral and ethical standards, quality standards, health standards, operating procedures, specifications, requirements and instructions required by Elephant & Castle, which may be amended and supplemented by Elephant & Castle from time to time.

### **8.4 Alterations to Restaurant**

The Franchisee will not install or permit to be installed in, on or above the Restaurant, without the prior written consent of Elephant & Castle, any FF&E or other items not previously approved by Elephant & Castle.

### **8.5 Prohibited Sales**

The Franchisee will offer for sale at the Franchised Location only those menu items, food products and other products approved in writing by Elephant & Castle. Elephant & Castle will provide the Franchisee with a sample of the standard Elephant & Castle® menu and all subsequent modifications to the menu.

### **8.6 Other Business**

The Franchisee will use the Franchised Location solely for the operation of an Elephant & Castle® Restaurant and will not directly or indirectly operate or engage in any other business or activity from the Franchised Location without the prior written consent of Elephant & Castle. The Franchisee will not participate in any dual branding program, or in any other program, promotion or business pursuant to which a trademark, service mark, trade name, logo, slogan, or commercial symbol owned by any person or ~~entity~~ Entity other than Elephant & Castle is displayed, featured or used in connection with the Franchisee's Elephant & Castle® Restaurant without the prior written consent of Elephant & Castle.

### **8.7 Franchisee's Name**

The Franchisee will not use the name "Elephant & Castle®" or any derivative thereof in its corporate, partnership or sole proprietorship name. The Franchisee will hold itself out to the

public as an independent contractor operating its Elephant & Castle® Restaurant pursuant to a Franchise from Elephant & Castle. The Franchisee will file for a certificate of assumed name in the manner required by applicable state law to notify the public that the Franchisee is operating its Elephant & Castle® Restaurant as an independent contractor pursuant to this Agreement.

#### **8.8 Operation of Elephant & Castle® Restaurant**

The Franchisee will be totally and solely responsible for the operation of its Elephant & Castle® Restaurant, and will control, supervise and manage all the employees, agents and independent contractors who work for or with the Franchisee. The Franchisee 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 applicable federal, state, city, local and municipal laws, statutes, ordinances, rules and regulations. Elephant & Castle will not have any right, obligation or responsibility to control, supervise or manage the Franchisee's employees, agents or independent contractors.

#### **8.9 Business Hours**

The Franchisee's Elephant & Castle® Restaurant will be open from 11:00 a.m. to 11:00 p.m. every day of the week, or during such other normal business hours as otherwise may be specified by Elephant & Castle in the Standard Operations Manual.

#### **8.10 Personnel**

The Franchisee will at all times during business hours have management personnel on duty who are responsible for supervising the employees and the business operations of the Franchisee's Restaurant. The Franchisee will maintain a competent, conscientious and adequately trained staff with enough personnel to operate the Restaurant in a professional and competent manner and to guarantee efficient service to the Franchisee's customers. The Franchisee will take such steps as are necessary to ensure that its employees develop and preserve good customer relations, render competent, prompt, courteous and knowledgeable service and meet the quality and service standards established by Elephant & Castle.

#### **8.11 Standards of Service**

The Franchisee will at all times give prompt, courteous and efficient service to its customers. The Franchisee will, in all dealings with its customers, suppliers and the public, adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct.

#### **8.12 Alcoholic Beverages**

The Franchisee will serve beer, wine and alcoholic beverages at its Elephant & Castle® Restaurant. The Franchisee will comply with all federal, state, city, local and municipal licensing, insurance and other laws, regulations and requirements applicable to the sale of alcoholic beverages by the Franchisee. The Franchisee will comply with the liquor liability insurance requirements set forth in Article 14 of this Agreement.

#### **8.13 Vending Machines and Entertainment Devices**

Other than those items which the Franchisee must procure and place in the premises of the Franchised Location as specified in the Standard Operations Manual, the Franchisee will not permit any jukebox, video and electronic games, vending machines (including cigarette, gum and candy machines), newspaper racks, rides or other mechanical or electronic entertainment devices or coin or token operated machines (including pinball) to be used on the premises of the Franchised Location without the prior written approval of Elephant & Castle.

#### **8.14 Gambling Machines; Tickets**

The Franchisee will not permit any gambling machines or other gambling devices to be used on the premises of the Franchised Location, except with the prior written approval of Elephant & Castle. The Franchisee will not keep or offer for sale or allow employees to offer for sale at or near the Franchised Location any tickets, subscriptions, pools, chances, raffles, lottery tickets or pull tabs, except with the prior written approval of Elephant & Castle.

#### **8.15 Standard Attire or Uniforms**

The Franchisee will require its employees to wear the standard attire or uniforms described in the Standard Operations Manual. All employees of the Franchisee will wear clean and neat attire or uniforms and will practice good personal hygiene.

#### **8.16 Credit Cards**

The Franchisee will honor all credit, charge, courtesy or cash cards or other credit devices required or approved by Elephant & Castle in writing. The Franchisee must obtain the written approval of Elephant & Castle prior to honoring any unapproved credit, charge, courtesy or cash cards or other credit devices.

#### **8.17 Gift Certificates and Coupons**

The Franchisee will offer the gift certificates issued by Elephant & Castle for use by its franchisees. The Franchisee will not have the right to sell or issue gift certificates except those that have been obtained from Elephant & Castle. The Franchisee will not issue coupons or discounts of any type, except as may be approved in advance in writing by Elephant & Castle. Such coupons will clearly state that they are redeemable only at the Franchisee's Elephant & Castle® Restaurant, and not at any other Elephant & Castle® Restaurant.

#### **8.18 Music and Music Selection**

In order to maintain the image and ambiance associated with the Restaurant System, the Franchisee will only play the music and music selections that have been approved by Elephant & Castle as set forth in the Standard Operations Manual or otherwise in writing.

#### **8.19 Approved Advertising**

The Franchisee will not conduct any advertising and/or promotion for its Elephant & Castle® Restaurant unless and until Elephant & Castle has given the Franchisee prior written approval for all concepts, content, materials and media proposed for any such advertising and/or promotion. The Franchisee will not permit any third party to advertise its business, services or products on the premises of or in connection with the Franchisee's Elephant & Castle® Restaurant without the prior written approval of Elephant & Castle.

#### **8.20 Compliance with Applicable Law**

The Franchisee will, at its expense, comply with all applicable federal, state, city, local and municipal laws, statutes, ordinances, rules and regulations pertaining to the construction or remodeling of the Franchised Location and the operation of the Franchisee's Elephant & Castle® Restaurant including, but not limited to, 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 Franchisee will, at its expense, be solely and exclusively responsible for determining the licenses and permits required by law for the Franchisee's Elephant & Castle® Restaurant, for obtaining and qualifying for all such licenses and permits, and for complying with all applicable laws.

### **8.21 Payment of Taxes**

The Franchisee will be absolutely and exclusively responsible and liable for filing all required tax returns and for the prompt payment of all federal, state, city and local taxes including, but not limited to, individual and corporate income taxes, sales and use taxes, franchise taxes, gross receipts taxes, employee withholding taxes, F.I.C.A. taxes, inventory taxes, liquor taxes, personal property taxes and real estate taxes (hereinafter referred to as "taxes") payable in connection with the Franchisee's Elephant & Castle® Restaurant business. Elephant & Castle will have no liability for these or any other taxes which arise or result from the Franchisee's Restaurant business and the Franchisee will indemnify Elephant & Castle for any such taxes that may be assessed or levied against Elephant & Castle which arise out of or result from the Franchisee's Restaurant.

### **8.22 "Franchise" and Other Taxes**

If any "franchise" or other tax which is based upon the Gross Sales, receipts, sales, business activities or operation of the Franchisee's Elephant & Castle® Restaurant is imposed upon Elephant & Castle by any taxing authority, then the Franchisee will reimburse Elephant & Castle in an amount equal to the amount of such taxes and related costs imposed upon and paid by Elephant & Castle. The Franchisee will be notified in writing when Elephant & Castle is entitled to reimbursement for the payment of such taxes and, in that event, the Franchisee will pay Elephant & Castle the amount specified in the written notice within 10 days after receipt of the written notice.

### **8.23 Payments to Creditors**

The Franchisee will timely pay all of its obligations and liabilities due and payable to Elephant & Castle, suppliers, lessors and its creditors.

### **8.24 Security Interest in Franchise Agreement**

This Agreement and the Franchise granted to the Franchisee hereunder may not be used as collateral or be the subject of a security interest, lien, levy, attachment or execution by the Franchisee's creditors or any financial institution, except with the prior written approval of Elephant & Castle.

### **8.25 Inspection Rights**

The Franchisee will permit Elephant & Castle or its representatives to enter, remain on, and inspect the Franchised Location, whenever Elephant & Castle reasonably deems it appropriate and without prior notice, to interview the Franchisee's employees and customers, to take photographs and videotapes of and to examine the interior and exterior of the Franchised Location, to examine representative samples of the foods, beverages and other products sold or used at the Franchisee's Restaurant and to evaluate the quality of the foods, beverages, products and services provided by the Franchisee to its customers. Elephant & Castle will also have the right to send a representative of Elephant & Castle to dine at the Franchisee's Elephant & Castle® Restaurant to evaluate the operations of the Franchisee's Elephant & Castle® Restaurant and the quality of the foods and services provided by the Franchisee to its customers. Elephant & Castle will have the right to use all interviews, photographs and videotapes of the Franchisee's Elephant & Castle® Restaurant for such purposes as Elephant & Castle deems appropriate including, but not limited to, use in advertising, marketing and promotional materials. The Franchisee will not be entitled to, and hereby expressly waives, any right that it may have to be compensated by Elephant & Castle, its advertising agencies, and other Elephant & Castle® franchisees for the use of such photographs or videotapes for advertising, marketing and promotional purposes.



### **8.26 Default Notices and Significant Correspondence**

The Franchisee will deliver to Elephant & Castle, immediately upon receipt by the Franchisee or delivery at the Franchised Location, an exact copy of all: ~~(a)~~(a) notices of default received from the landlord of the Franchised Location or any mortgagee, trustee under any deed of trust, contract for deed holder, lessor, or any other party with respect to the Franchised Location; ~~(b)~~(b) notifications or other correspondence relating to any legal proceeding or lawsuit relating in any way to the Franchisee's Restaurant or to the Franchised Location; ~~(c)~~(c) consumer lawsuits, complaints or claims filed with or served upon the Franchisee or a better business bureau; ~~(d)~~(d) employee lawsuits, complaints or claims; and ~~(e)~~(e) inspection reports or any other notices, claims, reports, warnings or citations from or by any governmental authority, including any health or safety authority. Upon a written request from Elephant & Castle, the Franchisee will provide such additional information as may be required by Elephant & Castle regarding the subject matter of the correspondence or other documents received by the Franchisee.

## **ARTICLE 9 PRODUCTS AND SERVICES**

### **9.1 Limitations on Products and Services**

The Franchisee will sell only those foods, beverages, food products, clothing, and services and other items approved by Elephant & Castle in writing and will offer for sale all foods, beverages, food products, clothing, services and other items prescribed by Elephant & Castle or approved by Elephant & Castle in writing. Prior to the opening of the Restaurant, Elephant & Castle will provide the Franchisee with a written schedule of all foods, food products, beverages, clothing, and other items for sale, and the FF&E necessary and required to commence operation of the Franchisee's Restaurant. The Franchisee will maintain sufficient inventories of foods, beverages, food products, clothing, and other items to realize the full potential of the Restaurant. The Franchisee will conform to all customer service standards prescribed by Elephant & Castle in writing. The Franchisee will have the absolute right to sell all foods, beverages, food products, clothing, services and other items at whatever prices and on whatever terms it deems appropriate.

### **9.2 Limitation on Sales**

The Franchisee will offer for sale and sell those foods, beverages, food products, clothing, services and other items offered for sale in connection with the Franchisee's Elephant & Castle® Restaurant or which are sold under any of the Marks only on a retail basis at the Franchisee's Franchised Location. The Franchisee will not offer for sale or sell on a wholesale or retail basis at any other location or in any other premises, or by means of the Internet, catalogue or mail order sales, telemarketing, or by any other method of sales or distribution, any of the foods, beverages, food products, clothing, services or other items offered for sale or sold in connection with the Franchisee's Elephant & Castle® Restaurant or which are sold under any of the Marks.

### **9.3 Approved Suppliers and Distributors**

The Franchisee will purchase from suppliers and distributors approved in writing by Elephant & Castle those foods, food items, beverages, recipe ingredients, goods, products, clothing, merchandise, supplies, sundries, uniforms, machinery, signs, furniture, fixtures, equipment and services (sometimes referred to in this Agreement as "products and services") designated in writing by Elephant & Castle which are to be used or sold by the Franchisee and which Elephant & Castle determines must meet the standards of quality and uniformity required to

protect the valuable goodwill and uniformity symbolized by and associated with the Marks and the Restaurant System and/or to protect the health and safety of the Franchisee's employees, customers and guests. Elephant & Castle will provide the Franchisee with a list of the approved suppliers and distributors for these products and services. The Franchisee will have the right and option to purchase these products and services from other or outside suppliers and distributors provided that such products and services conform in quality to the standards and specifications of Elephant & Castle and provided that Elephant & Castle determines that the supplier's or distributor's business reputation, quality standards, delivery performance, credit rating, and other factors determined by Elephant & Castle are satisfactory. If the Franchisee desires to purchase any products or services from such other suppliers and distributors, then the Franchisee must, at its expense, submit samples and specifications, and other business and product information as requested, to Elephant & Castle for review and/or product testing to determine whether the supplier or distributor and its products and services are satisfactory to Elephant & Castle and comply with Elephant & Castle's standards and specifications. Elephant & Castle will also have the right to inspect the facilities of the proposed supplier or distributor. The Franchisee will reimburse Elephant & Castle for the costs and expenses incurred by Elephant & Castle to conduct an inspection of the facilities of the unapproved supplier or distributor within 30 days after the Franchisee's receipt of an invoice for such costs and expenses from Elephant & Castle. Elephant & Castle will complete all product testing within 30 days after Elephant & Castle receives the samples and other requested information from the Franchisee, and will notify the Franchisee of its determination within 15 days after completion of the testing process. The written approval of Elephant & Castle must be obtained by the Franchisee before any previously unapproved products and services are sold by or used by the Franchisee or any previously unapproved supplier or distributor is used by the Franchisee.

#### **9.4 Designated Suppliers**

The Franchisee will purchase from designated suppliers those proprietary seasonings and other foods, food items and recipe ingredients, and clothing items designated in writing by Elephant & Castle which are to be used or sold by the Franchisee and which Elephant & Castle determines must meet the standards of quality and uniformity required to protect the valuable goodwill and uniformity symbolized by and associated with the Marks and the Restaurant System. In addition, the Franchisee will purchase and use in its Restaurant operations all the brand name products required by Elephant & Castle. Such required brand name products may be purchased from any commercial supplier of such products.

#### **9.5 Use of Rebates from Suppliers**

Any rebates or other payments paid to Elephant & Castle by a supplier as a result of the Franchisee's purchases from the supplier will be used by Elephant & Castle for the creation, development and production of advertising and promotional materials, marketing or related research and development, advertising and marketing expenses, product and food research and development, advertising materials, production costs, brochures, ad slicks, radio, film and television commercials, videotapes, newspaper, magazine and other print advertising, direct mail pieces, photographer costs, photographs, pictures, designs, services provided by advertising agencies, public relations firms or other marketing, research or consulting firms or agencies, market research and marketing surveys, menu design and graphics, customer incentive programs, sponsorships, marketing meetings, sales incentives, development of Home Pages on the Internet, Internet access provider costs, Internet/World Wide Web programming and advertising, subscriptions to industry newsletters or magazines, marketing or industry studies, books and research materials, administrative costs or salaries for marketing support personnel.

### **9.6 Limitation on Branding, Development and Sale of Products**

Nothing in this Agreement gives the Franchisee the right to, and the Franchisee will not: (a)(a) use or display the Marks on or in connection with any product or service other than those products and services prescribed or approved by Elephant & Castle; (b)(b) acquire, develop or manufacture any product using the name "Elephant & Castle®" or any of the Marks, or direct any other person or entity Entity to do so; (c)(c) acquire, develop or manufacture any product that has been developed or manufactured by or for Elephant & Castle for use in conjunction with the Restaurant System and which is sold under any of the Marks, or direct any other person or entity Entity to do so; and (d)(d) use, have access to, or have any rights to any proprietary formulas, ingredients, or recipes for any product created by or at the direction of Elephant & Castle and sold under the name "Elephant & Castle®" or any of the Marks.

### **9.7 Independent Shopping Services**

Elephant & Castle will have the right to hire an independent shopping service to visit, dine at and evaluate the Franchisee's Elephant & Castle® Restaurant and the quality of the foods, beverages and services provided to customers by the Franchisee's Elephant & Castle® Restaurant. Elephant & Castle will determine the number and frequency of the visits; the shopping service will make to the Franchisee's Elephant & Castle® Restaurant and the form of the reports the shopping service will provide to Elephant & Castle. The fees charged by the shopping service for visiting and evaluating the Franchisee's Elephant & Castle® Restaurant will be paid by Elephant & Castle. Elephant & Castle will provide the Franchisee with copies of all reports prepared by the shopping service evaluating the Franchisee's Elephant & Castle® Restaurant.

## **ARTICLE 10 STANDARD OPERATIONS MANUAL**

### **10.1 Compliance with Manual**

In order to protect the reputation and goodwill of Elephant & Castle, and to maintain the uniform operating standards under the Marks and the Restaurant System, the Franchisee will at all times conduct its business and operate its Elephant & Castle® Restaurant in compliance with Elephant & Castle's confidential and copyrighted Standard Operations Manual (~~sometimes referred to in this Agreement as the "Manual"~~) which is incorporated herein and made part of this Agreement. The Franchisee will conform to the common image and identity created by the foods, beverages, products, music, food portions, recipes, ingredients, cooking techniques and processes, cleanliness, sanitation and services associated with the Elephant & Castle® Restaurant which are portrayed and described by the Manual. The Franchisee acknowledges having received on loan from Elephant & Castle one copy of the Manual for the term of this Agreement.

### **10.2 Revisions to Manual**

Elephant & Castle reserves the right to and may from time to time revise the Standard Operations Manual. The Franchisee will, as promptly as reasonably possible, modify the operations of the Restaurant to implement all changes, additions and supplements made by Elephant & Castle to the Restaurant System which are reflected by the Manual. The Franchisee will implement all operational changes to the Restaurant System deemed necessary by Elephant & Castle to: (a)(a) improve the standards of service or the food, food items, beverages, and products offered for sale under the Restaurant System; (b)(b) protect the goodwill associated with the Marks; (c)(c) improve the operation of the Franchisee's Restaurant; or (d)(d) protect the health and safety of the Franchisee's employees, customers or

guests. The Franchisee will at all times keep its copy of the Manual current and up-to-date, and in the event of any dispute regarding the Manual, the terms of the master copy of the Manual maintained by Elephant & Castle will be controlling in all respects.

### **10.3 Confidentiality of Manual**

The Standard Operations Manual, and all revisions thereto, will at all times during the term of this Agreement and thereafter remain the sole and exclusive property of Elephant & Castle, which will own all copyright and other interests related to the Manual. The Franchisee will at all times during the term of this Agreement and thereafter treat the Manual and any other manuals created for or approved for use in the operation of the Franchisee's Elephant & Castle® Restaurant as secret and confidential, and the Franchisee will use all reasonable means to keep such information secret and confidential. Neither the Franchisee nor any employees of the Franchisee will make any copy, duplication, record or reproduction of the Manual, or any portion thereof, available to any unauthorized person. The Franchisee will not use the Manual or any information contained therein in connection with the operation of any other business or for any purpose other than in conjunction with the operation of the Franchisee's Elephant & Castle® Restaurant.

### **10.4 Confidentiality of Other Information**

Elephant & Castle and the Franchisee expressly understand and agree that Elephant & Castle will be disclosing and providing to the Franchisee certain confidential and proprietary information concerning the Restaurant System and the procedures, operations, technology and data used in connection with the Restaurant System. The Franchisee will not, during the term of this Agreement or thereafter, communicate, divulge or use for the benefit of any other person or ~~entity~~Entity any such confidential and proprietary information, knowledge or know-how concerning the methods of operation of the Elephant & Castle® Restaurant which may be communicated to the Franchisee, or of which the Franchisee may be apprised by virtue of this Agreement. The Franchisee will divulge such confidential and proprietary information only to its employees who must have access to it in order to operate the Franchisee's Elephant & Castle® Restaurant. Any and all information, knowledge and know-how including, without limitation, drawings, client lists, materials, equipment, technology, methods, procedures, techniques, recipes, specifications, computer programs, systems and other data which Elephant & Castle copyrights or designates as confidential or proprietary will be deemed confidential and proprietary for the purposes of this Agreement.

## **ARTICLE 11 BUSINESS PREMISES**

### **11.1 Site Location**

The Franchisee will be solely responsible for selecting the site of the Franchised Location for the Franchisee's Elephant & Castle® Restaurant, regardless of whether the Franchised Location is owned or leased by the Franchisee. The Franchisee will retain an experienced commercial real estate broker or salesperson who has at least five years experience in locating restaurant sites to advise the Franchisee and to locate, acquire, purchase or lease the site for the Franchisee's Elephant & Castle® Restaurant. Accordingly, no provision in this Agreement will be construed or interpreted to impose any obligation upon Elephant & Castle to locate a site for the Franchised Location, to assist the Franchisee in the selection of a suitable site for the Franchised Location, or to provide any assistance to the Franchisee in the purchase or lease of the Franchised Location.

### **11.2 Site Location Criteria**

Elephant & Castle may require that the Franchisee provide to Elephant & Castle for its review site information relating to, among other things, accessibility, visibility, potential traffic flows, population trends, household income and financial statistics, lease terms and other demographic information. The review of the site conducted by Elephant & Castle will not be deemed to be a warranty, representation or guaranty by Elephant & Castle that if the Franchisee's Elephant & Castle® Restaurant is opened and operated at that site, it will be a financial success. Elephant & Castle will have the right to require that the Franchisee obtain, at the Franchisee's expense, an economic feasibility and demographics study for the proposed site of the Franchised Location. Any feasibility and demographics study required by Elephant & Castle will be completed by a real estate or marketing expert mutually agreed upon in writing by Elephant & Castle and the Franchisee.

### **11.3 Construction and Remodeling Costs**

The Franchisee will provide to Elephant & Castle the dimensions and such other information as may be required by Elephant & Castle relating to the business premises for the Franchisee's Elephant & Castle® Restaurant. Based upon the information provided by the Franchisee, Elephant & Castle will prepare a seating study and kitchen layout for the Franchisee's Restaurant. The Franchisee will, at its cost, retain a licensed architect and will be responsible for the preparation of the floor plans, layouts, working drawings and construction plans and architectural plans and specifications for the Franchisee's Elephant & Castle® Restaurant. The Franchisee will be responsible for the accuracy of such floor plans, layouts, drawings, plans and specifications. The Franchisee will, at its expense, be solely responsible for all costs and expenses incurred for the construction, renovation or remodeling of the Franchisee's Elephant & Castle® Restaurant at the Franchised Location including, but not limited to, all costs for architectural plans and specifications, all modifications to the floor plans and layouts necessitated by the structure, construction or layout of the Franchised Location, building permits, site preparation, demolition, construction of the parking lot, landscaping, heating, ventilation and air conditioning, interior decorations, furniture, fixtures, equipment, leasehold improvements, labor, architectural and engineering fees, electricians, plumbers, general contractors and subcontractors.

### **11.4 Compliance with Specifications**

The Franchised Location and the Franchisee's Restaurant will conform to all specifications for the FF&E, exterior and interior decorating designs and color schemes established by Elephant & Castle. The Franchisee will obtain and pay for the FF&E required by Elephant & Castle and used by the Franchisee for the operation of its Elephant & Castle® Restaurant. The FF&E used in the Franchisee's Elephant & Castle® Restaurant must be installed and located in accordance with the floor plans approved by Elephant & Castle, and must conform to the quality standards and uniformity requirements established by Elephant & Castle.

### **11.5 Inspection During Construction or Renovation**

The Franchisee will be solely responsible for inspecting the Franchised Location during construction or renovation to confirm that the Franchised Location is being constructed or renovated in a workmanlike manner and according to the specifications established by Elephant & Castle. The Franchisee will be solely responsible for complying with all applicable local, state and federal laws, ordinances, statutes and building codes, and for acquiring all licenses and building and other permits required by all federal, state, city, municipal and local laws in connection with the construction or renovation of the Franchisee's business premises at the Franchised Location. Elephant & Castle will have no responsibility to the Franchisee or any other party if the Franchised Location is not constructed or renovated by the Franchisee or its

architect or contractor: ~~(a)~~(a) according to the standard specifications established by Elephant & Castle; ~~(b)~~(b) in compliance with all applicable federal, state or local laws or ordinances; or ~~(c)~~(c) in a workmanlike manner. The Franchisee will not open the Restaurant for business without the prior written approval of Elephant & Castle.

### **11.6 Maintenance**

The Franchisee will, at its expense, repair, paint and keep in a clean and sanitary condition the interior, the exterior, the parking lot, signage, exterior lighting, and the grounds of the Franchised Location and the Franchisee's Restaurant, and will replace all floor covering, wall coverings, light fixtures, curtains, blinds, shades, furniture, room furnishings, wall hangings, signs, fixtures and other decor items as they become worn-out, soiled or in disrepair. All mechanical equipment, including ventilation, heating and air conditioning, must be kept in good working order by the Franchisee at all times. All replacement FF&E and other items used in the Restaurant by the Franchisee must comply with the then-current standards and specifications of Elephant & Castle.

### **11.7 Remodeling of Business Premises**

The Franchisee will make the reasonable capital expenditures necessary to extensively remodel, modernize, redecorate and renovate ("remodel" or "remodeling") the Franchisee's Restaurant and to replace and modernize the FF&E so that the Franchisee's Restaurant will reflect the then-current image of an Elephant & Castle® Restaurant. All remodeling and all replacements for the FF&E must conform to the then-current specifications of Elephant & Castle. The Franchisee will commence remodeling the Franchised Location within four months after the date the Franchisee receives written notice from Elephant & Castle specifying the required remodeling, and will diligently complete such remodeling within a reasonable time after its commencement. Except as provided for in Article 11.6 of this Agreement, the Franchisee will not be required to remodel the Restaurant, or to replace and modernize its FF&E more than once every five years during the term of this Agreement.

## **ARTICLE 12 SIGNS**

### **12.1 Approved Signs**

The signs used at the Franchised Location (the "Signs") must comply with the standard sign plans and specifications established by Elephant & Castle. Elephant & Castle will provide the Franchisee with a copy of the standard sign plans and specifications and the Franchisee will, at its expense, prepare or cause the preparation of complete and detailed plans and specifications for the Signs and will submit such plans and specifications to Elephant & Castle for its written approval. Elephant & Castle will have the absolute right to inspect, examine, videotape and photograph the Signs for any reason at any time during the term of this Agreement.

### **12.2 Payment of Costs and Expenses**

The Franchisee will, at its expense, be responsible for any and all installation costs, sign costs, architectural fees, engineering costs, construction costs, permits, licenses, repairs, maintenance, utilities, insurance, taxes, assessments and levies in connection with the construction, erection, maintenance or use of the Signs including, if applicable, all electrical work, construction of the base and foundation, relocation of power lines and all required soil preparation work. The Franchisee will comply with all federal, state and local laws, regulations, building codes and ordinances relating to the construction, erection, maintenance and use of the Signs.