

12.3 Modifications; Inspection

The Franchisee may not alter, remove, change, modify, or redesign the Signs unless approved by Elephant & Castle in writing. Elephant & Castle will have the unequivocal and unilateral right to redesign the plans and specifications for the Signs during the term of this Agreement without the approval or consent of the Franchisee. Within 30 days after receipt of written notice from Elephant & Castle, the Franchisee must, at its expense, either modify or replace the Signs so that the Signs displayed at the Franchised Location will comply with the redesigned plans and specifications as issued by Elephant & Castle. The Franchisee will not be required to modify or replace the Signs more than once every five years.

ARTICLE 13 TELECOMMUNICATION AND COMPUTER EQUIPMENT

13.1 Telecommunication Equipment

The Franchisee will, at its sole expense, obtain and maintain at all times during the term of this Agreement, the telephone answering equipment, electronic telephone facsimile ("fax") equipment, and such other telecommunications equipment as may from time to time be required by Elephant & Castle for use in the operation of the Franchisee's Elephant & Castle® Restaurant business. At all times during the term of this Agreement, all telecommunication and fax equipment must be in compliance with the then-current standards and specifications established by Elephant & Castle, and must be in operation to send and receive information at such times as may be required by Elephant & Castle.

13.2 Satellite and Cable Television

The Franchisee will, at its sole expense, obtain, maintain and provide for viewing by the customers in the Franchisee's Restaurant, those cable and satellite television stations, networks and/or systems as may be specified in writing from time to time by Elephant & Castle. The Franchisee will, at its sole expense, obtain and maintain all services and equipment necessary to receive and display such cable and satellite television stations in accordance with the Standard Operations Manual.

13.3 Computer Hardware

The Franchisee will, at its sole expense, purchase the computer hardware and peripherals, including printers, monitors, modems and networking equipment (the "Computer Equipment") that will serve as, or integrate with, the Franchisee's point-of-sale cash register. All Computer Equipment must meet the standards and specifications established by Elephant & Castle and must be compatible with the software described in Article 13.4. The Franchisee will update the Computer Equipment as may from time to time be required by Elephant & Castle. The Franchisee will purchase a maintenance agreement for on-site maintenance of the Franchisee's point-of-sale cash register.

13.4 Software

The Franchisee will purchase the computer software and operating system specified by Elephant & Castle, including software for accounting and cost control, which meets the specifications described in the Standard Operations Manual. The Franchisee will, from time to time, update the computer software to meet the then-current standards and specifications issued by Elephant & Castle.

13.5 Access to Computer Data

Elephant & Castle will, at all times during the term of this Agreement, have the right to directly access all sales, financial, marketing, management and other business information and all other data maintained and stored by the Franchisee in its computer databases ("Data and Information"). The Franchisee will, at its expense, configure its computer and maintain the communications software and hardware necessary to permit Elephant & Castle to access the Data and Information by modem and telephone lines and to upload and download the Data and Information and other business information from and to the Franchisee's computers, computer data bases and software programs.

13.6 Internet Provider

The Franchisee will, at all times during the term of this Agreement, at the Franchisee's expense, have access to the Internet through the Microsoft Network, America Online, Prodigy, CompuServe or other Internet access provider designated or approved by Elephant & Castle.

13.7 E-Mail Address

The Franchisee will, at all times during the term of this Agreement, maintain an e-mail address on the Internet. The Franchisee's e-mail address will be provided to Elephant & Castle and will be used as a method for the Franchisee and Elephant & Castle to communicate with each other and to transmit documents and other information. The Franchisee will not use the words "Elephant & Castle®" as any part of its e-mail address or its domain name if a home page is maintained by the Franchisee on the Internet. The Franchisee will review its e-mail at least once a day and will respond to all e-mails within 24 hours, except for weekend e-mails, which will be answered every Monday.

13.8 Internet Website

The Franchisee will not establish a website or home page on the Internet (the "Home Page") to advertise or promote its Elephant & Castle® Restaurant without the prior written consent of Elephant & Castle. All features of any proposed Home Page, including its domain name, content, format and links to other websites, must be approved by Elephant & Castle prior to the activation of the Home Page. The Franchisee's Home Page must advertise only the Franchisee's Restaurant, and all content and information maintained by the Franchisee on the Home Page will at all times be subject to the provisions of this Agreement including, without limitation, the provisions of this Agreement relating to the Marks, the Restaurant business conducted by the Franchisee pursuant to this Agreement, advertising approval, confidentiality, and product and service limitations. The Franchisee will not link its Home Page to any Internet site, other than Elephant & Castle's Internet home page, without Elephant & Castle's prior written approval.

ARTICLE 14 INSURANCE

14.1 General Liability Insurance

The Franchisee will procure and maintain in full force and effect, at its sole cost and expense, a general liability insurance policy with coverage of at least \$2,000,000 per occurrence insuring the Franchisee, Elephant & Castle and their respective officers, directors, agents and employees from and against any and all loss, liability, claim or expense of any kind whatsoever, including bodily injury, personal injury, food poisoning or other sickness, death, property damage, products liability and all other occurrences resulting from the condition, operation, use, business or occupancy of the Franchisee's Restaurant and the Franchised Location, including

the surrounding premises or area, the parking area and the sidewalks of the Franchised Location.

14.2 Liquor Liability Insurance

The Franchisee will procure and maintain in full force and effect, at its sole cost and expense, liquor liability insurance with coverage of at least \$2,000,000 per occurrence insuring the Franchisee, Elephant & Castle and their respective officers, directors, agents and employees from any and all loss, liability, claim or expense of any kind whatsoever, including bodily injury, personal injury, death, property damage and all other occurrences resulting from the sale or service of liquor by the Franchisee or any of the Franchisee's employees in connection with the Franchisee's Restaurant.

14.3 Automobile Liability Insurance

The Franchisee will procure and maintain in full force and effect, at its sole cost and expense, automobile liability insurance with coverage of at least \$1,000,000 per occurrence insuring the Franchisee, Elephant & Castle and their respective officers, directors, agents and employees from any and all loss, liability, claim or expense of any kind whatsoever resulting from the use, operation or maintenance of all automobiles or vehicles owned by the Franchisee or used by the Franchisee or any of the Franchisee's employees (including automobiles owned or leased by any employee of the Franchisee).

14.4 Property Insurance

The Franchisee will procure and maintain in full force and effect, at its sole cost and expense, "all risks" property insurance coverage, which will include fire and extended coverage, for the FF&E owned or leased by the Franchisee and used by the Franchisee at the Franchised Location. The Franchisee's property insurance policy (including fire and extended coverage) must have coverage limits equal to at least actual "replacement" cost.

14.5 Business Interruption Insurance

The Franchisee will procure and maintain, at its sole cost and expense, business interruption insurance insuring the Franchisee for and against all losses and damages resulting from an interruption in the operation of the Franchisee's Restaurant.

14.6 Building Insurance

If the Franchisee, or any of the Franchisee's Owners, owns, either directly or indirectly, the building or the business premises at the Franchised Location, then the Franchisee will insure the building or the business premises for and against all risk, loss and damages in an amount equal to at least actual "replacement" cost. If the Franchised Location is either partially or completely destroyed by fire or any other catastrophe, then the Franchisee will use the insurance proceeds to repair or reconstruct the Franchised Location and recommence business as soon as reasonably possible.

14.7 Umbrella Liability

The Franchisee will, at its sole cost and expense, purchase and maintain umbrella liability insurance in the amount of \$1,000,000 that will provide liability insurance coverage for any liability incurred by the Franchisee in excess of the primary general liability, liquor liability, automobile liability and other liability insurance coverage carried by the Franchisee.

14.8 Insurance Required by Law

The Franchisee will, at its sole cost and expense, procure and maintain all other insurance required by state or federal law, including workers' compensation insurance for its employees.

14.9 Insurance Companies; Evidence of Coverage

All insurance companies providing coverage to the Franchisee must be acceptable to and approved by Elephant & Castle, and must be licensed in the state where coverage is provided. The Franchisee will provide Elephant & Castle with certificates of insurance evidencing the insurance coverage required of the Franchisee pursuant to this Article no later than the date the Franchisee opens for business, and the Franchisee will immediately provide, upon expiration, change or cancellation, a new certificate of insurance to Elephant & Castle.

14.10 Defense of Claims

All liability insurance policies procured and maintained by the Franchisee in connection with the Franchisee's Restaurant will require the insurance company to provide and pay for attorneys to defend any legal actions, lawsuits or claims brought against the Franchisee, Elephant & Castle, and their respective officers, directors, agents and employees.

14.11 Rights of Elephant & Castle

All insurance policies procured and maintained by the Franchisee pursuant to this Article will name Elephant & Castle as an additional insured, will contain endorsements by the insurance companies waiving all rights of subrogation against Elephant & Castle, and will stipulate that Elephant & Castle will receive copies of all notices of cancellation, nonrenewal, or coverage reduction or elimination at least 30 days prior to the effective date of such cancellation, nonrenewal or coverage change.

ARTICLE 15 LICENSING OF MARKS AND RESTAURANT SYSTEM

15.1 Right to License Marks

Elephant & Castle warrants that, except as otherwise provided for herein, it has the right to grant the Franchise and to license the Marks and the Restaurant System to the Franchisee. Any and all improvements made by the Franchisee to the Marks or the Restaurant System will be the sole and absolute property of Elephant & Castle, which will have the exclusive right to register and protect all such improvements in its name in accordance with applicable law. The Franchisee's right to use and identify with the Marks and the Restaurant System will exist concurrently with the term of this Agreement and such use by the Franchisee will inure exclusively to the benefit of Elephant & Castle.

15.2 Conditions to License of Marks

Elephant & Castle hereby grants to the Franchisee the nonexclusive personal right to use the Marks and the Restaurant System in accordance with the provisions of this Agreement. The Franchisee's nonexclusive personal right to use "Elephant & Castle®" as the name of the Franchisee's Restaurant and its right to use the Marks and the Restaurant System applies only to the Franchisee's Restaurant at the Franchised Location and such rights will exist only so long as the Franchisee fully performs and complies with all of the conditions, terms and covenants of this Agreement. "Nonexclusive," for the purposes of this Article, will mean that Elephant & Castle has or will grant franchises to other franchisees authorizing such franchisees to operate Elephant & Castle® Restaurants in conformity with the Restaurant System using the name "Elephant & Castle®" and the other Marks, and that Elephant & Castle, its affiliates and/or subsidiaries have operated and will operate Elephant & Castle® Restaurants.

15.3 Franchisee's Use of Marks

The Franchisee will only use the Marks designated by Elephant & Castle and only in the manner authorized and permitted by Elephant & Castle. The Franchisee's right to use the Marks is limited to the uses set forth in this Agreement and any unauthorized use will constitute an infringement of the rights of Elephant & Castle under this Agreement and under the Lanham Act (15 U.S.C. §1051, *et seq.*). The Franchisee will not have or acquire any rights in any of the Marks or the Restaurant System other than the right of use as provided herein. The Franchisee will have the right to use the Marks and the Restaurant System only in the manner prescribed, directed and approved by Elephant & Castle in writing and will not have the right to use the Marks in connection with the sale of any products or services other than those prescribed or approved by Elephant & Castle for sale by the Franchisee. If, in the judgment of Elephant & Castle, the acts of the Franchisee are contrary to the limitations set forth in this Agreement or infringe upon or demean the goodwill, uniformity, quality or business standing associated with the Marks or the Restaurant System, then the Franchisee will, upon written notice from Elephant & Castle, immediately modify its use of the Marks or the Restaurant System in the manner prescribed by Elephant & Castle in writing.

15.4 Adverse Claims to Marks

If there are any claims by any third party that its rights to any or all of the Marks are superior to those of Elephant & Castle and if the attorneys for Elephant & Castle are of the opinion that such claim by a third party is legally meritorious, or if there is an adjudication by a court of competent jurisdiction that any party's rights to the Marks are superior to those of Elephant & Castle, then upon receiving written notice from Elephant & Castle, the Franchisee will, at its sole expense, immediately adopt and use the changes and amendments to the Marks that are specified by Elephant & Castle. If so specified, the Franchisee will immediately cease using the Marks specified by Elephant & Castle, and will, as soon as reasonably possible, commence using the new trademarks, trade names, service marks, logos, designs and commercial symbols designated by Elephant & Castle in writing at the Franchised Location, and in connection with all advertising, marketing and promotion of the Franchisee's Restaurant. The Franchisee will not make any changes or amendments whatsoever to the Marks or the Restaurant System unless specified or approved in advance by Elephant & Castle in writing.

15.5 Defense or Enforcement of Rights to Marks

The Franchisee will have no right to and will not defend or enforce any rights associated with the Marks or the Restaurant System in any court or other proceedings for or against imitation, infringement, prior use or for any other claim or allegation. The Franchisee will give Elephant & Castle immediate written notice of any and all claims or complaints made against or associated with the Marks and the Restaurant System and will, without compensation for its time and at its expense, cooperate in all respects with Elephant & Castle in any lawsuits or other proceedings involving the Marks and the Restaurant System. Elephant & Castle will have the sole and absolute right to determine whether it will commence or defend any litigation involving the Marks and/or the Restaurant System, and the cost and expense of all litigation incurred by Elephant & Castle, including attorneys' fees, specifically relating to the Marks or the Restaurant System will be paid by Elephant & Castle.

15.6 Tender of Defense

If the Franchisee is named as a defendant or party in any action involving the Marks or the Restaurant System and if the Franchisee is named as a defendant or party solely because the plaintiff or claimant is alleging that the Franchisee does not have the right to use the Marks or the Restaurant System licensed by Elephant & Castle to the Franchisee at the Franchised Location pursuant to this Agreement, then the Franchisee will have the right to tender the

defense of the action to Elephant & Castle and Elephant & Castle will, at its expense, defend the Franchisee in the action provided that the Franchisee has tendered defense of the action to Elephant & Castle within seven days after receiving service of the pleadings or the Summons and Complaint relating to the action. Elephant & Castle will indemnify and hold the Franchisee harmless from any damages assessed against the Franchisee in any actions resulting solely from the Franchisee's proper and authorized use of the Marks and the Restaurant System at the Franchised Location if the Franchisee has timely tendered defense of the action to Elephant & Castle.

15.7 Franchisee's Right to Participate in Litigation

The Franchisee may, at its expense, retain an attorney to represent it individually in all litigation and court proceedings involving the Marks or the Restaurant System, and may do so with respect to matters involving only the Franchisee (*i.e.*, not involving Elephant & Castle or its interests); however, Elephant & Castle and its attorneys will control and conduct all litigation involving the Marks or the Restaurant System and the rights of Elephant & Castle. Except as expressly provided for herein, Elephant & Castle will have no liability to the Franchisee for any costs that the Franchisee may incur in any litigation involving the Marks or the Restaurant System, and the Franchisee will pay for all costs, including attorneys' fees, that it may incur in any litigation or proceeding arising as a result of matters referred to under this Article, unless it tenders the defense to Elephant & Castle in a timely manner pursuant to and in accordance with Article 15.6.

ARTICLE 16 TRAINING PROGRAM; OPENING ASSISTANCE

16.1 Training

Elephant & Castle will provide a training program for the Franchisee's Management Team at an approved training site designated by Elephant & Castle, to educate, familiarize and acquaint them with the Restaurant System and the operations of the Elephant & Castle® Restaurant. The training program will include on-the-job instruction on topics applicable to the position, such as basic business procedures, equipment operation and maintenance, hiring and training of employees, scheduling, advertising and promotion, purchasing procedures, food preparation, food safety, food presentation, food quality, food portions, liquor service, food and beverage inventory and cost control, customer service, janitorial service, general maintenance and other topics selected by Elephant & Castle. The Franchisee's Management Team must successfully complete the training program and be certified in writing by Elephant & Castle prior to commencing the business operations of the Franchisee's Restaurant. The training program will be scheduled by Elephant & Castle in its sole discretion and will be for a minimum of five consecutive days for the Franchisee (or the Franchisee's Operating Partner), for a minimum of 30 consecutive days for the Franchisee's General Manager and for the Franchisee's Kitchen Manager, and for a minimum of 14 consecutive days for the Assistant Manager. If any member of the Management Team does not successfully complete the required training program within 120 days after the date of this Agreement, then such person(s) will not be permitted or authorized to participate in the operations of the Franchisee's Restaurant, and Elephant & Castle will have the right to terminate this Agreement pursuant to Article 4.2.

16.2 Changes in Personnel

The Franchisee must at all times employ General Managers, Kitchen Managers and Assistant Managers who have successfully completed the prescribed training program and, consequently, have been certified in writing by Elephant & Castle to participate in the operation of the Franchisee's Elephant & Castle® Restaurant. The Franchisee will immediately notify

Elephant & Castle in writing of any personnel changes in the positions of the General Manager, Kitchen Manager or Assistant Manager of the Franchisee's Restaurant. If the Franchisee hires a new General Manager, Kitchen Manager or Assistant Manager who has not successfully completed the required training program, then that person must begin the training program within 30 days after the date of hire by the Franchisee, and must attend and successfully complete the training program. If, in the judgment of Elephant & Castle, the new General Manager, Kitchen Manager or Assistant Manager does not successfully complete the required training program, then the Franchisee will not permit that person to continue to participate in the operation of the Franchisee's Restaurant.

16.3 Initial Training of New Personnel

The initial training program for new General Managers, Kitchen Managers and Assistant Managers, as required by Article 16.2 of this Agreement, will be conducted by Elephant & Castle either at the Franchised Location or at another location designated by Elephant & Castle at the sole discretion of Elephant & Castle. If Elephant & Castle provides the initial training program for a new General Manager, Kitchen Manager or Assistant Manager at the Franchised Location, then the Franchisee will pay Elephant & Castle the then-current per day on-site Training Fee and reimburse Elephant & Castle for all expenses it incurs in connection with providing the training at the Franchised Location, including Travel Expenses. If the initial training program of new personnel is provided by Elephant & Castle at another site designated by Elephant & Castle other than the Franchised Location, then there will be no per day Training Fee and the Franchisee will not be required to reimburse Elephant & Castle for its expenses.

16.4 Payment of Salaries and Expenses

The Franchisee will pay the salaries, fringe benefits, payroll taxes, unemployment compensation, workers' compensation insurance, Travel Expenses and all other expenses for all persons who attend any type of training program on behalf of the Franchisee.

16.5 Opening Assistance

After the Management Team has successfully completed the training program and have been certified, Elephant & Castle will arrange for a training coordinator, a corporate chef, a bar trainer, a kitchen trainer, and a service trainer (the "Training Staff") to be at the Franchised Location for a period of not less than 12 consecutive days to provide opening assistance to the Franchisee. The Training Staff will provide opening assistance with implementing internal controls, recruiting and training employees, and implementing the Franchisee's pre-opening plan and initial business operations. The Franchisee will pay Elephant & Castle an Opening Assistance Fee of \$10,000 within five days after the opening date of the Restaurant and will be responsible for arranging and paying for the Training Staff's hotel accommodations and meals while providing the opening assistance. The Franchisee will accept and fully cooperate with the opening assistance provided by Elephant & Castle, and will not open and commence initial business operations until Elephant & Castle has given the Franchisee written approval to open the Franchisee's Restaurant.

16.6 Opening Date; Rescheduling Fee

The Franchisee will notify Elephant & Castle in writing of the scheduled opening date for its Elephant & Castle® Restaurant at least 30 days prior to the date the Franchisee intends to open its Restaurant for business. The Franchisee will also subsequently notify Elephant & Castle in writing if there is any change in the original scheduled opening date of its Restaurant. If the actual opening date for the Franchisee's Restaurant does not occur on the opening date specified in the Franchisee's first written notification to Elephant & Castle, then the Franchisee will pay Elephant & Castle a Rescheduling Fee to reimburse Elephant & Castle for the

expenses incurred by Elephant & Castle to change the Training Staff's travel arrangements and all other costs and expenses associated with the Franchisee's failure to open its Restaurant on the original scheduled opening date according to the following chart:

Number of Days Prior to Original Scheduled Opening Date that Elephant & Castle is Notified of Change in Scheduled Opening Date	Amount of Rescheduling Fee
More than 30 days	\$0
21 days to 30 days	\$5,000
Less than 21 days	\$10,000

The Franchisee will pay Elephant & Castle the applicable Rescheduling Fee within five days after the actual opening date of the Franchisee's Restaurant.

16.7 Advisory Assistance

If after the opening of the Franchisee's Restaurant, Elephant & Castle provides any advisory management, operations or other assistance to the Franchisee at the Franchised Location, then within five days after receipt of an invoice from Elephant & Castle specifying the amount owed, the Franchisee will pay Elephant & Castle the then-current per diem fees charged by Elephant & Castle and reimburse Elephant & Castle for the expenses Elephant & Castle incurred in connection with providing the advisory assistance to the Franchisee at the Franchised Location, including Travel Expenses.

16.8 Hiring and Training of Employees by Franchisee

The Franchisee will hire all employees of the Restaurant, will be exclusively responsible for the terms of their employment and compensation, and will implement a training program for employees of the Restaurant in compliance with the Standard Operations Manual. The Franchisee will at all times maintain a staff of trained employees sufficient to efficiently operate the Restaurant in compliance with Elephant & Castle's standards.

**ARTICLE 17
TRANSFER**

17.1 Transfer by Elephant & Castle

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

17.2 Transfer by Franchisee to Owned or Controlled Entity

If the Franchisee is an individual or a partnership, this Agreement may be Transferred by the Franchisee to a corporation or limited liability company that is owned or controlled by the Franchisee without paying any Transfer Fee, provided that: ~~(a)~~(a) the Franchisee and the shareholders who own the voting capital stock of the assignee corporation or the members who own the membership interests of the assignee limited liability company sign or have signed a

personal guaranty in the form attached to this Agreement; ~~(b)~~(b) the Franchisee furnishes prior written proof to Elephant & Castle substantiating that the assignee corporation or limited liability company will be financially able to perform all of the terms and conditions of this Agreement; and ~~(c)~~(c) none of the shareholders or members operate, franchise, develop, manage or control any Anglo/British style pub or related restaurant concept that is in any way similar to or competitive with the Franchisee's Elephant & Castle® Restaurant. The Franchisee will give Elephant & Castle 15 days prior written notice of the Transfer of this Agreement to a corporation or limited liability company owned or controlled by the Franchisee; however, the Transfer of this Agreement will not be valid or effective until Elephant & Castle has received the documents which its attorneys deem reasonably necessary to properly and legally document the Transfer of this Agreement to the corporation or limited liability company as provided herein.

17.3 Transfer by Individual Franchisee in Event of Death or Permanent Disability

If the Franchisee is an individual, then in the event of the death or permanent disability of the Franchisee, this Agreement may be Transferred by the Franchisee to any designated person or beneficiary without the payment of any Transfer Fee. However, the Transfer of this Agreement to the transferee, assignee or beneficiary of the Franchisee will be subject to the applicable provisions of Article 17.6, and will not be valid or effective until Elephant & Castle has received the properly executed legal documents which its attorneys deem necessary to properly and legally document the Transfer of this Agreement. The transferee, assignee or beneficiary must agree to be unconditionally bound by the terms and conditions of this Agreement and to personally guarantee the performance of the Franchisee's obligations under this Agreement. Furthermore, the transferee, assignee or beneficiary must complete the initial training program as set forth in Article 16.1 of this Agreement. The training will be conducted by Elephant & Castle at a location designated by Elephant & Castle. There will be no charge to the transferee, assignee or beneficiary for the initial training program, but that person's salary and expenses will be paid in accordance with Article 16.4 of this Agreement.

17.4 Sale of Ownership Interests to Public

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

17.5 Elephant & Castle's Warrant

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

17.6 Transfer by Franchisee

This Agreement and the rights granted to the Franchisee pursuant to this Agreement may be Transferred by the Franchisee only with the prior written approval of Elephant & Castle. Elephant & Castle will not unreasonably withhold its written consent to any Transfer of this Agreement, if the Transfer does not violate Article 17.9 of this Agreement and if the Franchisee and/or the transferee franchisee comply with the following conditions: ~~(a)~~(a) the Franchisee has provided written notice to Elephant & Castle of the proposed Transfer of this Agreement at least 90 days prior to the transaction; ~~(b)~~(b) all of the Franchisee's monetary obligations due to Elephant & Castle have been paid in full, and the Franchisee is not otherwise in default under this Agreement; ~~(c)~~(c) the Franchisee has executed a written agreement, in a form satisfactory to Elephant & Castle, in which the Franchisee agrees to observe all applicable provisions of this Agreement, including the provisions with obligations and covenants that continue beyond the expiration or termination of this Agreement, which includes the covenants not to compete contained in Article 21 of this Agreement; ~~(d)~~(d) Elephant & Castle and the Franchisee have executed a joint and mutual release, in a form satisfactory to Elephant & Castle, of any and all claims against Elephant & Castle or the Franchisee and of any and all claims against their officers, directors, shareholders, Owners, agents and employees, in their corporate and individual capacities arising from, in connection with, or as a result of this Agreement or the Franchisee's purchase of the Franchise including, without limitation, all claims arising under any federal or state franchising laws or any other federal, state or local law, rule or ordinance; provided, however, that Elephant & Castle and the Franchisee may exclude from the coverage of the release any prior or concurrent written agreements between them; ~~(e)~~(e) the transferee franchisee has demonstrated to the satisfaction of Elephant & Castle that he, she or it meets the managerial, financial and business standards required by Elephant & Castle for new franchisees, possesses a good business reputation and credit rating, and possesses the aptitude and ability to operate the Elephant & Castle® Restaurant in an economic and businesslike manner (as may be evidenced by prior related business experience or otherwise); ~~(f)~~(f) the transferee franchisee and all parties having a legal or beneficial interest in the transferee franchisee including, if applicable, the transferee franchisee's Owners and the Personal Guarantors, execute the transfer and assignment agreement between Elephant & Castle, the Franchisee and the transferee franchisee and such other ancillary agreements as Elephant & Castle or its legal counsel may require to Transfer this Agreement for the Franchisee's Elephant & Castle® Restaurant to the transferee franchisee; ~~(g)~~(g) the transferee franchisee has purchased the Franchised Location, acquired the lease for the Franchised Location or otherwise acquired possession of and access to the Franchised Location for a term consistent with the remaining term of this Agreement; ~~(h)~~(h) the transferee franchisee has purchased or otherwise acquired a valid liquor license and a valid food service license for the Elephant & Castle® Restaurant at the Franchised Location; and ~~(i)~~(i) the transferee franchisee

and its employees have successfully completed the initial training program as set forth in Article 16.1 of this Agreement.

17.7 Acknowledgment of Restrictions

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

17.8 Transfer Fee

If this Agreement is Transferred to another person or entity Entity, or if the Franchisee's Owner(s) Transfers in the aggregate controlling interest in the Franchisee to a third party, then except as provided for in Article 17.2 or Article 17.3, the Franchisee will pay Elephant & Castle on or before the date of Transfer a Transfer Fee of \$5,000 to cover the costs incurred by Elephant & Castle in connection with the Transfer, including attorneys' fees, accountants' fees, out-of-pocket expenses, long distance telephone calls, administrative costs and the time of its employees and officers. The Transfer Fee also covers the cost to Elephant & Castle to provide the initial training program to the transferee franchisee at the location designated by Elephant & Castle. However, the Transfer Fee does not cover the salaries or expenses incurred by the transferee franchisee and its employees in connection with attending the initial training program, including Travel Expenses, and such salaries and expenses will be paid in accordance with Article 16.4 of this Agreement.

17.9 Transfer to Competitor Prohibited

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

ARTICLE 18 TERMINATION RIGHTS OF ELEPHANT & CASTLE

18.1 Conditions of Breach

In addition to its other rights of termination contained in this Agreement, Elephant & Castle will have the right to terminate this Agreement if: ~~(a)~~(a) the Franchisee fails to open and commence operations of its Elephant & Castle® Restaurant within 12 months after the date of this Agreement or when the Franchised Location is ready for the Franchisee's occupancy, whichever is earlier; ~~(b)~~(b) the Franchisee violates any material provision, term or condition of this Agreement including, but not limited to, the failure to timely pay the Initial Fee, the Opening Assistance Fee, any Continuing Fees, or any other monetary obligations or fees due pursuant to this Agreement; ~~(c)~~(c) the Franchisee or any of its directors, officers or majority Owners are convicted of, or plead guilty to or no contest to, a charge of violating any law relating to the

Franchisee's Elephant & Castle® Restaurant, or any felony; ~~(d)~~(d) the Franchisee fails to timely pay any of its obligations or liabilities due and owing to Elephant & Castle, suppliers, banks, purveyors, other creditors or to any federal, state or municipal government (including, if applicable, federal and state income, sales, property, withholding and unemployment taxes); ~~(e)~~(e) the Franchisee is determined to be insolvent within the meaning of applicable state or federal law, any involuntary petition for bankruptcy is filed against the Franchisee, or the Franchisee files for bankruptcy or is adjudicated a bankrupt under applicable state or federal law; ~~(f)~~(f) the Franchisee makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors; ~~(g)~~(g) any check issued by the Franchisee is dishonored because of insufficient funds (except where the check is dishonored because of an error in bookkeeping or accounting) or closed accounts; ~~(h)~~(h) the Franchisee voluntarily or otherwise abandons the franchised Restaurant; ~~(i)~~(i) the Franchisee is involved in any act or conduct which materially impairs the goodwill associated with the name "Elephant & Castle®" or any other Marks or the Restaurant System; ~~(j)~~(j) the lease for the Franchised Location is terminated or canceled for non-payment of rent or other legal reasons, or the Franchisee otherwise loses possession of all or a significant portion of the Franchised Location; ~~(k)~~(k) the Franchisee's food service license or liquor license for the Franchised Location is terminated or canceled for any reason, or the Franchisee otherwise loses the food service license or liquor license for its Elephant & Castle® Restaurant; ~~(l)~~(l) the Franchisee fails to timely file any federal or state income or sales tax return or fails to timely pay any federal or state income or sales taxes, or ~~(m)~~(m) the Franchisee fails or refuses to provide the documents, records and other materials requested by Elephant & Castle to substantiate the Monthly Financials and the Financial Statements pursuant to Article 7.3 or to produce and permit Elephant & Castle to audit the Franchisee's Financial Records in accordance with Article 7.5 of this Agreement.

18.2 Notice of Breach

Except as provided in Article 4.2, Article 18.5 and Article 18.6 of this Agreement, Elephant & Castle will not have the right to terminate this Agreement until: ~~(a)~~(a) written notice setting forth the alleged breach in detail has been delivered to the Franchisee by Elephant & Castle; and ~~(b)~~(b) after receiving the written notice, the Franchisee fails to correct the alleged breach within the period of time specified by applicable law. If applicable law does not specify a time period to correct an alleged breach, then the Franchisee will have 30 days after receipt of the written notice to correct the alleged breach, except where the written notice states that the Franchisee is delinquent in the payment of the Initial Fee, the Opening Assistance Fee, any Continuing Fees or other fees payable to Elephant & Castle pursuant to this Agreement, in which case the Franchisee will have 10 days after receipt of written notice to correct the breach by making full payment (including Administrative Fees and interest as provided for herein) to Elephant & Castle. If the Franchisee fails to correct the alleged breach set forth in the written notice within the applicable period of time, then this Agreement may be terminated by Elephant & Castle as provided for in this Agreement. For the purposes of this Agreement, an alleged breach of this Agreement by the Franchisee will be deemed to be "corrected" if both Elephant & Castle and the Franchisee agree in writing that the alleged breach has been corrected.

18.3 Arbitration

If the Franchisee notices arbitration in accordance with Article 23 of this Agreement within the time period established in Article 18.2 for correcting the alleged breach, then Elephant & Castle will not have the right to terminate this Agreement until the facts of the alleged breach have been submitted to arbitration, the arbitrator determines that the Franchisee has breached this Agreement and the Franchisee fails to correct the breach within the applicable time period. If

the arbitrator determines that the Franchisee has violated or breached this Agreement as alleged by Elephant & Castle in the written notice given to the Franchisee, then unless applicable law specifies otherwise, the Franchisee will have 30 days from the date the arbitrator issues a written determination on the matter to correct the specified breach or violation of this Agreement, except where the Franchisee's breach is for failure to pay any fees or other payments to Elephant & Castle, in which case the Franchisee will have 10 days to make full payment, including all interest and Administrative Fees, to Elephant & Castle. If the Franchisee does timely correct the specified breach or violation of this Agreement, then this Agreement will remain in full force and effect. For the purpose of this Agreement, any controversy or dispute on the issue of whether the Franchisee has timely corrected the specified breach or violation of this Agreement will also be subject to arbitration as provided for herein. The time limitations set forth in this Article within which the Franchisee may demand arbitration of a dispute or controversy relating to the right of Elephant & Castle to terminate this Agreement for an alleged breach are mandatory. If the Franchisee fails to comply with the time limitations set forth in this Article, then Elephant & Castle may terminate this Agreement as provided for herein.

18.4 Notice of Termination

Except as provided in Article 18.5 and Article 18.6, if Elephant & Castle has complied with the provisions of Article 18.2 and the Franchisee has not corrected the alleged breach set forth in the written notice within the applicable time period specified in this Agreement, then Elephant & Castle will have the absolute right to terminate this Agreement by giving the Franchisee written notice stating to the Franchisee that this Agreement is terminated and in that event the effective date of termination of this Agreement will be the day the written notice of termination is received by the Franchisee.

18.5 Immediate Termination Rights of Elephant & Castle

Elephant & Castle will have the absolute right, unless precluded by applicable law, to immediately terminate this Agreement if: ~~(a)~~(a) the Franchisee or any of its directors, officers or majority Owners are convicted of, or plead guilty to or no contest to a charge of violating any law relating to the Franchisee's Elephant & Castle® Restaurant, or any felony; ~~(b)~~(b) the Franchisee is deemed insolvent within the meaning of applicable state or federal law, any involuntary petition for bankruptcy is filed against the Franchisee, or the Franchisee files for bankruptcy or is adjudicated a bankrupt under applicable state or federal law; ~~(c)~~(c) the Franchisee makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors; ~~(d)~~(d) the Franchisee voluntarily or otherwise abandons the Restaurant; ~~(e)~~(e) the Franchisee fails or refuses to provide the documents, records and other materials requested by Elephant & Castle to substantiate the Monthly Financials and the Financial Statements pursuant to Article 7.3 or to produce and permit Elephant & Castle to audit the Franchisee's Financial Records in accordance with Article 7.5 of this Agreement; ~~(f)~~(f) the Franchisee is involved in any act or conduct which materially impairs the goodwill associated with the Marks of Elephant & Castle or with the Restaurant System and the Franchisee fails to correct the breach within 24 hours after receipt of written notice from Elephant & Castle of the breach; or ~~(g)~~(g) the Franchisee violates any provision, term or condition of this Agreement three or more times during a 12 month period, without regard to whether the violations were of a similar or different nature or whether the violations were corrected within the prescribed cure period after receipt of written notice of the violations.

18.6 Notice of Immediate Termination

Except as set forth in Article 18.5(f), if this Agreement is terminated by Elephant & Castle pursuant to Article 18.5 above, then Elephant & Castle will give the Franchisee written notice by personal service or prepaid registered or certified mail that this Agreement is terminated and in that event the effective date of termination of this Agreement will be the day the written notice of termination is received by the Franchisee. If this Agreement is terminated by Elephant & Castle pursuant to Article 18.5(f), then this Agreement will terminate on the first minute of the twenty-fifth hour after receipt of the written notice of termination if the Franchisee fails to correct the alleged breach within 24 hours after receiving the written notice of termination.

18.7 Other Remedies

Nothing in this Article will preclude Elephant & Castle from seeking other remedies or damages under state or federal laws, common law, or under this Agreement against the Franchisee including, but not limited to, attorneys' fees, punitive damages and injunctive relief. If this Agreement is terminated by Elephant & Castle pursuant to this Article, or if the Franchisee breaches this Agreement by a wrongful termination or a termination that is not in strict compliance with the terms and conditions of Article 19 of this Agreement, then Elephant & Castle will be entitled to all damages from the Franchisee that Elephant & Castle has sustained and will sustain in the future as a result of the Franchisee's breach of this Agreement.

ARTICLE 19 FRANCHISEE'S TERMINATION RIGHTS

19.1 Conditions of Breach

The Franchisee will have the right to terminate this Agreement, as provided herein, if Elephant & Castle violates any material provision, term or condition of this Agreement, or fails to timely pay any material uncontested obligations due and owing to the Franchisee.

19.2 Notice of Breach

The Franchisee will not have the right to terminate this Agreement or to commence any action, lawsuit or proceeding against Elephant & Castle for breach of this Agreement, injunctive relief, violation of any state, federal or local law (including alleged violations of franchise laws), violation of common law (including allegations of fraud and misrepresentation), rescission, general or punitive damages, or termination, unless and until: ~~(a)~~(a) written notice setting forth the alleged breach or violation in detail has been delivered to Elephant & Castle by the Franchisee; and ~~(b)~~(b) Elephant & Castle fails to correct the alleged breach or violation within 30 days after receipt of the written notice. If Elephant & Castle fails to correct the alleged breach or violation within 30 days after receiving written notice, then this Agreement may be terminated by the Franchisee as provided for in this Agreement. For the purposes of this Agreement, an alleged breach or violation of this Agreement by Elephant & Castle will be deemed to be "corrected" if both Elephant & Castle and the Franchisee agree in writing that the alleged breach or violation has been corrected.

19.3 Arbitration

If Elephant & Castle notices arbitration in accordance with Article 23 of this Agreement within 30 days after the date Elephant & Castle receives written notice of any alleged breach of this Agreement from the Franchisee, then the Franchisee will not have the right to terminate this Agreement until the facts of the alleged breach have been submitted to arbitration, the arbitrator determines that Elephant & Castle has breached this Agreement and Franchisee fails to timely correct the breach as set forth in this Agreement. If the arbitrator determines that

Elephant & Castle has violated or breached this Agreement as alleged by the Franchisee in the written notice given to Elephant & Castle, then Elephant & Castle will have 30 days after the date the arbitrator issues a written determination on the matter to correct the specified breach or violation of this Agreement, then this Agreement will remain in full force and effect. If Elephant & Castle does timely correct the specified breach or violation of this Agreement, then this Agreement will remain in full force and effect. If Elephant & Castle does not correct the specified breach or violation of this Agreement, then the Franchisee will have the right to terminate this Agreement by giving Elephant & Castle written notice by personal service or prepaid registered or certified mail that this Agreement is terminated and in that event the effective date of termination of this Agreement will be the day the written notice of termination is received by Elephant & Castle. For the purpose of this Agreement, any controversy or dispute on the issue of whether Elephant & Castle has timely corrected the specified breach or violation of this Agreement will also be subject to arbitration as provided for herein. The time limitation set forth in this Article within which Elephant & Castle may demand arbitration of a dispute or controversy relating to the right of the Franchisee to terminate this Agreement for an alleged breach is mandatory. If Elephant & Castle fails to comply with the time limitation set forth in this Article, then the Franchisee may terminate this Agreement as provided for herein.

19.4 Waiver

The Franchisee must give Elephant & Castle immediate written notice of any alleged breach or violation of this Agreement after the Franchisee has knowledge of, believes, determines, is of the opinion, or becomes aware of facts and circumstances reasonably indicating that there has been an alleged breach or violation of this Agreement by Elephant & Castle. If the Franchisee fails to give written notice to Elephant & Castle as provided for herein of any alleged breach or violation of this Agreement within one year after the date that the Franchisee has knowledge of, believes, determines, is of the opinion that, or becomes aware of facts and circumstances reasonably indicating that the Franchisee may have a claim under any state law, federal law or common law because there has been an alleged breach or violation by Elephant & Castle, then the alleged breach or violation by Elephant & Castle will be deemed to be condoned, approved and waived by the Franchisee, the alleged breach or violation by Elephant & Castle will not be deemed to be a breach or violation of this Agreement by Elephant & Castle, and the Franchisee will be barred from commencing any action against Elephant & Castle for that specific alleged breach or violation.

19.5 Injunctive Relief

Notwithstanding any of the foregoing provisions, if the Franchisee gives Elephant & Castle written notice of an alleged breach or violation of this Agreement or of any federal or state laws that give rise to a claim that the Franchisee has the right to terminate this Agreement, then Elephant & Castle will have the absolute right to immediately commence legal action against the Franchisee to enjoin and prevent the termination of this Agreement by the Franchisee without giving the Franchisee any notice and without regard to any waiting period that may be contained in this Agreement. If Elephant & Castle commences such legal action against the Franchisee, then the Franchisee will not have the right to terminate this Agreement, unless and until a court of competent jurisdiction has ruled on the merits that Elephant & Castle has breached this Agreement in the manner alleged by the Franchisee, and then only if Elephant & Castle fails to begin the actions necessary to correct the breach or violation within 60 days after a final judgment has been entered against Elephant & Castle and all time for appeals by Elephant & Castle has expired.

ARTICLE 20 FRANCHISEE'S OBLIGATIONS UPON TERMINATION

20.1 Termination of Use of Marks; Other Obligations

If this Agreement is canceled or terminated for any reason or this Agreement expires, then the Franchisee will: ~~(a)~~(a) within five days after termination, pay all Continuing Fees, other fees and other amounts due and owing under this Agreement or under any other contract, promissory note or other obligation due and owing by the Franchisee to Elephant & Castle; ~~(b)~~(b) immediately return to Elephant & Castle by first class prepaid United States mail the Manual, menus, advertising materials and all other printed materials pertaining to the Restaurant; and ~~(c)~~(c) comply with all other applicable provisions of this Agreement. Upon termination or expiration of this Agreement for any reason, the Franchisee's right to use "Elephant & Castle®," the other Marks and the Restaurant System will terminate immediately in all respects, and the Franchisee will not thereafter conduct or promote any business under any name or in any manner that might tend to give the general public the impression that the Franchisee is continuing to operate as a franchisee of Elephant & Castle. Without limiting the generality of the foregoing, the Franchisee will immediately cease any and all advertising which includes any of the Marks, delete all content containing the Marks or any references to Elephant & Castle or the Franchisee's Elephant & Castle® Restaurant from any Home Page maintained by the Franchisee, and cease using any and all items or materials which bear or include any of the Marks.

20.2 Alteration of Franchised Location

If this Agreement expires or is terminated for any reason or if the Franchised Location ever ceases to be used for the Franchisee's Elephant & Castle® Restaurant, then within 30 days after the date of the expiration or termination of this Agreement, the Franchisee will, at its expense, alter, modify and change both the exterior and interior appearance of the building and the Franchised Location so that it will be clearly distinguished from the standard appearance of an Elephant & Castle® Restaurant. At a minimum, such changes and modifications to the Franchised Location will include: ~~(a)~~(a) repainting and, where applicable, recovering both the exterior and interior walls of the Franchised Location with totally different colors, including removing any distinctive colors, designs and paneling from the walls; ~~(b)~~(b) removing all furniture, fixtures and decor items associated with an Elephant & Castle® Restaurant and replacing them with other decor items not of the general type and appearance customarily used in Elephant & Castle® Restaurants; ~~(c)~~(c) removing all exterior and interior Elephant & Castle® signs; and ~~(d)~~(d) immediately discontinuing use of the approved wall decor items and window decals, and refraining from using any items which may be confusingly similar to those used in an Elephant & Castle® Restaurant.

20.3 Cancellation of Telephone Directory Listings

Upon termination or expiration of this Agreement, or if Elephant & Castle acquires the Franchisee's Elephant & Castle® Restaurant pursuant to this Agreement, Elephant & Castle will have the absolute right to notify the telephone company and all listing agencies of the termination or expiration of the Franchisee's right to use all telephone numbers and all classified and other directory listings for the Restaurant and to authorize the telephone company and all listing agencies to transfer to Elephant & Castle or its assignee all telephone numbers and directory listings of the Franchisee's Elephant & Castle® Restaurant. The Franchisee acknowledges and agrees that Elephant & Castle has the absolute right and interest in and to all telephone numbers and directory listings associated with the Marks, and the Franchisee hereby authorizes Elephant & Castle to direct the telephone company and all

listing agencies to transfer the Franchisee's telephone numbers and directory listings to Elephant & Castle or to an assignee of Elephant & Castle, if this Agreement expires or is terminated or if Elephant & Castle acquires the Franchisee's Elephant & Castle® Restaurant. The telephone company and all listing agencies may accept this Agreement as evidence of the exclusive rights of Elephant & Castle to such telephone numbers and directory listings and this Agreement will constitute the authority from the Franchisee for the telephone company and listing agency to transfer all such telephone numbers and directory listings to Elephant & Castle. This Agreement will constitute a release of the telephone company and listing agencies by the Franchisee from any and all claims, actions and damages that the Franchisee may at any time have the right to allege against them in connection with this Article.

20.4 Continuation of Obligations

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

ARTICLE 21 FRANCHISEE'S COVENANTS NOT TO COMPETE

21.1 Consideration

The Franchisee, the Owners and the Personal Guarantors acknowledge that the Franchisee, its officers, executives and employees will receive specialized training, marketing and advertising plans, business strategies, confidential recipe, cooking, and food preparation information, and trade secrets from Elephant & Castle pertaining to the Restaurant System and the operation of the Elephant & Castle® Restaurant. In consideration for this information, the Franchisee, the Owners and the Personal Guarantors will comply in all respects with the provisions of this Article. Elephant & Castle has advised the Franchisee that this provision is a material provision of this Agreement, and that Elephant & Castle will not sell an Elephant & Castle® Restaurant Franchise to any person or entityEntity that owns or intends to own, operate or be involved in any business that competes directly or indirectly with an Elephant & Castle® Restaurant; provided however, that Elephant & Castle may, under certain circumstances, exclude from the coverage of Article 21.2 and Article 21.3 existing operational restaurant(s) owned and operated by the Franchisee as of the date of this Agreement, and the Franchisee may, with the written consent of Elephant & Castle, continue to own and operate such restaurants during the term of this Agreement and thereafter.

21.2 In-Term Covenant Not to Compete

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

21.3 Post-Term Covenant Not to Compete

The Franchisee, the Owners and the Personal Guarantors will not, for a period of 12 months after the termination or expiration of this Agreement on their own account or as an employee, principal, agent, independent contractor, consultant, affiliate, licensee, partner, officer, director or shareholder of any other person, firm, entityEntity, partnership or corporation, own, operate, lease, franchise, conduct, engage in, be connected with, have any interest in or assist any person or entityEntity engaged in any Anglo/British style pub restaurant concept that is in any

way similar to or competitive with an Elephant & Castle® Restaurant and which is located within 10 miles of the Franchised Location or any other Elephant & Castle® Restaurant, or within any exclusive area granted by Elephant & Castle or any affiliate of Elephant & Castle pursuant to a Development Agreement or other territorial agreement. The Franchisee, the Owners and the Personal Guarantors expressly agree that the time and geographical limitations set forth in this provision are reasonable and necessary to protect Elephant & Castle and its franchisees if this Agreement expires or is terminated by either party for any reason, and that this covenant not to compete is necessary to permit Elephant & Castle the opportunity to resell and/or develop a new Elephant & Castle® Restaurant at or in the area near the Franchised Location.

21.4 Injunctive Relief

The Franchisee, the Owners and the Personal Guarantors agree that the provisions of this Article are necessary to protect the legitimate business interest of Elephant & Castle and its franchisees including, without limitation, preventing the unauthorized dissemination of marketing, promotional and other confidential information to competitors of Elephant & Castle and its franchisees, 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 Franchisee, 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 Franchisee, the Owners or the Personal Guarantors, and that injunctive relief against the Franchisee is essential for the protection of Elephant & Castle and its franchisees. The Franchisee, the Owners and the Personal Guarantors agree, therefore, that if Elephant & Castle alleges that the Franchisee, 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 Franchisee, 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 Franchisee, the Owners or the Personal Guarantors, then the Franchisee, 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.

21.5 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.

ARTICLE 22 INDEPENDENT CONTRACTORS; INDEMNIFICATION

22.1 Independent Contractors

Elephant & Castle and the Franchisee are each independent contractors and, as a consequence, there is no employer-employee or principal-agent relationship between Elephant & Castle and the Franchisee. The Franchisee 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 franchisee. Neither Elephant & Castle nor the Franchisee will be obligated by or have any liability to the other under any agreements or representations made by the other to any third parties.

22.2 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 Franchisee's negligence, the Franchisee's wrongdoing or the operation of the Franchisee's Elephant & Castle® Restaurant. Therefore, the Franchisee 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 Franchisee's negligence, the Franchisee's wrongdoing or the operation of the Franchisee's Elephant & Castle® Restaurant including, without limitation, attorneys' fees, investigation expenses, court costs, deposition expenses, and Travel Expenses. The Franchisee will indemnify Elephant & Castle, without limitation, for all claims and damages arising from, out of, in connection with, or as a result of: ~~(a)~~(a) any personal injury, property damage, commercial loss or environmental contamination resulting from any act or omission of the Franchisee or its employees, agents or representatives; ~~(b)~~(b) any failure on the part of the Franchisee to comply with any requirement of any laws or any governmental authority; ~~(c)~~(c) any failure of the Franchisee to pay any of its obligations to any person or ~~entity~~Entity; ~~(d)~~(d) any failure of the Franchisee to comply with any requirement or condition of this Agreement or any other agreement with Elephant & Castle; ~~(e)~~(e) any misfeasance or malfeasance by the Franchisee; and ~~(f)~~(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 Franchisee's negligence or the operation of the Franchisee's Elephant & Castle® Restaurant.

22.3 Payment of Costs and Expenses

The Franchisee will indemnify Elephant & Castle for all costs and expenses incurred by Elephant & Castle in enforcing any term, condition or provision of this Agreement or in enjoining any violation of this Agreement by the Franchisee including, without limitation, attorneys' fees, expert witness fees, costs of investigation, court costs, litigation expenses, arbitration fees, costs and expenses, and Travel Expenses.

22.4 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 23 ARBITRATION

23.1 Mediation

Elephant & Castle and the Franchisee acknowledge that resolving disputes prior to commencing arbitration hearings or court proceedings is in the best interests of both parties. Therefore, the Franchisee 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.

23.2 Disputes Subject to Arbitration

Except as expressly provided to the contrary in Article 23.7 of this Agreement, all disputes and controversies, 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 Franchised Location, the Franchisee's Restaurant business or the Personal Guaranty attached to this Agreement are subject to and will be resolved exclusively by arbitration conducted in accordance with the Code or Procedure of the National Arbitration Forum.

23.3 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 Franchisee is delinquent in the payment of any fees or other payments payable to Elephant & Castle, the Franchisee will have 10 days to make full payment (including interest and Administrative Fees as provided for herein) to Elephant & Castle.

23.4 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.

23.5 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 Franchisee, its officers and directors, and the Owners and 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.

23.6 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 Franchisee or their officers, directors, shareholders, Owners and Personal Guarantors, and Elephant & Castle and the Franchisee and their officers, directors, shareholders or 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 be final and binding on Elephant & Castle and the Franchisee, except as provided for in Article 23.9 of this Agreement. 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 23.9 of this Agreement.

23.7 Disputes Not Subject to Arbitration

The following disputes between Elephant & Castle and the Franchisee will not be subject to arbitration: ~~(a)~~(a) any disputes arising between Elephant & Castle and the Franchisee which are set forth in Article 24.1; ~~(b)~~(b) any dispute involving the Marks or which arise under or as a result of Article 15 of this Agreement; ~~(c)~~(c) any dispute involving immediate termination of this Agreement by Elephant & Castle pursuant to Article 18.5 and Article 18.6 of this Agreement; and ~~(d)~~(d) any dispute involving enforcement of the covenants not to compete contained in Article 21 of this Agreement.

23.8 No Collateral Estoppel or Class Actions

Except as provided by Article 23.9, all arbitration findings, conclusions, orders and awards made by the arbitrator(s) will be final and binding on Elephant & Castle and the Franchisee; however, such arbitration findings, conclusions, orders and awards may not be used: ~~(a)~~(a) to collaterally estop either the Franchisee 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 franchisees; or ~~(b)~~(b) by any third party or other franchisee to establish any fact, action, finding, violation or otherwise used by any third party or other franchisee as evidence, in any arbitration, litigation, court hearing or other proceeding involving Elephant & Castle or the Franchisee. In any arbitration between them, neither Elephant & Castle nor the Franchisee 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 Franchisee and a third party, or Elephant & Castle and a third party or other franchisees. No party except Elephant & Castle, the Franchisee, and their officers, directors, shareholders or Owners and the Personal Guarantors will have the right to join 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 party to be involved in any arbitration proceeding brought by either party under this Agreement.

23.9 De Novo Hearing on Merits

If the arbitrator(s) awards either Elephant & Castle or the Franchisee 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 Franchisee. 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 Franchisee and all other parties and may be entered as an order decree and judgment in any court of competent jurisdiction by any party.

23.10 Confidentiality

All evidence, testimony, records, documents, findings, decisions, judgments and awards pertaining to any arbitration hearing between Elephant & Castle and the Franchisee will be secret and confidential in all respects. Elephant & Castle and the Franchisee 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 23.9.

23.11 Performance During Arbitration of Disputes

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

ARTICLE 24 ENFORCEMENT

24.1 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)~~(a) the Franchisee's improper use of the Marks or the Restaurant System; ~~(b)~~(b) the obligations of the Franchisee upon termination or expiration of this Agreement; ~~(c)~~(c) the Transfer of this Agreement, the Franchisee's Restaurant or the Ownership Interests of the Franchisee; ~~(d)~~(d) the Franchisee's violation of the provisions of this Agreement relating to confidentiality and the covenants not to compete; and ~~(e)~~(e) any act or omission by the Franchisee or the Franchisee'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 Franchisee's Restaurant or other Elephant & Castle® Restaurants, (3) constitutes a danger to the employees, public, guests, or customers of the Franchisee's Restaurant, or (4) may impair the goodwill associated with the Marks or the Restaurant System.

24.2 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 or any specification, standard or operating procedure prescribed by Elephant & Castle 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, specification, standard or operating procedure will be modified to the extent required to be valid and enforceable. Such modifications to this Agreement will be effective only in such jurisdiction.

24.3 Waiver

Elephant & Castle and the Franchisee may, by written instrument signed by Elephant & Castle and the Franchisee, waive any obligation of or restriction upon the other under this Agreement. Acceptance by Elephant & Castle of any payment by the Franchisee and the failure, refusal or neglect of Elephant & Castle to exercise any right under this Agreement or to insist upon full compliance by the Franchisee 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 franchisees under their franchise agreements without waiving those obligations or restrictions for the Franchisee 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 franchisees of Elephant & Castle without granting those same rights to the Franchisee and without incurring any liability to the Franchisee whatsoever.

24.4 Payments to Elephant & Castle

The Franchisee 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 Franchisee, or for any other reason, withhold payment of any Continuing Fees or any other fees or payments due Elephant & Castle pursuant to this Agreement or pursuant to any other contract, agreement or obligation to Elephant & Castle. The Franchisee will not have the right to "offset" or withhold any liquidated or unliquidated amounts, damages or other funds allegedly due to the Franchisee by Elephant & Castle against any Continuing Fees or any other fees or payments due to Elephant & Castle under this Agreement.

24.5 Effect of Wrongful Termination

If either Elephant & Castle or the Franchisee takes any action to terminate this Agreement or the Franchisee takes any action to convert its Elephant & Castle® Restaurant to another business, and such actions were taken without first complying with the terms and conditions of Article 18 or Article 19 of this Agreement, as applicable, 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.

24.6 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.

24.7 Binding Agreement

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

24.8 Joint and Several Liability

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

24.9 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 Franchisee and the President or a Vice President of Elephant & Castle.

24.10 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 Franchisee 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 Franchisee 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.

24.11 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 "Franchisee" 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 "Franchisee," "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 Franchisee or any such assignee or transferee if the Franchisee or such assignee or transferee is a corporation, a limited liability company, a partnership, or a limited partnership.

24.12 Venue and Jurisdiction

All litigation, court proceedings, arbitration proceedings, mediation proceedings, lawsuits, court hearings and other hearings initiated by the Franchisee 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 Franchisee, each of its officers and directors, and the Owners and 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, the Franchised Location or the Franchisee's

Elephant & Castle® Restaurant, and do hereby agree and stipulate that any suits, proceedings and hearings will be exclusively venued and held in such venue. The Franchisee, each of its officers and directors, and the Owners and Personal Guarantors waive any rights to contest such venue and jurisdiction and any claims that venue and jurisdiction are invalid.

24.13 Federal Arbitration Act

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

24.14 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 Franchisee and Elephant & Castle, or the Franchisee's operation of the Restaurant 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 25 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 Franchisee will be made by personal service upon the Franchisee (or, if applicable, upon an officer or director of the Franchisee) or sent by prepaid registered or certified mail addressed to the Franchisee at the Franchised Location, or such other address as the Franchisee 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 26 DISCLAIMER; ACKNOWLEDGMENTS

26.1 Disclaimer

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

26.2 Acknowledgments by Franchisee

The Franchisee acknowledges that it has conducted an independent investigation of the Elephant & Castle® Restaurant and recognizes that the business venture contemplated by this Agreement involves business and economic risks. The Franchisee acknowledges that the financial, business and economic success of the Franchisee's Elephant & Castle® Restaurant will be primarily dependent upon the personal efforts of the Franchisee, its management and its employees, and on economic conditions in the area where the Franchised Location is located and economic conditions in general. The Franchisee acknowledges that it has not received any estimates, projections, representations, warranties or guaranties, expressed or implied, regarding potential sales, Gross Sales, income, profits, earnings, expenses, financial or business success, value of the Restaurant, or other economic matters pertaining to the Franchisee's Restaurant from Elephant & Castle or any of its agents that were not expressly set forth in the Uniform Franchise Offering Circular received by the Franchisee from Elephant & Castle (~~hereinafter referred to in this provision as "Representations"~~). The Franchisee 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.

26.3 Other Franchisees

The Franchisee acknowledges that other franchisees of Elephant & Castle have or will be granted franchises at different times, different locations, under different economic conditions and in different situations, and further acknowledges that the economics and terms and conditions of such other franchises may vary substantially in form and in substance from those contained in this Agreement.

26.4 Receipt of Agreement and Uniform Franchise Offering Circular

The Franchisee 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 Franchisee. The Franchisee 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 27
FRANCHISEE'S LEGAL COUNSEL**

The Franchisee acknowledges that this Agreement constitutes a legal document which grants certain rights to and imposes certain obligations upon the Franchisee. The Franchisee 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® Restaurant, to determine compliance with franchising and other applicable laws, and to advise the Franchisee on economic risks, liabilities, obligations and rights under this Agreement and to advise the Franchisee on tax issues, financing matters, applicable state and federal laws, liquor laws, health and safety laws, environmental laws, employee issues, insurance, structure of the Restaurant business, and other business matters. The name of the Franchisee's attorney or other advisor is:

Attorney's Name: _____
Name of Firm: _____
Address: _____

City, State, Zip Code: _____
Telephone Number: _____
Fax Number: _____

ARTICLE 28 GOVERNING LAW; STATE MODIFICATIONS

28.1 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 Franchisee will be governed by the laws of the state in which the Franchised Location 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 Franchisee and Elephant & Castle.

28.2 Applicable State Laws

If applicable, the following states have statutes which may supersede the provisions of this Agreement in the Franchisee'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 Franchisee's relationship with Elephant & Castle in the areas of termination and renewal of the Franchise.

28.3 State Law Modifications

If the Franchisee's Elephant & Castle® Restaurant is located in 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 21.3 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 Franchisee'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 24.14 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 Franchisee to enforce any liability created by the Illinois Act; and (3) any condition,

stipulation or provision of this Agreement requiring the Franchisee to waive compliance with any provision of the Illinois Act is void; therefore, any acknowledgments or other language contained in Article 24.10, Article 26.2 and Article 26.4 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 17.6(d) of this Agreement will be inapplicable; (2) the post-term covenant not to compete contained in Article 21.3 of this Agreement will be enforceable only within the Exclusive Area; (3) Article 21.4 and Article 24.1 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 Franchisee; (4) the designation of jurisdiction and venue contained in Article 24.12 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 Franchisee, 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 Franchisee 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 Franchisee 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 Franchisee; (9) Elephant & Castle will not establish a franchisor-owned restaurant that is substantially identical to an Elephant & Castle® Restaurant within the Exclusive Area; and (10) Article 22.2 of this Agreement will be amended to exclude from the Area Developer Franchisee's indemnification obligations liability caused by the Area Developer Franchisee'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) the provisions of Article 17.6(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 Franchisee or Elephant & Castle; (2) notwithstanding anything to the contrary in Article 24.12 of this Agreement, the Franchisee 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 Franchisee contained in Article 26 of this Agreement will not be construed to act as a waiver of the Franchisee'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) Article 23 of this Agreement will be amended to provide that, except in certain circumstances specified by law, Elephant & Castle must give the Franchisee at least 180 days prior written notice of nonrenewal of the Franchise; (2) Article 18.2 will be

amended to require that, except as set forth in Article 18.5 and 18.6, in the event Elephant & Castle gives the Franchisee written notice that the Franchisee has breached this Agreement, such written notice will be given to the Franchisee at least 90 days prior to the date this Agreement is terminated by Elephant & Castle, and the Franchisee 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 Franchisee, the Owners or the Personal Guarantors; (4) Article 17.6(d) of this Agreement will be inapplicable; and (5) in accordance with Minn. Stat. Sec. 80C.17, Subd. 5, the Franchisee 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 17.1 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 22.1 of this Agreement will be amended to provide that the Franchisee will not be required to indemnify Elephant & Castle against claims arising out of Elephant & Castle's breach of contract, negligence or other civil wrong; however, such amendment of Article 22.1 will not affect in any way the Franchisee's obligation to obtain and maintain insurance coverage in accordance with Article 14; (3) any modifications to the Manual made by Elephant & Castle will not unreasonably increase the Franchisee's obligations under this Agreement and will not place an excessive economic burden on the Franchisee's operations; and (4) Article 17.6(d) of this Agreement is hereby amended to provide that all rights arising in the Franchisee'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 21.3 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; (3) Article 24.2 is amended to provide that the prevailing party will pay all attorneys' fees, costs and expenses incurred by the other party in enforcing any term, condition or provision of this Agreement or in enjoining any violation of this Agreement by the other party; and (4) the consent by the Franchisee to jurisdiction and venue contained in Article 24.12 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 Franchisee, 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 18 of this Agreement will be amended to provide that if the Franchisee 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 Franchisee 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 21.3 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 Franchisee 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 Franchisee 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 reasonable estimated or actual costs in effecting a Transfer.

28.4 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 28.3 above.

IN WITNESS WHEREOF, Elephant & Castle, the Franchisee and the Franchisee's Owners have respectively signed this Agreement effective as of the day and year set forth on Page F-1 of this Agreement.

In the Presence of:

Elephant & Castle International, Inc.

By _____
Its _____

In the Presence of:

"Franchisee"

The undersigned Owners of the Franchisee 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 "Franchisee") have entered into a Franchise Agreement for the operation of a franchised "Elephant & Castle® Restaurant" at _____ (the "Franchise Agreement").

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

NOW, THEREFORE, in consideration of the execution of the Franchise 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 Franchise Agreement, including the covenants not to compete, to be paid, kept and performed by the Franchisee.

The undersigned, individually and jointly, hereby agree to be personally bound by each and every condition and term contained in the Franchise 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 an agreement containing the identical terms and conditions of the Franchise Agreement.

If any default should at any time be made therein by the Franchisee, then the undersigned, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to pay to Elephant & Castle the Initial Fee, Opening Assistance Fee, Continuing Fees and other fees due and payable to Elephant & Castle under the terms and conditions of the Franchise Agreement.

In addition, if the Franchisee fails to comply with any other terms and conditions of the Franchise 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 Franchise Agreement for and on behalf of the Franchisee.

If the Franchisee 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 the Initial Fee, Opening Assistance Fee, Continuing Fees, merchandise, products, FF&E or other items purchased by the Franchisee from Elephant & Castle or any subsidiary or affiliate of Elephant & Castle, or for any other indebtedness of the Franchisee 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 Franchisee to Elephant & Castle or any subsidiary or affiliate of Elephant & Castle upon default by the Franchisee.

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 provided by applicable law, all litigation, actions or proceedings pertaining to this Personal Guaranty will be brought and venued in accordance with Article 24.12 of the Franchise 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

AUTHORIZATION TO HONOR ELEPHANT & CASTLE INTERNATIONAL, INC.
ELECTRONIC TRANSFER OF FUNDS

PAYEE

BANK NAME

ACCOUNT NO.

Elephant & Castle International, Inc. _____

The undersigned Depositor hereby authorizes and requests the Depository designated below to honor and to charge to the following designated account, checks, drafts, orders and electronic debits (collectively "debits") drawn on such account which are payable to the above named Payee, provided however, that in no event will the combined total of such debits in any 30-day period exceed \$20,000. It is agreed that the Depository's rights with respect to each such debit will be the same as if it were a check drawn and signed by the Depositor. It is further agreed that if any such debit is not honored, whether with or without cause and whether intentionally or inadvertently, the Depository will be under no liability whatsoever. This authorization will continue in force until the Depository and the Payee have received at least 30 days prior written notification from the Depositor of its termination.

The Depositor agrees with respect to any action taken pursuant to the above authorization:

- (1) To indemnify the Depository and hold it harmless from any loss it may suffer resulting from or in connection with any debit including, without limitation, execution and issuance of any check, draft or order, whether or not genuine, purporting to be authorized or executed by the Payee and received by the Depository in the regular course of business for the purpose of payment, including any costs or expenses reasonably incurred in connection therewith.
- (2) To indemnify the Payee and the Depository for any loss arising in the event that any such debit is dishonored, whether with or without cause and whether intentionally or inadvertently.
- (3) To defend, at the Depositor's own cost and expense, any action which might be brought by any persons or entities because of any actions taken by the Depository or the Payee pursuant to the foregoing request and authorization, or in any manner arising by reason of the Depository's or the Payee's participation therein.

Name of Depository (Franchisee's Bank): _____

Name of Franchisee/Depositor (as listed on account): _____

Designated Bank Account (Franchisor's Bank): _____
(Please attach one voided check for the above account.)

Franchised Location: _____
Address, City, State, Zip Code

For information call: _____
Print Name of Franchisee's Contact Person

Restaurant Number: _____ E-Mail Address: _____

Telephone Number: _____ Fax Number: _____

Name of Franchisee/Depositor as Listed On Account (please print)

By: _____
Franchisee's Authorized Representative Title

Date: _____, 200__