

**EXHIBIT D**  
**to the Paciugo Franchising LP**  
**Franchise Agreement**

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**IN FRANCHISE AGREEMENT**

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## EXHIBIT D

### OWNER AGREEMENT

As a condition to the granting by Paciugo Franchising LP ("we" or "us"), of a Franchise Agreement with \_\_\_\_\_ ("Franchisee"), each of the undersigned individuals ("Owners"), who constitute all of the owners of a beneficial interest in Franchisee, covenant and agree to be bound by this Owner Agreement.

#### 1. Acknowledgments.

(a) **Franchise Agreement.** Franchisee entered into a franchise agreement with us effective as of \_\_\_\_\_, 200\_\_ ("Franchise Agreement"). Capitalized words not defined in this Owner Agreement will have the same meanings ascribed to them in the Franchise Agreement.

(b) **Owners' Role.** Owners are the beneficial owners of all of the equity interest in Franchisee. Franchisee's obligations under the Franchise Agreement, including the confidentiality and non-compete obligations, would be of little value to us if Franchisee's owners were not bound by the same requirements. Under the provisions of the Franchise Agreement, Owners are required to enter into this Owner Agreement as a condition to our entering into the Franchise Agreement with Franchisee. Owners will be jointly and severally liable for any breach of this Owner Agreement.

#### 2. Non-Disclosure Of Confidential Information.

(a) **Protection of Confidential Information.** Under the Franchise Agreement, we will provide Franchisee with specialized training, proprietary trade secrets, and other confidential information about the establishment and operation of a Unit using our System. Owners will not, during or after the term of the Franchise Agreement, communicate, divulge, or use for the benefit of themselves or anyone else any confidential information, knowledge, or know-how concerning the methods of operation of our business or the Unit which may be communicated to them, or of which they may become aware by virtue of their ownership of Franchisee. This confidentiality obligation specifically includes the Manual, all information in the Manual, supplier discount rates, and any other information, knowledge, know-how, and techniques associated with the System. Owners will use their best efforts and utmost diligence to protect the confidentiality of all Confidential Information. At our request, Owners must immediately send us all documents and other things they have that contain any of this Confidential Information.

(b) **Our Remedies.** Owners acknowledge that any failure to comply with the requirements of this Section 2 of this Owner Agreement will result in irreparable injury to us for which there is no adequate remedy at law, and Owners agree that we may seek, without posting bond, an ex-parte or other order for injunctive or other legal or equitable relief in order to enforce the requirements of Section 2 of this Owner Agreement.

Regardless of any other remedies available under this Owner Agreement or applicable law, Owners agree that, because of the difficulty in establishing the precise amount of damages for Owners' breach of their obligations in this Section 2, they will pay us \$50,000 as liquidated damages for each breach. Owners also agree to pay all court costs and reasonable attorneys fees that we incur as a result of Owner's actual or threatened disclosure of Confidential Information.

### 3. Covenant Not To Compete.

**(a) Non-Competition During Term of Franchise Agreement.** During the term of the Franchise Agreement, Owners will not engage in, assist, acquire, advise, consult with, be employed by, own, or become associated in any way with, any business whose methods of operation, trade dress or business concept is the same as or similar to that of the System or the Marks, or which makes or sells gelato, other than the Franchised Business, unless Owners have our prior express written consent. Owners will not solicit or otherwise induce our employees or the employees of any of our affiliates or other franchisee to leave their employment. Owners will not divert or attempt to divert any business or customer of ours or any of our affiliates or franchisees to any competitor.

**(b) Non-Competition After Expiration or Termination of Franchise Agreement.** For a period of 2 years following termination or expiration of this Owner Agreement or following a Transfer, Owners will not: (a) engage in, assist, acquire, advise, consult with, be employed by, own or become associated in any way with any business whose methods of operation, trade dress, or business concept is the same as or similar to that of the System or the Marks, or which sells primarily gelato; (b) engage in, assist, acquire, advise, consult with, be employed by, own or become associated in any way with any business which sells gelato and which is located within a radius of 25 miles from Franchisee's former Unit location, or the location of any Units of any of our affiliates or other franchisees; (c) solicit or otherwise induce our employees or the employees of any of our affiliates or other franchisee to leave their employment; and (d) divert or attempt to divert any customer of ours or any of our affiliates or franchisees to any competitor.

**(c) Interests in Publicly-Traded Companies.** Section 3 of this Owner Agreement won't apply to prevent Owners from owning 5% or less beneficial interest in the outstanding equity securities of any publicly-traded company.

**(d) Construction of Covenants.** The parties agree that each of the foregoing covenants will be construed as independent of any other covenant or provision of this Owner Agreement. If all or any portion of a covenant in this section is held unreasonable or unenforceable by a court or agency having valid jurisdiction in a final decision to which we are a party, Owners agree to be bound by any lesser covenant subsumed within the terms of the relevant covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this section.

(e) **Our Right to Reduce Scope of Covenants.** Additionally, we have the right, in our sole discretion, to unilaterally reduce the scope of any covenant set forth in Section 3 of this Owner Agreement, or any portion thereof, without Owners consent, effective when we give Owners written notice of this reduction. Owners agree to comply with any covenant as so modified.

#### 4. **Guaranty.**

(a) Owners will pay us (or cause us to be paid) all monies payable by Franchisee under the Franchise Agreement on the date and in the manner required for payment in the Franchise Agreement.

(b) Owners unconditionally guarantee full performance and discharge by Franchisee of all of Franchisee's obligations under the Franchise Agreement on the date and times and in the manner required in the Franchise Agreement.

(c) Owners will indemnify, defend and hold harmless us, all of our affiliates, and their and our respective shareholders, directors, partners, employees, and agents, against and from all losses, damages, costs, and expenses which we or they may sustain, incur, or become liable for by reason of:

(1) Franchisee's failure to pay the monies payable (to us or any of our affiliates) pursuant to the Franchise Agreement or to do and perform any other act, matter, or thing required by the Franchise Agreement; or

(2) any action by us to obtain performance by Franchisee of any act, matter, or thing required by the Franchise Agreement.

(d) Owners acknowledge and agree that we will not be obligated to proceed against Franchisee or exhaust any security from Franchisee or pursue or exhaust any remedy, including any legal or equitable relief against Franchisee, before proceeding to enforce the obligations of the Owners as guarantors under this Owner Agreement, and the enforcement of the obligations can take place before, after, or contemporaneously with, enforcement of any of Franchisee's debts or obligations under the Franchise Agreement.

(e) Without affecting Owners' obligations under this section, we can extend, modify, or release any of Franchisee's indebtedness or obligation, or settle, adjust, or compromise any claims against Franchisee, all without notice to the Owners. Owners waive notice of amendment of the Franchise Agreement and notice of demand for payment or performance by Franchisee.

(f) Upon the death of an Owner, the estate of the Owner will be bound by the obligations in this section, but only for defaults and obligations hereunder existing at the

time of death; and the obligations of any other Owners will continue in full force and effect.

**5. Transfers.** Owners acknowledge and agree that we have granted the Franchise Agreement to Franchisee in reliance on Owners' business experience, skill, financial resources and personal character. Accordingly, Owners agree not to sell, encumber, assign, transfer, convey, pledge, merge or give away any direct or indirect interest in this Franchisee, unless Owners first comply with the sections in the Franchise Agreement regarding Transfers. Owners acknowledge and agree that any attempted Transfer of an interest in Franchisee requiring our consent under the Franchise Agreement for which our express written consent is not first obtained will be a material breach of the Franchise Agreement.

**6. Enforcement Of This Owner Agreement.**

**(a) Choice of Law.** This Owner Agreement and any claim or controversy arising out of, or relating to, any of the rights or obligations of the parties under this Owner Agreement, and any other claim or controversy between the parties will be governed by and construed in accordance with the laws of the State of Texas (without regard for any conflicts of law principals).

**(b) Provisional Remedies.** We have the right to seek from an appropriate court any provisional remedies, including temporary restraining orders or preliminary injunctions to enforce Owners' obligations under this Owner Agreement. Owners acknowledge and agree that there is no adequate remedy at law for Owners failure to fully comply with the requirements of this Owner Agreement. Owners further acknowledge and agree that, in the event of any noncompliance, we will be entitled to temporary, preliminary, and permanent injunctions and all other equitable relief that any court with jurisdiction may deem just and proper.

**(c) Litigation.** All litigation between the parties relating to or arising under this Owner Agreement will be brought in any state or federal court within the jurisdiction where we then have our principal place of business; provided that we have the option to bring suit against any Owner in any state or federal court within the jurisdiction where Franchisee's Unit is or was located or where any Owner lives. The parties consent to the exercise of personal jurisdiction over them by these courts, and to the propriety of venue in these courts, and the parties waive any objections that they would otherwise have in this regard. The prevailing party will be entitled to recover from the other party its actual costs and expenses (including attorneys' fees and expenses) incurred in connection with any litigation between the parties relating to or arising under this Owner Agreement.

## 7. Notices.

(a) **Method of Notice.** No notice, demand, request or other communication to the parties will be binding upon the parties unless the notice is in writing, refers specifically to this Owner Agreement, and is sent to the proper address.

(b) **Notice Addresses.** Our current address for all communications under this Owner Agreement is:

**Paciugo Franchising LP:**  
9761 Clifford Drive, Suite 170  
Dallas, Texas 75220  
Attention: Ugo Ginatta

The current address of each Owner for all communications under this Owner Agreement is set forth on the signature page of this Owner Agreement. Either party may designate a new address for notices by giving written notice to the other party of the new address pursuant to this section.

(c) **Effective Date of Notices.** Notices will be immediately effective upon the date of delivery, or, if delivery is refused, the date of the first attempted delivery.

## 8. Miscellaneous.

(a) **No Other Agreements.** This Owner Agreement constitutes the entire, full and complete agreement between the parties, and supersedes any earlier or contemporaneous negotiations, discussions, understandings or agreements. There are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Owner Agreement, other than those set forth in this Owner Agreement. No other obligations, restrictions or duties that contradict or are inconsistent with the express terms of this Owner Agreement may be implied into this Owner Agreement. Except for unilateral reduction of the scope of the covenants permitted in Section 3.5 (or as otherwise expressly provided in this Owner Agreement), no amendment, change or variance from this Owner Agreement will be binding on either party unless it is mutually agreed to by the parties and signed in writing. Time is of the essence.

(b) **Severability.** Each provision of this Owner Agreement, and any portions thereof, will be considered severable. If any provision of this Owner Agreement or the application of any provision to any person, property or circumstances is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Owner Agreement will be unaffected and will still remain in full force and effect. The parties agree that the provision found to be invalid or unenforceable will be modified to the extent necessary to make it valid and enforceable, consistent as much as possible with the original intent of the parties, and the parties agree to be bound by the modified provisions.

**(c) No Third-Party Beneficiaries.** Nothing in this Owner Agreement is intended to confer upon any person or entity (other than the parties and their heirs, successors and assigns) any rights or remedies under or by reason of this Owner Agreement.

**(d) Construction.** No provision of this Owner Agreement will be interpreted in favor of or against either party merely because of that party's role in the preparation of this Owner Agreement, or because of the nature or type of this Owner Agreement. All references to gender and number will be construed to include the other gender and number as the context may require. All captions in this Owner Agreement are intended solely for the convenience of the parties and none will be deemed to affect the meaning or construction of any provision of this Owner Agreement.

**(e) Binding Effect.** This Owner Agreement may be signed in counterparts, and each copy so signed and delivered will be deemed an original. This Owner Agreement is binding on the parties and their respective heirs, executors, administrators, personal representatives, successors and (permitted) assigns.

IN WITNESS WHEREOF, the parties have entered into this Owner Agreement as of the effective date of the Franchise Agreement.

**OWNERS**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**PACIUGO FRANCHISING, LP**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_