

**EXHIBIT B
TO THE OFFERING CIRCULAR**

FRANCHISE AGREEMENT



**PANCHERO'S FRANCHISE CORPORATION
FRANCHISE AGREEMENT**

THIS CONTRACT IS SUBJECT TO ARBITRATION

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PANCHERO'S FRANCHISE CORPORATION
FRANCHISE AGREEMENT

This Franchise Agreement (this "Agreement"), is made this ___ day of _____, 20__ by and between **PANCHERO'S FRANCHISE CORPORATION**, an Illinois corporation, having its principal place of business at 2475 Coral Court, Suite B, Coralville, Iowa 52241 ("Franchisor"), and _____ ("Franchisee").

W I T N E S S E T H:

WHEREAS, Franchisor and its Affiliate ("Affiliate"), over a period of time and as the result of the expenditure of time, expertise, effort and money, have developed and own a unique System ("System"), identified by the Mark "PANCHERO'S", relating to the establishment, development and operation of businesses for (i) the operation of a restaurant facility providing carry-out and on-premises dining services, featuring burritos, quesadillas, tacos, fajitas, salads, rice, salsa, and other food and beverage products, all prepared in accordance with specified recipes and procedures ("Menu Items"); (ii) may develop and continue to further develop a proprietary line of specially formulated spice packs, salsas, marinades and other food products ("Trade Secret Food Products"); (iii) have developed certain presentation, packaging and marketing standards and techniques for all Menu Items and Trade Secret Food Products; and (iv) have developed consumer acceptance for all Menu Items and Trade Secret Food Products ("Franchised Restaurant"); and

WHEREAS, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior layout, design and color scheme; exclusively designed signage, decorations, furnishings and materials; display cooking; special recipes, formulae, menus and food and beverage designations; the PANCHERO'S Confidential Operations Manual ("Confidential Operations Manual"); the Proprietary Software Package ("Proprietary Software Package") (if developed); food and beverage storage, preparation and service procedures and techniques; operating procedures for sanitation and maintenance; and methods and techniques for inventory and cost controls, record keeping and reporting, personnel management, purchasing, sales promotion and advertising; all of which may be changed, improved and further developed by Franchisor from time to time; and

WHEREAS, Franchisor's Affiliate, Little Donkeys, Inc., has certain rights together with all the goodwill connected thereto in and to the trade names, service marks and trademarks "PANCHERO'S", "PANCHERO'S, plus the design", associated logos, commercial symbols, and such other trade names, service marks, and trademarks as are now designated (and may hereinafter be designated by Franchisor in writing) as part of the System ("Mark[s]") and has licensed the rights in the Marks to Franchisor with the right to sublicense to Franchisor's franchisees. Franchisor shall continue to develop, use and control such Marks for the benefit and use of itself and its franchisees in order to identify for the public the source of food products and services marketed thereunder and to represent the System's high standards of quality regarding Menu Items, operations, food products, ingredients, appearance and service; and

WHEREAS, Franchisor grants to qualified persons franchises to own and operate PANCHERO'S Franchised Restaurants offering food products and services authorized and approved by Franchisor and utilizing the System and Marks. Franchisee desires to operate a PANCHERO'S Franchised Restaurant using the System and Marks and has applied for a franchise, which application has been approved by Franchisor in reliance upon all of the representations made therein; and

WHEREAS, Franchisee understands and acknowledges the importance of Franchisor's high and uniform standards of quality, operations and customer service and the necessity of operating the PANCHERO'S Franchised Restaurant in conformity with Franchisor's standards and specifications; and

WHEREAS, Franchisor expressly disclaims the making of and Franchisee acknowledges that it has not received nor relied upon any warranty or guaranty, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement. Franchisee acknowledges that it has read this Agreement and Franchisor's Uniform Franchise Offering Circular and that it has no knowledge of any representations by Franchisor, or its officers, directors, shareholders, employees or agents that are contrary to the statements made in Franchisor's Uniform Franchise Offering Circular or to the terms herein.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, hereby agree as follows:

I. **APPOINTMENT AND FRANCHISE FEE**

A. Franchisor hereby grants to Franchisee, upon the terms and conditions herein contained, the right, license and privilege to use the Mark "PANCHERO'S" and the other Marks. Franchisee undertakes the obligation to operate a PANCHERO'S Franchised Restaurant featuring the Menu Items and offering carry-out and on-premises dining services and to use solely in connection therewith the System, as it is currently established and as it may be changed, improved and further developed from time to time, at one (1) location only, such location to be:

1. _____
("Premises"); or

2. At a location to be designated, as provided in Paragraph III. hereof within the following area: _____; provided, however, that when a location has been designated and approved by the parties, said location shall become Paragraph I.A.1., as if originally incorporated therein. Franchisee shall not relocate its Franchised Restaurant without the prior written approval of Franchisor which may be withheld by Franchisor in its sole discretion.

B. Franchisor shall not, so long as this Agreement is in force and effect and Franchisee is not in default under any of the terms hereof, enfranchise or operate any other PANCHERO'S restaurant within the following area: _____ ("Designated Area").

The determination of the Designated Area shall be made and agreed upon between Franchisor and Franchisee. Franchisor reserves the right to exclude any regional shopping malls and

enclosed shopping malls from the determination of an exclusive territory or Designated Area. The Designated Area selected is described in writing and on a map attached hereto as Exhibit A and made a part of this Agreement. However, Franchisor has the right, in its sole discretion, to grant such other franchises outside of the Designated Area as Franchisor, in its sole and exclusive discretion, deems appropriate. This Agreement grants no rights to Franchisee to open a PANCHERO'S Franchised Restaurant outside of this Designated Area.

1. Although neither Franchisor nor its affiliates shall operate a PANCHERO'S restaurant within the Designated Area, Franchisor and its affiliates reserve the right, both within and outside of the Designated Area, to offer and sell at wholesale, retail or through any other distribution system, products and services which comprise, or may in the future comprise, a part of the System, which products may be resold at retail or through any other distribution channel including, but not limited to, supermarkets and other retail facilities, to the general public by such entities. Franchisee shall have no rights of any kind with respect to these sales.

2. Franchisor and its affiliates further reserve the right, both within and outside the Designated Area, to sell at both wholesale and retail all products and services which do not comprise a part of the System. Franchisor and its affiliates also reserve the right, both within and outside the Designated Area, to establish food service units operating under a format and trademarks and service marks distinct from the PANCHERO'S System.

3. Franchisee shall engage only in the retail sale of Menu Items, and Franchisee agrees not to engage in the wholesale sale and/or distribution of any product offered for sale through the Franchised Restaurant, except if authorized in writing by Franchisor. "Wholesale Sale and/or Distribution" shall mean any sale and/or distribution of product by Franchisee to a third party for resale, retail sale or further distribution by such third party.

C. In consideration of the franchise granted herein, Franchisee shall pay to Franchisor upon execution of this Agreement, an initial franchise fee determined in accordance with the following schedule: **(INITIAL THE PROVISION THAT APPLIES)**

____ 1. The initial franchise fee is THIRTY THOUSAND Dollars (\$30,000.00).

____ 2. For a Franchisee who executes a Conversion Franchise Agreement, the initial franchise fee is TWENTY-FIVE THOUSAND Dollars (\$25,000.00).

____ 3. For a Franchisee who has been employed by Franchisor or any PANCHERO'S restaurant (whether Franchisor-owned, Affiliate-owned or franchised) in a managerial capacity for a period of at least eighteen (18) months, the initial franchise fee is TWENTY THOUSAND Dollars (\$20,000.00).

____ 4. The initial franchise fee for an existing Franchisee in good standing who purchases a second or subsequent franchise is TWENTY THOUSAND Dollars (\$20,000.00) for each additional unit.

____ 5. The initial franchise fee for each Franchised Restaurant the parties agree to develop pursuant to an Area Development Agreement ("Area Development Agreement") is TWENTY THOUSAND Dollars (\$20,000.00) with fifty percent (50%) of the total amount due for each Franchised Restaurant pursuant to the Area Development Agreement, payable at the time of execution of the Area Development Agreement and the remaining balance, due upon the signing of this Agreement for each Franchised Restaurant.

Said fee shall be deemed fully earned and non-refundable upon execution of this Agreement as consideration for expenses incurred by Franchisor in furnishing assistance and services to Franchisee and for Franchisor's lost or deferred opportunity to franchise others, except as may be otherwise specifically provided in this Agreement and/or any Exhibit attached hereto.

D. Franchisee acknowledges that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor specifically reserves the right and privilege, at its sole discretion and as it may deem in the best interests of all concerned in any specific instance, to vary standards for any System franchisee based upon the peculiarities of the particular site or circumstance, density of population, business potential, population of trade area, existing business practices or any other condition which Franchisor deems to be of importance to the successful operation of such franchisee's business. Franchisee shall not be entitled to require Franchisor to grant to Franchisee a like or similar variation hereunder.

E. In consideration of Franchisor's agreement not to grant another franchise in Franchisee's Designated Area, Franchisee at all times shall use its best efforts to promote and increase the sales and service of Menu Items and to effect the widest and best possible distribution throughout the Designated Area, soliciting and servicing all potential customers for PANCHERO'S food products and services. Failure of Franchisee to devote its best efforts to adequately represent its PANCHERO'S Franchised Restaurant in its Designated Area through its sales and service efforts shall be deemed just cause for termination.

II. TERM AND RENEWAL

A. This Agreement shall be effective and binding from the date of its execution for an initial term of five (5) years commencing on the date of this Agreement.

B. Franchisee shall have the right to renew this franchise before the expiration of the initial term of the franchise for four (4) additional successive terms of five (5) years each, providing all of the conditions hereinafter set forth have been fulfilled:

1. At the time of giving notice of renewal to Franchisor, Franchisee is not in default under any terms of any agreements with Franchisor;

2. Franchisee has, during the entire term of this Agreement, complied with all its provisions;

3. At the time of giving notice of renewal to Franchisor, Franchisee is not in default under any terms of this Agreement nor has Franchisee at any time during the term of this Agreement been in material default under any provisions of this Agreement;

4. Franchisee maintains possession of the Franchised Restaurant and before the expiration date of this Agreement has brought the Franchised Restaurant into full compliance with the specifications and standards then applicable for new or renewing PANCHERO'S Franchised Restaurants and presents evidence satisfactory to Franchisor that it has the right to remain in possession of the Premises for the duration of any renewal term; or, in the event Franchisee is unable to maintain possession of the Premises, or if, in the judgment of Franchisor, the Premises should be relocated, Franchisee secures substitute premises approved by Franchisor and has furnished, stocked and equipped such premises to bring the Franchised Restaurant at its substituted premises into full compliance with the then-current specifications and standards before the expiration date of this Agreement;

5. Franchisee has given notice of renewal to Franchisor as provided hereinafter;

6. Franchisee has satisfied all monetary obligations owed by Franchisee to Franchisor and has timely met these obligations throughout the term of this Agreement;

7. Franchisee has executed upon renewal Franchisor's then-current form of the Agreement (with appropriate modifications to reflect the fact that the Agreement relates to the grant of a renewal franchise), which agreement shall supersede in all respects this Agreement, and the terms of which may differ from the terms of this Agreement including, without limitation, a different percentage Continuing Services and Royalty Fee and advertising contribution; a different territory; provided, however, Franchisee shall not be required to pay the then-current initial franchise fee or its equivalent;

8. Franchisee has complied with Franchisor's then-current qualification and training requirements; and

9. Franchisee has executed a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its respective officers, directors, agents, shareholders and employees.

C. If Franchisee desires to renew this franchise before the expiration of this Agreement, Franchisee shall give Franchisor written notice of its desire to renew at least nine (9) months, but not more than fifteen (15) months, prior to the expiration of the initial term of this Agreement. Within sixty (60) days after its receipt of such timely notice, Franchisor shall furnish Franchisee with written notice of: (i) reasons which could cause Franchisor not to grant a renewal to Franchisee including, but not limited to, any deficiencies which require correction and a schedule for correction thereof by Franchisee; and (ii) Franchisor's then-current requirements relating to the image, appearance, decoration, furnishing, equipping and stocking of PANCHERO'S Franchised Restaurants and a schedule for effecting upgrading or modifications

in order to bring the Franchised Restaurant in compliance therewith, as a condition of renewal. Renewal of the franchise shall be conditioned upon Franchisee's compliance with such requirements and continued compliance with all the terms and conditions of this Agreement up to the date of termination of the initial term.

D. Franchisor shall give Franchisee written notice of its election not to renew the franchise at least three (3) months prior to the expiration of the initial term of this Agreement.

III. RESTAURANT LOCATION

A. Franchisee shall operate the Franchised Restaurant only at the location specified in Paragraph I. hereof. If the lease for the site of the Franchised Restaurant expires or terminates without fault of Franchisee, or if the site is destroyed, condemned or otherwise rendered unusable, or as otherwise may be agreed upon in writing by Franchisor and Franchisee, Franchisor shall grant permission for relocation of the Franchised Restaurant at a location and site acceptable to Franchisor. Any such relocation shall be at Franchisee's sole expense and Franchisor shall have the right to charge Franchisee for any and all reasonable costs incurred by Franchisor. If Franchisee is allowed to relocate its Franchised Restaurant, Franchisee must comply with Franchisor's then-current standards and specifications for the Franchised Restaurants. Franchisor shall make no guarantee of Franchisee's success at this new location.

B. Franchisee shall be responsible for purchasing or leasing a suitable site for the Franchised Restaurant. Prior to the acquisition by lease or purchase of any site for the Premises, Franchisee shall submit a description of the proposed site to Franchisor, together with a letter of intent or other evidence satisfactory to Franchisor which confirms Franchisee's favorable prospects for obtaining the proposed site. Franchisor shall provide Franchisee written notice of approval or disapproval of the proposed site within thirty (30) business days after receiving Franchisee's written proposal. Franchisor has the right to require Franchisee to use only a real estate broker that Franchisor has designated or approved to assist Franchisee in locating a suitable site for the Franchised Restaurant.

C. After receiving Franchisor's written approval of the location of the Franchised Restaurant as provided in Paragraph III.B. hereof, Franchisee shall, subject to the prior approval of terms by Franchisor execute a lease within 6 months after executing the Franchise Agreement (if the Premises are to be leased) or a binding agreement to purchase the site. Franchisor's approval of the lease or purchase agreement shall be conditioned upon inclusion in the lease of terms acceptable to Franchisor, and at Franchisor's option, the lease shall contain such provisions including, but not limited to:

1. A provision reserving to Franchisor the right, at Franchisor's election, to receive an assignment of the leasehold interest upon termination or expiration of the franchise grant;
2. A provision which expressly requires the lessor to provide Franchisor all sales and other information lessor may have related to the operation of the Franchised Restaurant, as Franchisor may request;

3. A provision which requires the lessor concurrently to provide Franchisor with a copy of any written notice of deficiency under the lease sent to Franchisee and which grants to Franchisor, in its sole discretion, the right (but not obligation) to cure any deficiency under the lease within fifteen (15) business days after the expiration of the period in which Franchisee had to cure any such default should Franchisee fail to do so;

4. A provision which evidences the right of Franchisee to display the Marks in accordance with the specifications required by the Confidential Operations Manual, subject only to the provisions of applicable law;

5. A provision that the Premises be used for the operation of a Franchised Restaurant; and

6. A provision which expressly states that any default under the lease shall constitute a default under this Agreement.

D. If the location is not designated above, Franchisor may use reasonable efforts, but shall not be obligated, to help analyze Franchisee's market area, to help determine site feasibility and to assist in the designation of the location, which must be approved by Franchisor; provided however, that Franchisor shall not conduct site selection activities on Franchisee's behalf. **Nothing contained herein shall be interpreted as a guarantee of success for said location nor shall any site recommendation or approval made by Franchisor be deemed a representation that any particular site is available for use as a PANCHERO'S Franchised Restaurant. It shall be the sole responsibility of Franchisee to undertake site selection activities and otherwise secure Premises for Franchisee's Franchised Restaurant.**

E. In the event no acceptable site is found and approved by the parties within ninety (90) days from the date of this Agreement, then and in that event, upon written application from either party, this contract shall be terminated and deposits received by Franchisor shall be returned to Franchisee. Provided, however, that in the event Franchisor has within the aforesaid time submitted in writing to Franchisee two (2) or more sites which are acceptable to Franchisor, and Franchisee has refused to accept same, then Franchisee, upon termination, shall forfeit to Franchisor the sum of EIGHT THOUSAND Dollars (\$8,000.00) as liquidated damages in payment for Franchisor's expenses in its site evaluation and selection activities. Franchisee and Franchisor agree that the amount set forth to wit, EIGHT THOUSAND Dollars (\$8,000.00) as liquidated damages is a reasonable amount and that due to the nature of the subject matter, it shall be impossible to ascertain the exact amount of damages sustained by the recipient therefore. If Franchisee has completed Franchisor's training program, as more fully described in Paragraph IV. hereof, Franchisor shall retain 50% of the franchise fee as such liquidated damages.

F. Franchisee shall promptly after obtaining possession of the site for the Franchised Restaurant: (i) cause to be prepared and submit for approval by Franchisor a site survey and any modifications to Franchisor's basic architectural plans and specifications (not for construction) for the development of a PANCHERO'S Franchised Restaurant (including requirements for dimensions, exterior design, materials, interior design and layout, equipment, fixtures, furniture, signs and decorating) at the site leased or purchased therefore, provided that Franchisee may

modify Franchisor's basic plans and specifications only to the extent required to comply with all applicable ordinances, building codes and permit requirements and with prior notification to and approval by Franchisor; (ii) obtain all required zoning changes, building, utility, health, sanitation and sign permits and licenses and any other required permits and licenses; (iii) purchase or lease equipment, fixtures, furniture and signs as provided herein; (iv) complete the construction and/or remodeling, equipment, fixtures, furniture and sign installation and decorating of the Franchised Restaurant in full and strict compliance with plans and specifications therefore approved by Franchisor and all applicable ordinances, building codes and permit requirements; (v) obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services; and (vi) otherwise complete development of and have the Franchised Restaurant ready to open and commence the conduct of its business in accordance with Paragraph XIII. hereof.

G. Franchisee shall be required to periodically make reasonable capital expenditures to remodel, modernize and redecorate the Premises so that the Franchised Restaurant shall reflect the then-current image intended to be portrayed by PANCHERO'S businesses. All remodeling, modernization or redecoration of the Premises must be done in accordance with the standards and specifications as prescribed by Franchisor from time to time and with the prior written approval of Franchisor. All replacements must conform to Franchisor's then-current quality standards and specifications and must be approved by Franchisor in writing. Franchisee shall not be required to remodel, modernize and redecorate the Franchised Restaurant and its Premises more than once during the initial term of this Agreement, requiring expenditures in excess of TWENTY FIVE THOUSAND Dollars (\$25,000.00); however, maintenance of the Premises and modifying or replacing equipment may exceed this amount and maintenance costs and equipment costs may not be credited to remodeling, modernization or redecoration expenditures. Franchisee must proceed with diligence when undertaking any remodeling, modernization or redecoration of the Premises; Franchisor shall set the timeframe for completion for such remodeling, modernization or redecoration.

IV. TRAINING AND ASSISTANCE

A. Prior to Franchisee's commencement of operations, Franchisor shall make an initial training program available to Franchisee or Franchisee's manager. The initial training program shall be approximately one (1) week in duration. Franchisee or Franchisee's manager is required to attend and successfully complete such program. The initial training program shall be conducted at Franchisor's headquarters, a PANCHERO'S restaurant or at such other place as Franchisor shall designate. Said training program shall include classroom training and on-the-job training at a PANCHERO'S restaurant and shall cover material aspects of the operation of a PANCHERO'S Franchised Restaurant, including administrative, operational and marketing matters. Multiple unit operators shall be provided with such training before opening the first unit only; Franchisees who served previously as a PANCHERO'S manager (whether company-owned, Affiliate-owned or franchised) shall be provided with one (1) week of such training. Such training shall be completed at least six (6) weeks prior to opening the Franchised Restaurant. Franchisee shall attend such training program no later than eight (8) weeks after executing the Franchise Agreement. All expenses incurred by Franchisee and its employees in attending such program including, without limitation, travel costs, room and board expenses and employees' salaries shall be the sole responsibility of Franchisee.

B. For approximately three (3) weeks after completion of the initial training program, Franchisee or Franchisee's manager and Franchisee's assistant manager or cook shall be provided with additional on-the-job training. Franchisee and/or Franchisee's designees are required to attend and successfully complete such training program. Such training shall be conducted at a location to be designated by Franchisor. Franchisor shall determine, at its option, whether to provide and/or require this on-the-job training for personnel of multiple unit operators. Franchisees who served previously as a PANCHERO'S manager (whether company-owned, Affiliate-owned or franchised) shall be provided with one (1) week of such training. Such training shall be completed at least three (3) weeks prior to opening the Franchised Restaurant. Franchisee and/or Franchisee's designees shall attend such training program no earlier than eight (8) weeks and no later than four (4) weeks before the Franchised Restaurant begins operations. All expenses incurred by Franchisee and its employees in attending such program including, without limitation, travel costs, room and board expenses, and employees' salaries shall be the sole responsibility of Franchisee.

C. If this is Franchisee's first PANCHERO'S Franchised Restaurant, for approximately two (2) weeks around the commencement of operations of Franchisee's Franchised Restaurant, Franchisor shall furnish to Franchisee, at Franchisee's Premises and at Franchisor's expense, one (1) of Franchisor's representatives for the purpose of facilitating the opening of Franchisee's Franchised Restaurant. Franchisor shall also furnish Franchisee during this period one (1) fully trained crew member from Franchisor's, affiliate's or another franchisee's PANCHERO'S Franchised Restaurant for approximately five (5) days to assist Franchisee in beginning operations of Franchisee's Franchised Restaurant. If Franchisee is a multiple unit operator, then, in lieu of the assistance described in the two preceding sentences, Franchisor will furnish to Franchisee one representative who will provide up to five (5) days of operations assistance to Franchisee around the commencement of operations of the Franchised Restaurant. Franchisee is required to successfully complete this phase of the initial training program as well. During this period, such representative shall also assist Franchisee in establishing and standardizing procedures and techniques essential to the operation of a PANCHERO'S Franchised Restaurant and shall assist in training personnel. Should Franchisee request additional assistance from Franchisor in order to facilitate the opening of the Franchised Restaurant and should Franchisor, in its discretion, deem it necessary, feasible and appropriate to comply with the request, Franchisee shall reimburse Franchisor for the expense of Franchisor providing such additional assistance which may include Franchisor's then-current service fee, as set forth in the Confidential Operations Manual which may be amended from time to time.

D. If Franchisor determines, in its sole discretion, that Franchisee is unable to satisfactorily complete either phase of training program, Franchisor shall have the right to: (i) require Franchisee to attend such additional training so as to demonstrate its ability to operate the Franchised Restaurants to Franchisor's satisfaction; or (ii) terminate this Agreement in the manner herein provided. If this Agreement is terminated pursuant to this Paragraph IV., Franchisee shall be liable to Franchisor for the expenses incurred by Franchisor as of such date for providing training to Franchisee and other expenses incurred by Franchisor not to exceed TWELVE THOUSAND FIVE HUNDRED Dollars (\$12,500.00). If Franchisee has paid franchise fees in excess of the amount Franchisee is liable to Franchisor, Franchisor shall return to Franchisee the franchise fees paid by Franchisee to Franchisor minus the expenses incurred by Franchisor as of such date for providing training to Franchisee and other expenses incurred by

Franchisor. Upon return of said amount, Franchisor shall be fully and forever released from any claims or causes of action Franchisee may have under or pursuant to this Agreement and Franchisee shall have no further right, title or interest in the Marks and any such rights shall automatically revert to Franchisor.

E. Franchisor from time to time may provide and if it does, may require that previously-trained and experienced franchisees, its managers and/or employees attend and successfully complete refresher training programs or seminars to be conducted at such location as may be designated by Franchisor. Attendance at such refresher training programs or seminars shall be at Franchisee's sole expense, provided, however, that attendance shall not be required at more than one (1) such program in any calendar year and shall not collectively exceed four (4) business days in duration during any calendar year.

F. If Franchisee designates new or additional managers after the initial training program, Franchisor shall provide training to such managers at the then-current published rates. Any and all designated managers shall be required to successfully complete the training program provided at Franchisor's headquarters or such other location designated by Franchisor. Franchisee shall bear all costs incurred by Franchisee's employees attending such training program.

V. TRUCKS, VANS AND OTHER MOTOR VEHICLES

A. If Franchisee requests to provide delivery services and Franchisor approves such request, Franchisor shall provide Franchisee with specifications for brands and types of trucks, vans and other motor vehicle(s) required for the Franchised Restaurant. Franchisee may purchase or lease original and replacement motor vehicle(s) from any source, provided they meet Franchisor's approval.

B. Franchisee at its expense shall, at all times during the term of this Agreement, maintain the interior and exterior of any motor vehicle(s) utilized in the Franchised Restaurant in good repair, attractive appearance, sound operating condition and equipped in accordance with Franchisor's standards and specifications. Franchisee, at the request of Franchisor, shall make necessary repairs and equipment modifications or additions to Franchisee's motor vehicle(s) used in the Franchised Restaurant in order to maintain the reputation of the System.

C. It shall be the sole responsibility of Franchisee to investigate all applicable licensing, leasing and other requirements for the maintenance of Franchisee's motor vehicle(s) and to insure ongoing compliance with all such requirements throughout the term of this Agreement.

D. The motor vehicle(s) used by Franchisee in conducting the Franchised Restaurant must be capable of prominently providing the external display of PANCHERO'S advertising copy, including the PANCHERO'S logo graphics supplied and/or approved by Franchisor, and further, such logo and graphics must be maintained in good appearance. Additional sales, advertising or display information can be placed on the motor vehicle(s) only with the prior written approval of Franchisor.

VI. PROPRIETARY MARKS

A. Franchisee acknowledges that Little Donkeys, Inc. has certain rights together with all the goodwill of the Marks and the Franchisor, by virtue of its license from owner, has the right to use and sublicense the Marks herein. Franchisee further acknowledges that Franchisee's right to use the Marks is derived solely from this Agreement and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications and operating procedures prescribed by Franchisor from time to time during the term of the Franchise. Any unauthorized use of the Marks by Franchisee is a breach of this Agreement and an infringement of the rights of Franchisor in and to the Marks. Franchisee acknowledges that all usage of the Marks by Franchisee and any goodwill established by Franchisee's use of the Marks shall inure to the exclusive benefit of Franchisor and that this Agreement does not confer any goodwill or other interests in the Marks upon Franchisee. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Marks or assist any other person in contesting the validity or ownership of the Marks. All provisions of this Agreement applicable to the Marks apply to any and all additional trademarks, service marks and commercial symbols authorized for use by and licensed to Franchisee by Franchisor after the date of this Agreement. Franchisee shall cooperate with Franchisor in its use and display of the Marks in enforcing or protecting the Marks.

B. Franchisee shall not use any Mark or portion of any Mark (1)) as part of a corporate or trade name, (2)) with any prefix, suffix or other modifying words, terms, designs or symbols, (3)) in connection with the sale of any unauthorized product or service, (4)) as part of any domain name, Website, homepage, electronic address, or other interactive site maintained on the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system, or (5)) or in any other manner not expressly authorized in writing by Franchisor. Franchisee shall give such notices of trademark and service mark registrations as Franchisor specifies and obtain such fictitious or assumed name registrations as may be required under applicable law.

C. Franchisee shall promptly notify Franchisor and/or Little Donkeys, Inc. of any claim, demand or cause of action based upon or arising from any attempt by any other person, firm or corporation to use the Marks or any colorable imitation thereof. Franchisee shall also notify Franchisor and/or Little Donkeys, Inc. of any action, claim or demand against Franchisee relating to the Marks within ten (10) days after Franchisee receives notice of said action, claim or demand. Upon receipt of timely notice of an action, claim or demand against Franchisee relating to the Marks, Franchisor and/or Little Donkeys, Inc. shall have the sole right, but not the duty, to defend any such action. Franchisor shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Marks and shall exercise such right in their sole discretion. In any defense or prosecution of any litigation relating to the Marks or components of the System undertaken by Franchisor and/or Little Donkeys, Inc., Franchisee shall cooperate with Franchisor and execute any and all documents and take all actions as may be desirable or necessary, in the opinion of their counsel, to carry out such defense or prosecution. Both parties shall make every effort consistent with the foregoing to protect, maintain and promote the Marks as identifying the System and only the System. **FRANCHISOR MAKES**

NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE USE, EXCLUSIVE OWNERSHIP, VALIDITY OR ENFORCEABILITY OF THE MARKS.

D. If it becomes advisable at any time, in Franchisor's sole discretion, for Franchisor to modify or discontinue use of any Mark, and/or use one or more additional or substitute trade names, trademarks, service marks or other commercial symbols, Franchisee shall comply with Franchisor's directions within a reasonable time, after notice to Franchisee by Franchisor. Franchisee shall stop using and displaying the Marks immediately upon notice by Franchisor of any alleged infringement of the Marks on the rights of a third party. Franchisor shall have no liability or obligation whatsoever with respect to Franchisee's modification or discontinuance of any Mark.

E. In order to preserve the validity and integrity of the Marks and copyrighted material licensed herein and to assure that Franchisee is properly employing the same in the operation of its Franchised Restaurant, Franchisor or its agents shall have the right of entry and inspection of Franchisee's Premises and operating procedures at all reasonable times. Franchisor shall have the right to observe the manner in which Franchisee is rendering its PANCHERO'S services and conducting its operations, to confer with Franchisee's employees and customers and to select Menu Items, the Trade Secret Food Products, ingredients, food and non-food products, beverages and other items, products and supplies for test of content and evaluation purposes to make certain that the Menu Items, the Trade Secret Food Products, ingredients, food and non-food products, beverages and other items, products, materials and supplies are satisfactory and meet the quality control provisions and performance standards established by Franchisor.

VII. CONFIDENTIAL OPERATIONS MANUAL

A. Franchisor shall loan to Franchisee during the term of the franchise one (1) copy of the Confidential Operations Manual containing mandatory and suggested specifications, standards, operating procedures and rules prescribed from time to time by Franchisor for PANCHERO'S Franchised Restaurants and information relative to other obligations of Franchisee hereunder. Franchisor shall have the right to add to and otherwise modify the Confidential Operations Manual from time to time to reflect changes in the specifications, standards, operating procedures and rules prescribed by Franchisor for PANCHERO'S Franchised Restaurants, provided that no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement.

B. The Confidential Operations Manual shall at all times remain the sole property of Franchisor and shall promptly be returned upon the expiration or other termination of this Agreement. At no time shall Franchisee or its employees make copies or reproductions of all or part of the Confidential Operations Manual.

C. The Confidential Operations Manual contains proprietary information of Franchisor and shall be kept confidential by Franchisee both during the term of the franchise and subsequent to the expiration and/or termination of the franchise. Franchisee shall at all times ensure that its copy of the Confidential Operations Manual be available at the Premises in a current and up-to-date manner. At all times that the Confidential Operations Manual is not in use by authorized personnel, Franchisee shall maintain the Confidential Operations Manual in a

locked receptacle at the Premises, and shall only grant authorized personnel, as defined in the Confidential Operations Manual, access to the key or lock combination of such receptacle. In the event of any dispute as to the contents of the Confidential Operations Manual, the terms of the master copy of the Confidential Operations Manual maintained by Franchisor at Franchisor's home office shall be controlling.

VIII. CONFIDENTIAL INFORMATION

A. Franchisee acknowledges that its entire knowledge of the operation of a PANCHERO'S Franchised Restaurant including, without limitation, the method of preparation of Menu Items, Trade Secret Food Products and other food products, ideas, designs, pricing, suppliers, the System, the Confidential Operations Manual and other specifications, product formulae, standards and operating procedures of a PANCHERO'S Franchised Restaurant is derived from information disclosed to Franchisee by Franchisor and that such information is proprietary, confidential and the trade secret of Franchisor. In addition, any improvements developed by Franchisee pursuant to Franchisee's operation of the Franchised Restaurant shall constitute proprietary information of Franchisor. "Trade Secrets" refers to the whole or any portion of know-how, knowledge, methods, recipes, formulae, specifications, processes, procedures and/or improvements regarding the PANCHERO'S Franchised Restaurant and the System that is valuable and secret in the sense that it is not generally known to competitors of Franchisor. Franchisee shall maintain the absolute confidentiality of all such information and Trade Secrets and not disclose to any person or entity during and after the term of the franchise and that Franchisee shall not use any such information and Trade Secrets in any other business or in any manner not specifically authorized or approved in writing by Franchisor. Franchisee shall return all such confidential information and Trade Secrets to Franchisor at the termination of this Agreement.

B. Franchisee shall divulge such confidential information only to the extent and only to such of its employees as must have access to it in order to operate the Franchised Restaurant. Any and all information, knowledge and know-how including, without limitation, drawings, materials, equipment, techniques, restaurant systems, product formulae, recipes and other data which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate lawfully came to its attention prior to disclosure thereof by Franchisor; or which, at the time of disclosure by Franchisor to Franchisee, had lawfully become a part of the public domain, through publication or communication by others; or which, after disclosure to Franchisee by Franchisor, lawfully becomes a part of the public domain, through publication or communication by others. All employees or agents of Franchisee who must have access to such information or materials shall be required to execute nondisclosure agreements in the form acceptable to Franchisor.

C. Due to the special and unique nature of the confidential information, Marks and Confidential Operations Manual of Franchisor and the possibility of irreparable damage due to their disclosure, Franchisee hereby acknowledges that Franchisor shall be entitled to immediate equitable remedies including, but not limited to, restraining orders and injunctive relief in order to safeguard such proprietary, confidential, unique and special information of Franchisor and that money damages alone would be an insufficient remedy with which to compensate Franchisor for any breach of the terms of Paragraphs VI., VII. and VIII. of this Agreement. All owners,

directors, shareholders, partners and employees of Franchisee having access to the confidential and proprietary information of Franchisor shall be required to execute non-disclosure agreements in the form acceptable to Franchisor.

IX. MODIFICATION OF THE SYSTEM

Franchisee acknowledges that from time to time hereafter, Franchisor may change or modify the System including, without limitation, the adoption and use of new or modified trade names, trademarks, service marks or copyrighted materials, new Menu Items, new products, new equipment, new techniques, new recipes or new presentations and such modifications shall be communicated to Franchisee through the Confidential Operations Manual. Franchisee shall accept, use and display for the purpose of this Agreement any such changes in the System within the timeframe prescribed by Franchisor, as if they were part of this Agreement at the time of execution hereof. Franchisee shall make such expenditures as are reasonably required by such changes or modifications in the System. Franchisee shall not change, modify or alter in any way the System.

X. ADVERTISING

Recognizing the value of advertising and the importance of the standardization of advertising and promotion to the furtherance of the goodwill and the public image of PANCHERO'S Franchised Restaurants, Franchisee agrees as follows:

A. Franchisee shall submit to Franchisor or its designated agency, for its prior approval, all promotional materials and advertising to be used by Franchisee including, but not limited to, newspapers, radio and television advertising, specialty and novelty items, signs, containers and boxes. In the event written disapproval of said advertising and promotional material is not given by Franchisor to Franchisee within thirty (30) days from the date such material is received by Franchisor, said materials shall be deemed approved. Failure by Franchisee to conform with the provisions herein and subsequent nonaction by Franchisor to require Franchisee to cure or remedy this failure and default shall not be deemed a waiver of future or additional failures and defaults of any other provision of this Agreement. The submission of advertising to Franchisor for approval shall not affect Franchisee's right to determine the prices at which Franchisee sells its products or services.

B. Franchisee shall expend a minimum of THREE THOUSAND Dollars (\$3,000.00) on newspaper, direct mail or other advertising through other media during the Franchisee's initial two (2) to three (3) weeks of operation of the Franchised Restaurant ("Grand Opening Advertising"). Such Grand Opening Advertising shall be conducted in accordance with guidelines established by Franchisor as published in the Confidential Operations Manual.

C. At such time as Franchisor establishes the PANCHERO'S Advertising and Development Fund ("Advertising Fund"), Franchisee shall contribute to the Advertising Fund an amount not to exceed three percent (3%) of the Gross Revenues derived from the Franchised Restaurant, as defined in Paragraph XI.A. of this Agreement. Franchisee's required payments to the Advertising Fund shall be made at the same time and in the same manner as, and in addition to, the Continuing Services and Royalty Fee provided in Paragraph XI.A. herein. Such payment

shall be made in addition to and exclusive of any sums that Franchisee may be required to spend on local advertising and promotion. The fund shall be maintained and administered by Franchisor or its designee, as follows:

1. Franchisor shall direct all advertising programs with sole discretion over the creative concepts, materials and media used in such programs and the placement and allocation thereof. Franchisee agrees and acknowledges that the Advertising Fund is intended to maximize general public recognition and acceptance of the Marks for the benefit of the System and that Franchisor and its designee undertake no obligation in administering the Advertising Fund to make expenditures for Franchisee which are equivalent or proportionate to its contribution or to ensure that any particular Franchisee benefits directly pro rata from the placement of advertising.

2. The funds may be used to meet any and all costs of maintaining, administering, directing, producing and preparing promotions and advertising (including, without limitation, the cost of conducting public relations activities, conducting advertising; and producing promotional brochures and other marketing materials to franchisees in the System) and developing, implementing, and maintaining an electronic consumer Website and/or related strategies. All sums paid by Franchisee to the Advertising Fund shall be maintained in a separate account from the other funds of Franchisor and shall not be used to defray any of Franchisor's general operating expenses, except for such reasonable administrative costs and overhead, if any, as Franchisor may incur in activities reasonably related to the administration or direction of the Advertising Fund and advertising programs including, without limitation, conducting market research, preparing marketing and advertising materials, and collecting and accounting for assessments for the Advertising Fund. Franchisor-owned and Affiliate-owned restaurants shall contribute the same percentage to the Advertising Fund as Franchised Restaurants.

3. It is anticipated that all contributions to the Advertising Fund shall be expended for advertising and promotional purposes during Franchisor's fiscal year within which contributions are made. If, however, excess amounts remain in the Advertising Fund at the end of such fiscal year, all expenditures in the following fiscal year(s) shall be made first out of any current interest or other earnings of the Advertising Fund, next out of any accumulated earnings and finally from principal.

4. Although Franchisor intends the Advertising Fund to be of perpetual duration, Franchisor maintains the right to terminate the Advertising Fund. The Advertising Fund shall not be terminated, however, until all monies in the Advertising Fund have been expended for advertising and promotional purposes.

5. An accounting of the operation of the Advertising Fund shall be prepared annually and shall be made available to Franchisee upon request. Franchisor reserves the right, at its option, to require that such annual accounting include an audit of the operation of the Advertising Fund prepared by an independent certified public accountant selected by Franchisor and prepared at the expense of the Advertising Fund.

6. Franchisor shall, for each of its company-owned and Affiliate-owned PANCHERO'S restaurants offering products and services similar to the Franchised Restaurant, make contributions to the Advertising Fund equivalent to the contributions required of Franchised Restaurant within the System.

D. Franchisee shall spend each calendar month on local advertising and promotion, an amount equal to a percentage of Franchisee's Gross Revenues, (as defined in Paragraph XI.A.1. of this Agreement) in accordance with the following schedule: **(INITIAL THE PROVISION THAT APPLIES.)**

_____ 1. If the Franchised Restaurant is located in a "Regional Mall or Life Style Center," Franchisee shall not be required to contribute to local advertising and promotion each month and shall only be required to advertise locally as required by the Regional Mall or Life Style Center lease. However, if such lease requires expenditures for advertising less than three percent (3%) of the Gross Revenues of the Franchised Restaurant, Franchisee shall be required to spend up to three percent (3%) of the Gross Revenues of the Franchised Restaurant on local advertising. "Regional Mall or Life Style Center" shall mean a shopping center having three hundred thousand (300,000) or more square feet of leasable space.

_____ 2. If the Franchised Restaurant is located at a site other than a Regional Mall or Life Style Center, Franchisee shall spend an amount equal to three percent (3%) of the Gross Revenues of the Franchised Restaurant on local advertising and promotion each month.

Such expenditures shall be made directly by Franchisee, subject to approval and direction by Franchisor or Franchisor's designated advertising agency. Within thirty (30) days of the end of each calendar month, Franchisee shall furnish to Franchisor, in a manner approved by Franchisor, an accurate accounting of Franchisee's expenditures on local advertising and promotion for the preceding calendar month just ended. Franchisor shall provide guidelines for local advertising and any deviation from such guidelines requires the prior approval of Franchisor. If Franchisee fails to spend each month on local advertising and promotion the required 3% of the Franchised Restaurant's Gross Revenues, Franchisor may require Franchisee to pay this amount to Franchisor immediately, and Franchisor then may spend such three percent (3%) for such local advertising and promotion of the Franchised Restaurant that Franchisor deems best. Franchisor's right to require Franchisee to pay it such amounts is in addition to, and does not replace, Franchisee's obligation to pay Franchisor the amounts specified in Paragraph X.C. above.

E. From time to time Franchisor may designate a local, regional or national Advertising Coverage Area in which Franchisee's business and at least one (1) other PANCHERO'S restaurant is located for purposes of developing a cooperative local, regional or national advertising or promotional program. Franchisee agrees to participate in and contribute its share to such cooperative advertising and promotional programs in Franchisee's Advertising Coverage Area in addition to such contributions and expenditures as required pursuant to Paragraphs X.B. and X.C. The cost of the program shall be allocated among locations in such area and each Franchisee's share shall be in proportion to its sales during the preceding twelve

(12) month period, or portion of said period. Said contributions to cooperative advertising promotional programs shall be credited toward the local advertising and promotional expenditure required by Paragraph X.D. "Advertising Coverage Area" shall be defined as the area covered by the particular advertising medium (television, radio or other medium) as recognized in the industry. All PANCHERO'S restaurants whether Franchisor-owned, Affiliate-owned or franchised shall have one (1) vote per location in any such cooperative. Franchisor may establish Regional Franchisee Councils to administer the cooperative advertising program which shall be comprised of Franchisor, franchisees in the Advertising Coverage Area and Franchisor-owned or Affiliate-owned restaurants. At the time a program is submitted, Franchisor shall submit a list to Franchisee of all operating PANCHERO'S restaurants within the Advertising Coverage Area.

F. Franchisee shall maintain a listing in boldface type in the white pages of the local telephone directory and advertise continuously in the classified or Yellow Pages of the local telephone directory. Franchisee shall maintain a Yellow Pages listing in boldface type under the listing "Restaurant," "Restaurant - Mexican," and such other listings of the size and type deemed appropriate by Franchisor. When more than one (1) PANCHERO'S Franchised Restaurant serves a metropolitan area, classified advertisements shall list all PANCHERO'S Franchised Restaurants operating within the distribution area of such classified directories and Franchisee shall contribute its equal share in the cost of such advertisement which shall be credited toward the local advertising required in Paragraph X.D. hereof.

G. Franchisee shall not advertise or use in advertising or any other form of promotion, the copyrighted materials, trademarks, service marks or commercial symbols of Franchisor without the appropriate © or ® registration marks or the designation ™ or SM where applicable.

XI. CONTINUING SERVICES AND ROYALTY FEE

A. Franchisee shall pay without offset, credit or deduction of any nature, to Franchisor, so long as this Agreement shall be in effect, a weekly Continuing Services and Royalty Fee equal to five percent (5%) of the Gross Revenues derived from the Franchised Restaurant. Said Continuing Services and Royalty Fee shall be paid weekly in the manner specified below or as otherwise prescribed in the Confidential Operations Manual.

1. On or before Tuesday of each week, Franchisee shall submit to Franchisor, on a form approved by Franchisor, a correct statement signed by Franchisee, of Franchisee's Gross Revenues for the preceding week ended Saturday. If Franchisor has instructed Franchisee to pay the Continuing Service and Royalty Fee by check (or means other than the electronic deposit mechanism described in Paragraph D. below), then each weekly statement of Gross Revenues shall be accompanied by the Continuing Services and Royalty Fee payment based on the Gross Revenues reported in the statement so submitted. Franchisee shall make available to Franchisor all original books and records that Franchisor may deem necessary to ascertain Franchisee's Gross Revenues for reasonable inspection at reasonable times.

2. The term "Gross Revenues," as used herein and throughout this Agreement, shall mean and include the total of all revenues and income from the sale of

all Trade Secret Food Products, other food products, beverages and other related merchandise, products and services to customers of Franchisee or any other source, whether or not sold or performed at or from the PANCHERO'S Franchised Restaurant and whether received in cash, in services in kind, from barter and/or exchange, on credit (whether or not payment is received therefore) or otherwise. There shall be deducted from Gross Revenues for purposes of said computation (but only to the extent they have been included) the amount of all sales tax receipts or similar tax receipts which, by law, are chargeable to customers, if such taxes are separately stated when the customer is charged and if such taxes are paid to the appropriate taxing authority. There shall be further deducted from Gross Revenues the amount of any documented refunds, chargebacks, credits and allowances given in good faith to customers by Franchisee. All barter and/or exchange transactions pursuant to which Franchisee furnishes services and/or products in exchange for goods or services to be provided to Franchisee by a vendor, supplier or customer shall, for the purpose of determining Gross Revenues, be valued at the full retail value of the goods and/or services so provided to Franchisee.

B. All Continuing Services and Royalty Fees, advertising contributions, amounts due for purchases by Franchisee from Franchisor and other amounts which Franchisee owes to Franchisor shall bear interest after due date at the highest applicable legal rate for open account business credit, not to exceed one and one-half percent (1.5%) per month. Franchisee acknowledges that this Paragraph XI. shall not constitute agreement by Franchisor to accept such payments after same are due or a commitment by Franchisor to extend credit to or otherwise finance Franchisee's operation of, the Franchised Restaurant. Further, Franchisee acknowledges that its failure to pay all amounts when due shall constitute grounds for termination of this Agreement, as provided in Paragraph XVII. hereof, notwithstanding the provisions of this Paragraph XI.

C. Notwithstanding any designation by Franchisee, Franchisor shall have the sole discretion to apply any payments by Franchisee to any past due indebtedness of Franchisee for Continuing Services and Royalty Fees, advertising contributions, purchases from Franchisor, interest or any other indebtedness.

D. All Continuing Services and Royalty Fees, advertising contributions, amounts due for purchases by Franchisee from Franchisor and other amounts which Franchisee owes to Franchisor shall be paid through an Electronic Depository Transfer Account ("Electronic Depository Transfer Account") as further described in the Confidential Operations Manual. Immediately following execution of this Agreement, Franchisee shall set up an Electronic Depository Transfer Account and Franchisor shall have access to such account for the purpose of receiving payment for Continuing Services and Royalty Fees, advertising contributions, amounts due for purchases by Franchisee from Franchisor and any other amounts which Franchisee owes to Franchisor. Every Wednesday, Franchisee shall make deposits to the fund sufficient to cover amounts owed to Franchisor on the preceding Saturday for Continuing Services and Royalty Fees, advertising contributions and other funds owed to Franchisor. Deposits for all other amounts owed to Franchisor shall be in accordance with the procedures set forth in the Confidential Operations Manual.

XII. ACCOUNTING AND RECORDS

A. Franchisee shall maintain during the term of this Agreement, and shall preserve for the time period specified in the Confidential Operations Manual, full, complete and accurate books, records and accounts in accordance with the standard accounting system prescribed by Franchisor in the Confidential Operations Manual or otherwise in writing and in accordance with generally accepted accounting principles ("GAAP"), consistently applied. Franchisee shall retain for a period of three (3) years thereafter all books and records related to the Franchised Restaurant including, without limitation, sales checks, purchase orders, invoices, payroll records, customer lists, check stubs, sales tax records and returns, cash receipts and disbursement journals and general ledgers. Franchisor has the right to require Franchisee to use only an accountant that Franchisor has approved. However, if Franchisee fails to comply with Franchisor's accounting, record-keeping, and reporting obligations, Franchisor may require Franchisee to use Franchisor's designated accountant (which also may be Franchisor's accountant) to ensure preparation of required reports and financial statements accurately and in Franchisor's desired format.

B. Franchisee shall supply to Franchisor at the end of each calendar quarter, in the form approved by Franchisor, a profit and loss statement and balance sheet for the last preceding three (3) month period just ended within twenty-five (25) days after the end of the calendar quarter. Additionally, Franchisee shall, at its expense, submit to Franchisor within forty-five (45) days after the end of each fiscal year during the term of this Agreement, a profit and loss statement for such fiscal year and a balance sheet as of the last day of such fiscal year, prepared on an accrual basis, including all adjustments necessary for fair presentation of the financial statements. Such financial statements shall be certified to be true and correct by Franchisee. Franchisor reserves the right to require annual financial statements, prepared in accordance with generally accepted accounting standards, audited by an independent certified public accountant. Franchisee shall provide to Franchisor copies of all federal and state income tax returns and sales tax returns.

C. Franchisee shall submit to Franchisor such other periodic reports, forms and records as specified, in the manner and at the time as specified in the Confidential Operations Manual or as Franchisor shall otherwise require in writing from time to time.

D. Franchisee shall record all sales and related activities on computer-based, point-of-sale cash registers which are fully compatible with any program or system which Franchisor, in its discretion, may now or in the future employ. Franchisee must procure a computer system meeting the specifications and standards prescribed by Franchisor. All Gross Revenues and sales information shall be recorded on such equipment. Franchisor shall have full access to all of Franchisee's data, system and related information by means of direct access whether in person, or by telephone/modem.

E. Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at its expense, the books, records and tax returns of Franchisee. Franchisor shall also have the right, at any time, to have an independent audit made of the books and records of Franchisee at Franchisor's expense. If an inspection should reveal that any payments due to Franchisor have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount understated upon demand, in addition to interest from the date such

amount was due until paid, at the maximum rate permitted by law. If an inspection discloses an understatement in any report of two percent (2%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, reasonable accounting and attorneys' fees). The foregoing remedies shall be in addition to any other remedies Franchisor may have.

F. Franchisee acknowledges that nothing contained herein constitutes Franchisor's agreement to accept any payments after same are due or a commitment by Franchisor to extend credit to or otherwise finance Franchisee's operation of the Franchised Restaurant. Further, Franchisee acknowledges that its failure to pay all amounts when due shall constitute a material default of and grounds for termination of this Agreement.

XIII. STANDARDS OF QUALITY AND PERFORMANCE

A. Franchisee shall comply with all requirements set forth in this Agreement, the Confidential Operations Manual and other written policies supplied to Franchisee by Franchisor. Mandatory specifications, standards, operating procedures and rules prescribed from time to time by Franchisor in the Confidential Operations Manual or otherwise communicated to Franchisee in writing, shall constitute provisions of this Agreement as if fully set forth herein and shall be reasonably and uniformly applied to all franchisees to the extent possible. All references herein to this Agreement shall include all such mandatory specifications, standards and operating procedures and rules. Franchisee shall comply with the entire System including, but not limited to, the requirements of this Paragraph XIII.

B. Franchisee shall commence operation of the Franchised Restaurant not later than nine (9) months after execution of this Agreement or as otherwise required or approved in writing by Franchisor. Prior to such opening, Franchisee shall have procured all necessary licenses, permits and approvals including, but not limited to, construction permits, hired and trained personnel, made all leasehold improvements and purchased initial inventory. If Franchisee for any reason fails to commence operation as herein provided, unless Franchisee is precluded from doing so by force majeure, such failure shall be considered a default and Franchisor may terminate this Agreement as herein provided.

C. Franchisee shall maintain the condition and appearance of the Premises consistent with Franchisor's quality controls and standards. Franchisee shall effect such reasonable maintenance of the Franchised Restaurant as is from time to time required to maintain or improve the appearance and efficient operation of the Franchised Restaurant including, but not limited to, replacement of worn out or obsolete fixtures and signs, repair of the exterior and interior of the Premises and purchasing and installation of new or modified equipment. If at any time in Franchisor's judgment the general state of repair or the appearance of the Premises or its equipment, fixtures, signs or decor does not meet Franchisor's quality control and standards therefore, Franchisor shall so notify Franchisee, specifying the action to be taken by Franchisee to correct such deficiency. If Franchisee fails or refuses to initiate within thirty (30) days after receipt of such notice, and thereafter continue a bona fide program to complete any required maintenance, Franchisor shall have the right, in addition to all other remedies, to enter upon the Premises and effect such repairs, painting, maintenance or replacements of equipment, fixtures or signs on behalf of Franchisee and Franchisee shall pay the entire costs thereof on demand.

Franchisee's obligation to initiate and continue any required maintenance shall be suspended during any period in which such maintenance is impractical due to force majeure.

D. Franchisee shall make no material alterations to the Premises nor shall Franchisee make material replacements of or alterations to the equipment, fixtures or signs of the Franchised Restaurant without the prior written approval by Franchisor.

E. The location of the Franchised Restaurant approved by Franchisor in accordance with Paragraph III. hereof shall be used solely for the purpose of conducting a PANCHERO'S Franchised Restaurant.

F. Franchisor and its Affiliate may develop Trade Secret Food Products and shall continue to further develop and own proprietary recipes. In order to protect its trade secrets and to monitor the manufacture, packaging, processing and sale of Trade Secret Food Products, Franchisor or its Affiliate shall (i) manufacture, supply and sell Trade Secret Food Products to franchisees of Franchisor, and/or (ii) disclose the formulae for and methods and preparation of the Trade Secret Food Products to a limited number of suppliers who shall be authorized by Franchisor or its affiliates to manufacture Trade Secret Food Products to Franchisor's precise specifications and sell Trade Secret Food Products to franchisees of Franchisor. Franchisee acknowledges that Franchisee shall be required to purchase and use Trade Secret Food Products from Franchisor or a limited number of suppliers so authorized by Franchisor.

G. Franchisee shall offer for sale and sell at the Franchised Restaurant all types of Menu Items and other categories of food and beverage products that Franchisor from time to time authorizes and shall not offer for sale or sell at the Franchised Restaurant or the Premises which it occupies, any other category of products or use such Premises for any purpose other than the operation of a Franchised Restaurant in full compliance with this Agreement.

H. In order to ensure that all Menu Items produced by Franchisee meet Franchisor's high standards of taste, texture, appearance and freshness and in order to protect Franchisor's goodwill and Marks, all Trade Secret Food Products, Menu Items and other food products shall be prepared only by properly trained personnel strictly in accordance with Franchisor's recipes, cooking techniques and processes as designated by Franchisor in the Confidential Operations Manual and shall be sold only at retail to customers in conformity with Franchisor's marketing plan and concept. Franchisee acknowledges that such recipes, cooking techniques and processes are integral to the System and failure to adhere to such recipes, cooking techniques and processes (including the handling and storage of both ingredients and fully prepared Menu Items) shall be detrimental to the System and Marks.

I. From time to time, Franchisor shall provide to Franchisee a list of approved manufacturers, suppliers and distributors ("Approved Suppliers List") and approved inventory, products, fixtures, furniture, equipment, signs, stationery, supplies and other items or services necessary to operate the Franchised Restaurant ("Approved Supplies List"). Such list shall specify the manufacturer, brand name, supplier and distributor and the inventory, products, fixtures, furniture, equipment, signs, stationery, supplies and services which Franchisor has approved to be carried or used in the System. Franchisor may revise the Approved Suppliers List and Approved Supplies List from time to time in its sole discretion and such lists shall be

submitted to Franchisee as Franchisor deems advisable. If Franchisee proposes to offer for sale at the Franchised Restaurant any brand of product, or to use in the operation of the Franchised Restaurant any brand of food ingredient or other material or supply which is not then approved by Franchisor as meeting its minimum specifications and quality standards, or to purchase any product from a supplier that is not then designated by Franchisor as an approved supplier, Franchisee shall first notify Franchisor and shall, upon request by Franchisor, submit samples and such other information as Franchisor requires for examination and/or testing or to otherwise determine whether such product, material or supply, or such proposed supplier meets its specifications and quality standards. A charge not to exceed the reasonable cost of the inspection and evaluation and the actual cost of the test shall be paid by Franchisee or the supplier. Franchisor reserves the right, at its option, to re-inspect the facilities and products of any supplier of an approved item and to revoke its approval of any item which fails to continue to meet any of Franchisor's criteria. Franchisor reserves the right, in its sole discretion, to approve any and all supplies, suppliers, brand name products and other products and services, whether currently approved by Franchisor or submitted to Franchisor by Franchisee for approval, authorized for use by or sale from Franchised Restaurant. Franchisor and its affiliates have the right to receive payments from suppliers on account of their actual or prospective dealings with Franchisee and other franchisees and to use all amounts they receive without restriction for any purposes they deem appropriate (unless Franchisor and its affiliates agree otherwise with the suppliers).

J. All inventory, products, materials and other items and supplies used in the operation of the Franchised Restaurant which are not specifically required to be purchased in accordance with Franchisor's Approved Supplies List and Approved Suppliers List shall conform to the specifications and quality standards established by Franchisor from time to time.

K. Franchisee shall secure and maintain in force all required licenses, permits and certificates relating to the operation of the Franchised Restaurant and shall operate the Franchised Restaurant in full compliance with all applicable laws, ordinances and regulations including, without limitation, all government regulations relating to occupational hazards and health, dispensing of food products, consumer protection, trade regulation, workers' compensation, unemployment insurance and withholding and payment of Federal and State income taxes and social security taxes and sales, use and property taxes.

L. Franchisee shall refrain from any merchandising, advertising or promotional practice which is unethical or may be injurious to the business of Franchisor and/or other Franchised Restaurants or to the goodwill associated with the Marks. Franchisee shall cease and desist using such practices immediately upon notification by Franchisor.

M. Franchisee shall in the operation of the Franchised Restaurant use only displays, trays, napkins, boxes, bags, wrapping paper, labels, forms and other paper and plastic products imprinted with the Marks and colors as prescribed from time to time by Franchisor and shall purchase such items only from such third parties licensed by Franchisor to duplicate the Mark on such items.

N. Franchisee acknowledges that the Franchised Restaurant shall at all times maintain an inventory of ingredients, food and beverage products and other products, materials and supplies that shall permit operation of the Franchised Restaurant at maximum capacity.

O. The Franchised Restaurant shall at all times be under the direct, on-premises supervision of Franchisee (or a trained and competent employee acting as full-time manager) or, for a single-unit franchisee, someone who owns or shall be entitled to own within five (5) years 15% of the Franchised Restaurant. If Franchisee employs a full-time manager, however, Franchisee acknowledges that it shall remain obligated to supervise the operations of the Franchised Restaurant as agreed upon by Franchisee and Franchisor. In the event Franchisee operates more than one (1) franchise, at least one (1) trained and competent employee referred to above shall act as a full-time manager. Franchisee shall keep Franchisor informed at all times of the identity of any employee(s) acting as manager(s) of the Franchised Restaurant. If Franchisee selects a substitute or additional manager, Franchisee shall be required to make sure such manager receives training from Franchisor. To the extent that Franchisor can reasonably accommodate Franchisee's manager in Franchisee's regularly scheduled training course, Franchisor shall make training available, as is reasonable and necessary, for all managers designated by Franchisee. Franchisor shall provide such training at the then-current published rates. In no event shall Franchisor be under any obligation to provide individual training to Franchisee's managers. Franchisee shall, at all times, faithfully, honestly and diligently perform its obligations hereunder and shall not engage in any business or other activities that shall conflict with its obligations hereunder.

P. Franchisee shall not install or maintain on the Premises any newspaper racks, video games, juke boxes, gaming machines, gum machines, games, rides, vending machines or other similar devices without the written approval of Franchisor.

Q. If directed by Franchisor, Franchisee shall participate actively in a PANCHERO'S Regional Advisory Council ("Council") and participate in all Council programs, for Franchisee's particular Council, approved by Franchisor. The purposes of the Council(s) include, but are not limited to, exchanging ideas and problem solving methods, advising Franchisor on expenditures for regional advertising, providing back-up support and staffing for political influence and coordinating franchisee efforts. Franchisee shall pay all assessments levied by the Council and Franchisor has the right to enforce this obligation. Amounts and expenditures may vary from time to time and due to variations in Council participation and costs as determined by a particular Council and as approved by Franchisor. Although Franchisee shall pay such Council assessments, such assessments shall in no way diminish Franchisee's rights and the benefit of the bargain under this Agreement. Such Council(s) may be formed by Franchisor at such time that more than one (1) franchisee conducts a Franchised Restaurant in any given region, the boundaries of such region to be determined in the sole and unfettered discretion of Franchisor.

R. Franchisor may allow Franchisee to conduct delivery services of prepared food products from the Franchised Restaurant in compliance with any delivery standards established by Franchisor. Franchisee shall obtain written approval from Franchisor before undertaking such delivery service and shall conduct such delivery service in accordance with guidelines established by Franchisor.

S. Franchisor may allow Franchisee to obtain a license for the sale of beer, wine and/or margaritas. Franchisee shall obtain written approval from Franchisor before applying for such license and shall comply with any standards established by Franchisor for the Franchised Restaurant selling such alcoholic beverages. Franchisor shall approve Franchisee's sale of

alcoholic beverages if it is cost efficient to obtain the license, Franchisee is able to obtain a license, Franchisee's location is suitable for such sale and various other factors that Franchisor shall consider.

T. Franchisee's employees shall at all times wear uniforms imprinted with the Marks as prescribed by Franchisor in the Confidential Operations Manual.

U. Franchisor may, in the future, develop and custom design a software package for conducting accounting, inventory control, point-of-sale functions and related activities. If developed, this software shall be proprietary to Franchisor and confidential information of Franchisor. At such time as the Proprietary Software Package is introduced into the System, Franchisee shall sign such confidentiality agreements, software license agreements or other documents required by Franchisor. Franchisor has determined that it shall not be able to alter the Proprietary Software Package and system to accommodate each and every franchisee of the System; therefore, at such time as Franchisor introduces the Proprietary Software Package into the System, Franchisee shall implement and utilize the Proprietary Software Package in the operation of the Franchised Restaurant and comply with all specifications and standards prescribed by Franchisor regarding the Proprietary Software Package, as provided from time to time in the Confidential Operations Manual. This unique software is in an ongoing development and testing stage and upgrades may be implemented into the System at Franchisor's discretion. Once developed, Franchisee shall be responsible for maintaining ongoing service and support regarding the Proprietary Software Package, and Franchisor shall lease such software to Franchisee at the then-current rates published by Franchisor.

V. Franchisee shall periodically attend special meetings of all PANCHERO'S franchisees to be conducted at a location designated by Franchisor. Franchisee shall bear all costs incurred by Franchisee and its employees in attending such meetings including, without limitation, travel expenses, room and board expenses and employees' salaries. Attendance at the first such meeting each calendar year shall be mandatory, but shall not last more than two (2) business days. If more than one (1) such meeting is called by Franchisor in a calendar year and Franchisee is unable to attend, Franchisor shall conference Franchisee into the meeting via telephone or other available means, provided, however, that the costs of this conferencing will be split among all franchisees who were unable to attend such meeting.

W. Franchisee shall notify Franchisor in writing within five (5) days of the commencement of any action, suit or proceeding and of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality which involves any amount greater than TEN THOUSAND Dollars (\$10,000.00) or which may adversely affect the operation or financial condition of the Franchised Restaurant.

XIV. FRANCHISOR'S OPERATIONS ASSISTANCE

A. Franchisor may from time to time advise or offer guidance to Franchisee relative to prices for the food and other products offered for sale by the Franchised Restaurant that, in Franchisor's judgment, constitute good business practice. Such guidance shall be based on the experience of Franchisor and its franchisees in operating Franchised Restaurants and an analysis of the costs of such products and prices charged for competitive products. Franchisee shall not

be obligated to accept any such advice or guidance and shall have the sole right to determine the prices to be charged by the Franchised Restaurant and no such advice or guidance shall be deemed or construed to impose upon Franchisee any obligation to charge any fixed, minimum or maximum prices for any product offered for sale by the Franchised Restaurant.

B. Upon commencement of operation of the Franchised Restaurant and during the term of this Agreement, Franchisor may, but is not obligated to, provide to Franchisee the following:

1. A comprehensive list of established sources of equipment, foods, supplies and containers necessary for the operation of the Franchised Restaurant and provide specifications for such products;
2. Coordination of product distribution for local, regional and national suppliers;
3. Regulation of quality standards and products in conformance throughout the network of Franchised Restaurants;
4. Coordination of advertising materials and strategies;
5. Negotiation of group rates for purchases of products and materials as Franchisor, in its sole discretion, deems necessary and appropriate; and
6. On-going training and support.

C. Franchisor may furnish Franchisee with such assistance in connection with the operation of the Franchised Restaurant as is reasonably determined to be necessary by Franchisor from time to time. Operations assistance may consist of advice and guidance with respect to:

1. Proper utilization of procedures by the Franchised Restaurant regarding the service and sale of all Menu Items, other food and beverage items and related items and materials as approved by Franchisor;
2. Additional products and services authorized for sale from PANCHERO'S Franchised Restaurants;
3. Purchase of ingredients and other food and beverage items, materials and supplies;
4. The institution of proper administrative, bookkeeping, accounting, inventory control, supervisory and general operating procedures for the effective operation of the Franchised Restaurant;
5. Advertising and promotional programs; and
6. On-going research and development of new procedures and techniques, new products and materials and other enhancements to the System.

D. Franchisor may make periodic visits to and inspections of the Franchised Restaurant for the purposes of consultation, assistance and guidance of Franchisee in all aspects of the operation and management of the Franchised Restaurant. Franchisor or Franchisor's representatives who attend at the Franchised Restaurant may prepare, for the benefit of both Franchisor and Franchisee, written reports with respect to such visits outlining any suggested changes or improvements in the operations of the Franchised Restaurant and detailing any defaults in such operations which become evident as a result of any such visit, and a copy of each such written report shall be provided to both Franchisor and Franchisee. Franchisor shall advise Franchisee of problems arising out of the operation of the Franchised Restaurant as disclosed by reports submitted to Franchisor by Franchisee or by inspections conducted by Franchisor of the Franchised Restaurant. Any defaults or problems discovered and documented by Franchisor must be remedied by Franchisee within thirty (30) days after notice by Franchisor.

E. All of the specifications, Approved Suppliers Lists, Approved Supplies Lists, training and operations manuals to be provided by Franchisor to Franchisee pursuant to this Agreement shall be delivered during the initial phase of Franchisor's training program.

XV. INSURANCE

A. Franchisee shall procure at its expense and maintain in full force and effect during the term of this Agreement, an insurance policy or policies protecting Franchisee, Franchisor and their officers, directors and employees against any loss, liability, personal injury, death or property damage or expense whatsoever arising or occurring upon or in connection with the Franchised Restaurant, as Franchisor may reasonably require for its own and Franchisee's protection. Franchisor shall be named an additional insured in such policy or policies.

B. Such policy or policies shall be written by an insurance company licensed in the state in which Franchisee operates and having at least an "A" Rating Classification as indicated in Best's Key Rating Guide in accordance with standards and specifications set forth in the Confidential Operations Manual or otherwise in writing, and shall include, at a minimum (except as different coverages and policy limits may reasonably be specified for all franchisees from time to time by Franchisor in the Confidential Operations Manual or otherwise in writing) the following:

1. All risks coverage insurance on the Franchised Restaurant and all fixtures, equipment, supplies, products and other property used in the operation of the Franchised Restaurant (which coverage may include flood and/or earthquake coverage where applicable, and theft insurance) for full repair and replacement value without any applicable co-insurance clause, except that an appropriate deductible clause shall be permitted.

2. Workers' compensation and employer's liability insurance as well as such other insurance as may be required by statute or rule of the state in which the Franchised Restaurant is located and operated.

3. Comprehensive general liability insurance and product liability insurance, including a per premises aggregate with the following coverages: broad form contractual

liability, personal and advertising injury; and products/completed operation, insuring Franchisor and Franchisee against all claims, suits, obligations, liabilities and damages, including attorneys' fees, based upon or arising out of actual or alleged personal injuries or property damage resulting from or occurring in the course of, or on or about or otherwise relating to the Franchised Restaurant, including General Aggregate coverage in the following limits:

| <u>Recommended Coverage</u> | <u>Minimum Limits of Coverage</u> |
|----------------------------------------------|-----------------------------------|
| General Aggregate | \$ 1,000,000.00 |
| Products/Completed Operations Aggregate..... | \$ 1,000,000.00 |
| Personal and Advertising Injury | \$ 1,000,000.00 |
| Each Occurrence | \$ 1,000,000.00 |
| Liquor Law Liability..... | \$ 500,000.00 |
| Fire Damage (any one fire)..... | \$ 150,000.00 |
| Medical Expense (any one person)..... | \$ 5,000.00 |

The amounts required herein may be modified from time to time by Franchisor to reflect inflation or future experience with claims.

4. Business interruption insurance in the amount of actual losses sustained.

5. Automobile liability insurance, including owned, hired and non-owned vehicle coverage, with a combined single limit of at least ONE MILLION Dollars (\$1,000,000.00).

6. Such insurance and types of coverage as may be required by the terms of any lease for the Franchised Restaurant, or as may be required from time to time by Franchisor.

C. The insurance afforded by the policy or policies respecting liability shall not be limited in any way by reason of any insurance which may be maintained by Franchisor. Within ninety (90) days of the signing of this Agreement, but in no event later than the date on which Franchisee acquires an interest in the real property from which it shall operate the Franchised Restaurant, a Certificate of Insurance showing compliance with the foregoing requirements shall be furnished by Franchisee to Franchisor for approval. Such certificate shall state that said policy or policies shall not be canceled or altered without at least twenty (20) days prior written notice to Franchisor and shall reflect proof of payment of premiums. Maintenance of such insurance and the performance by Franchisee of the obligations under this Paragraph XV. shall not relieve Franchisee of liability under the indemnity provision set forth in this Agreement. Minimum limits as required above may be modified from time to time, as conditions require, by written notice to Franchisee. Franchisee shall furnish proof of annual renewal of such insurance to Franchisor at least twenty (20) days prior to such renewal date.

D. Should Franchisee, for any reason, not procure and maintain such insurance coverage as required by this Agreement, Franchisor shall have the right and authority (without, however, any obligation to do so) to immediately procure such insurance coverage and to charge

same to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

XVI. COVENANTS

A. Unless otherwise specified, the term "Franchisee" as used in this Paragraph XVI. shall include, collectively and individually, Franchisee as defined in Paragraph XXXIII.

B. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (if Franchisee is an individual), a shareholder of a beneficial interest of fifteen percent (15%) or more of the securities of Franchisee (if Franchisee is a corporation), a general partner of Franchisee (if Franchisee is a partnership) or Franchisee's full-time manager shall devote full-time, energy and best efforts to the management and operation of the Franchised Restaurant.

C. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for himself, or through, on behalf of or in conjunction with any person, persons, partnership or corporation:

1. Divert or attempt to divert any business or customer of the Franchised Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System.

2. Employ or seek to employ without the consent of Franchisor any person who is at that time, employed by Franchisor or by any other franchisee of Franchisor, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat.

3. Own, maintain, engage in or have any interest in any business (including any business operated by Franchisee prior to entry into this Agreement) specializing in whole or in part, in dispensing, promoting or selling prepared food products or any other business which sells or offers to sell prepared food products or services, the same as or similar to those sold in the System.

D. Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee shall receive valuable training and confidential information including, without limitation, information regarding the promotional, operational, sales and marketing methods and techniques of Franchisor and the System. Accordingly, Franchisee covenants that, except as otherwise approved in writing by Franchisor, Franchisee shall not, for a period of one (1) year after the expiration or termination of this Agreement, regardless of the cause of termination, either directly or indirectly, for himself, or through, on behalf of or in conjunction with any person, persons, partnership or corporation, hire Franchisor's or Affiliate's employees or own, maintain, engage in, consult with or have any interest in any restaurant business or prepared food business engaged primarily in the preparation and sale of prepared food products or services, the same as or similar to the type sold in the System:

1. Within the Metropolitan Statistical Area, as that term is defined by the United States Census Bureau ("MSA") in which the Franchised Restaurant is located; or
2. Within a radius of ten (10) miles of the Franchised Restaurant; or
3. Within a radius of ten (10) miles of the location of any other business using the System, whether franchised or owned by Franchisor.

If this Paragraph XVI.D. is found unenforceable, either in whole or in part, by a court of law, arbitration proceeding or other official proceeding, Franchisor shall still be entitled to equitable relief.

E. Franchisee shall not divulge to any person, partnership, corporation or any other entity any information, trade secrets, ingredients, recipes, cooking techniques or processes used in the Trade Secret Food Products, Menu Items and other food and beverage products used in the System or any information stated in the Confidential Operations Manual.

F. Each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Paragraph XVI. is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, such finding shall not impair the remainder of this Agreement and Franchisee shall be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Paragraph XVI.

G. Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Paragraphs XVI.C. and XVI.D. in this Agreement, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Paragraph XXVII. hereof.

H. Franchisor shall have the right to require all of Franchisee's officers, directors, shareholders, general partners, limited partners, personnel performing managerial or supervisory functions and all personnel receiving training from Franchisor to execute similar covenants in a form satisfactory to Franchisor.

XVII. DEFAULT AND TERMINATION

A. If Franchisee is in substantial compliance with this Agreement and Franchisor materially breaches this Agreement and fails to cure such breach within a reasonable time after written notice thereof is delivered to Franchisor, Franchisee may terminate this Agreement. Such termination shall be effective thirty (30) days after delivery to Franchisor of written notice that such breach has not been cured and Franchisee elects to terminate this Agreement. A termination of this Agreement by Franchisee for any reason other than breach of this Agreement by Franchisor and Franchisor's failure to cure such breach within a reasonable time after receipt of written notice thereof shall be deemed a termination by Franchisee without cause.

B. This Agreement shall terminate automatically upon delivery of written notice of termination to Franchisee, if Franchisee or its owner(s), officer(s) or manager(s):

1. Fails to satisfactorily complete the training program as provided in Paragraph IV. of this Agreement;
2. Has made any material misrepresentation or omission in its application for the franchise;
3. Is convicted of or pleads no contest to a felony or other crime or offense that is likely to adversely affect the reputation of Franchisee or the Franchised Restaurant;
4. Makes any unauthorized use, disclosure or duplication of any portion of the Confidential Operations Manual or duplicates or discloses or makes any unauthorized use of any trade secret or confidential information provided to Franchisee by Franchisor;
5. Abandons, fails or refuses to actively operate the Franchised Restaurant for two (2) business days in any twelve (12) month period, unless the Franchised Restaurant has been closed for a purpose approved by Franchisor or due to force majeure, or fails to relocate to approved Premises within an approved period of time following expiration or termination of the lease for the Premises;
6. Surrenders or transfers control of the operation of the Franchised Restaurant, makes an unauthorized direct or indirect assignment of the franchise or an ownership interest in Franchisee or fails or refuses to assign the franchise or the interest in Franchisee of a deceased or disabled controlling owner thereof as herein required;
7. Submits to Franchisor on two (2) or more separate occasions at any time during the term of the franchise any reports or other data, information or supporting records which understate by more than three percent (3%) the Continuing Services and Royalty Fees for any period of, or periods aggregating, three (3) or more weeks, and Franchisee is unable to demonstrate that such understatements resulted from inadvertent error;
8. If Franchisee shall be adjudicated bankrupt, becomes insolvent, commits any affirmative act of insolvency or files any action or petition of insolvency, or if a receiver (permanent or temporary) of its property or any part thereof is appointed by a court of competent authority, or if it makes a general assignment for the benefit of its creditors, or if a final judgment remains unsatisfied of record for thirty (30) days or longer (unless supersedeas bond is filed), or if execution is levied against Franchisee's business or property, or if suit to foreclose any lien or mortgage against its Premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days, or is not in the process of being dismissed; provided, however, that Franchisor reserves the right to be named as trustee or receiver in any voluntary petition for bankruptcy or insolvency filed by Franchisee;

9. Materially misuses or makes an unauthorized use of any of the Marks or commits any other act which can reasonably be expected to materially impair the goodwill associated with any of the Marks;

10. Materially misuses or makes an unauthorized use of the Proprietary Software Package (if developed);

11. Fails on two (2) or more separate occasions within any period of twelve (12) consecutive months to submit when due reports or other information or supporting records, to pay when due the Continuing Services and Royalty Fees, advertising contributions, amounts due for purchases from Franchisor or other payments due to Franchisor, or otherwise fails to comply with this Agreement, whether or not such failures to comply are corrected after notice thereof is delivered to Franchisee;

12. Continues to violate any health, safety or sanitation law, ordinance or regulation or operates the Franchised Restaurant in a manner that presents a health or safety hazard to its customers or the public; or

13. Employs an operator of the Franchised Restaurant who does not own and shall not be entitled to own within five (5) years at least fifteen (15) percent of the Franchised Restaurant for a single-unit franchise owner.

C. This Agreement shall terminate without further action by Franchisor or notice to Franchisee if Franchisee or Franchisee's owner:

1. Fails or refuses to make payments of any amounts due Franchisor for Continuing Services and Royalty Fees, advertising contributions, purchases from Franchisor or any other amounts due to Franchisor, and does not correct such failure or refusal within ten (10) business days after written notice of such failure is delivered to Franchisee;

2. Fails or refuses to comply with any other provision of this Agreement or any mandatory specification, standard or operating procedure prescribed in the Confidential Operations Manual or otherwise in writing and does not correct such failure within thirty (30) days (or provide proof acceptable to Franchisor that it has made all reasonable efforts to correct such failure and shall continue to make all reasonable efforts to cure until a cure is effected, if such failure cannot reasonably be corrected within thirty (30) days) after written notice of such failure to comply is delivered to Franchisee.

D. To the extent that the provisions of this Agreement provide for periods of notice less than those required by applicable law, or provide for termination, cancellation, non-renewal or the like other than in accordance with applicable law, such provisions shall, to the extent such are not in accordance with applicable law, not be effective, and Franchisor shall comply with applicable law in connection with each of these matters.

E. In addition to Franchisor's right to terminate this Agreement and not in lieu of such right or any other rights against Franchisee, Franchisor, in the event that Franchisee shall not have cured a default under this Agreement within the twenty (20) business days after receipt

of a written notice to cure from Franchisor, may, at its option, enter upon the Premises and exercise complete authority with respect to the operation of the Franchised Restaurant until such time as Franchisor determines that the default of Franchisee has been cured and that there is compliance with the requirements of this Agreement. Franchisee specifically acknowledges that a designated representative of Franchisor may take over, control and operate the Franchised Restaurant, and that Franchisee shall pay Franchisor a service fee of at least TWO HUNDRED Dollars (\$200.00) per day per Franchisor representative, as published in the Confidential Operations Manual, plus all travel expenses, room and board and other expenses reasonably incurred by such representative so long as it shall be required by the representative to enforce compliance herewith. Franchisee further acknowledges that if, as herein provided, Franchisor temporarily operates for Franchisee the Franchised Restaurant, Franchisee shall indemnify and hold harmless Franchisor and any representative of Franchisor who may act hereunder, respecting any and all acts and omissions which Franchisor may perform, or fail to perform, as regards the interests of Franchisee or third parties.

**XVIII. RIGHTS AND DUTIES OF PARTIES UPON EXPIRATION
OR TERMINATION**

Upon termination or expiration, this Agreement and all rights granted hereunder to Franchisee shall forthwith terminate, and:

A. Franchisee shall immediately cease to operate the Franchised Restaurant under this Agreement, and shall not thereafter, directly or indirectly, represent to the public or hold himself out as a present or former franchisee of Franchisor.

B. Upon demand by Franchisor, Franchisee shall assign to Franchisor, Franchisee's interest in any lease then in effect for the Premises and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement.

C. Franchisee shall immediately and permanently cease to use by advertising or in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, the Marks, any distinctive forms, slogans, signs, symbols, logos or devices associated with the System. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, stationery, forms and any other articles which display the Marks associated with the System.

D. Franchisee shall take such action as may be necessary to cancel or assign to Franchisor or Franchisor's designee, at Franchisor's option, any assumed name rights or equivalent registration filed with state, city or county authorities which contain the name "PANCHERO'S" or any Mark, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement.

E. Franchisee shall, in the event it continues to operate or subsequently begins to operate any other business, not use any reproduction, counterfeit, copy or colorable imitation of the Marks either in connection with such other business or the promotion thereof, which is likely

to cause confusion, mistake or deception, or which is likely to dilute Franchisor's exclusive rights in and to the Marks and shall not utilize any designation of origin or description or representation which falsely suggests or represents an association or connection with Franchisor so as to constitute unfair competition. Franchisee shall make such modifications or alterations to the Premises (including, without limitation, the changing of the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to prevent any association between Franchisor or the System and any business thereon subsequently operated by Franchisee or others and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose including, without limitation, removal of all distinctive physical and structural features identifying the System. In the event Franchisee fails or refuses to comply with the requirements of this Paragraph XVIII., Franchisor shall have the right to enter upon the Premises where Franchisee's Franchised Restaurant was conducted, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required at the expense of Franchisee, which expense Franchisee shall pay upon demand.

F. Franchisee shall promptly pay all sums owing to Franchisor. In the event of termination for any default of Franchisee, such sums shall include all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default.

G. Franchisee shall pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor subsequent to the termination or expiration of the franchise herein granted in obtaining injunctive or other relief for the enforcement of any provisions of this Paragraph XVIII. or Paragraph XVI.

H. Franchisee shall immediately turn over to Franchisor all manuals, including the Confidential Operations Manual, customer lists, records, files, instructions, brochures, agreements and any and all other materials provided by Franchisor to Franchisee relating to the operation of the Franchised Restaurant (all of which are acknowledged to be Franchisor's property). Under no circumstances shall Franchisee retain any copies of the Confidential Operations Manual upon expiration or termination of this Agreement.

I. Franchisor shall have the right, title and interest to any sign or sign faces bearing the Marks. Franchisee hereby acknowledges Franchisor's right to access the Premises should Franchisor elect to take possession of any said sign or sign faces bearing the Marks.

J. Franchisee hereby acknowledges that all telephone numbers used in the operation of the Franchised Restaurant constitute assets of the Franchised Restaurant. Upon termination or expiration of this Agreement, Franchisee shall assign to Franchisor or its designee, all Franchisee's right, title and interest in and to Franchisee's telephone numbers and shall notify the telephone company and all listing agencies of the termination or expiration of Franchisee's right to use any telephone number and any regular, classified or other telephone directory listing associated with the Marks and to authorize a transfer of same to or at the direction of Franchisor.

K. Franchisor shall have the right (but not the duty), to be exercised by notice of intent to do so within thirty (30) days after termination or expiration, to purchase for cash except as provided in Paragraph XVIII.K. any or all assets of the Franchised Restaurant, including leasehold improvements, equipment, supplies and other inventory, advertising materials and all

items bearing the Marks, at Franchisee's cost or fair market value, whichever is less. If the parties cannot agree on fair market value within a reasonable time, the determination of fair market value shall be submitted to arbitration in accordance with Paragraph XXX. If Franchisor elects to exercise any option to purchase as herein provided, it shall have the right to set off all amounts due from Franchisee under this Agreement, if any, against any payment therefore.

L. Franchisee shall comply with the covenants contained in Paragraph XVI. of this Agreement.

XIX. TRANSFERABILITY OF INTEREST

A. This Agreement and all rights hereunder can be assigned and transferred by Franchisor and, if so, shall be binding upon and inure to the benefit of Franchisor's successors and assigns; provided, however, that with respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, the assignee shall:

1. At the time of such assignment, be financially responsible and economically capable of performing the obligations of Franchisor hereunder; and

2. Expressly assume and agree to perform such obligations. Specifically, and without limitation to the foregoing, Franchisee expressly agrees that Franchisor may sell its assets, Marks or System outright to a third party; may make a public offering of securities; may engage in a private placement of some or all of its securities; may merge, acquire other corporations or entities or be acquired by another corporation or other entity; may undertake a refinancing, recapitalization, leveraged buy out or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, Franchisee expressly and specifically waives any claims, demands or damages arising from or related to the loss of said Marks (or any variation thereof) and/or the loss of association with or identification of PANCHERO'S FRANCHISE CORPORATION as Franchisor hereunder. Nothing contained in this Agreement shall require Franchisor to remain in the business in the event that Franchisor exercises its rights hereunder to assign its rights in this Agreement.

B. This Agreement and all rights hereunder may be assigned and transferred by Franchisee and, if so, shall be binding upon and inure to the benefit of Franchisee's successors and assigns, subject to the following conditions and requirements, and Franchisor's right of first refusal as set forth herein:

1. No Franchisee, partner of Franchisee (if Franchisee is a partnership) or shareholder of Franchisee (if Franchisee is a corporation), without Franchisor's prior written consent, by operation of law or otherwise shall sell, assign, transfer, convey, give away or encumber to any person, firm or corporation, all or any part of its interest in this Agreement or its interest in the franchise granted hereby or its interest in any proprietorship, partnership or corporation which owns any interest in the franchise, nor offer, permit or suffer the same to be sold, assigned, transferred, conveyed, given away or encumbered in any way to any person, firm or corporation. Franchisee may not, without the prior written consent of Franchisor, fractionalize any of the rights of Franchisee

granted pursuant to this Agreement. Any purported assignment of any of Franchisee's rights herein not having the aforesaid consent shall be null and void and shall constitute a material default hereunder.

2. Franchisor shall not unreasonably withhold its consent to any transfer referenced in Paragraph XIX.B.1. of this Agreement when requested; provided, however, that the following conditions and requirements shall first be met to the full satisfaction of Franchisor.

a. If Franchisee is an individual or partnership and desires to assign and transfer its rights to a corporation:

(1) Said transferee corporation shall be newly organized and its charter shall provide that its activities are confined exclusively to acting as a PANCHERO'S franchisee as licensed under this Agreement;

(2) Franchisee shall be and shall remain the owner of the majority fifty-one percent (51%) stock interest of the transferee corporation;

(3) The individual Franchisee (or, if Franchisee is a partnership, one (1) of the partners) shall be and shall remain the principal partner of the corporation;

(4) The transferee corporation shall enter into a written assignment (in a form satisfactory to Franchisor) in which the transferee corporation assumes all of Franchisee's obligations hereunder;

(5) All shareholders of the transferee corporation shall enter into a written agreement, in a form satisfactory to Franchisor, jointly and severally guaranteeing the full payment and performance of the transferee corporation's obligations under this Agreement;

(6) Each stock certificate of the transferee corporation shall have conspicuously endorsed upon it, a statement that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon assignments by this Agreement;

(7) No new shares of common or preferred voting stock in the transferee corporation shall be issued to any person, partnership, trust, foundation or corporation without obtaining Franchisor's prior written consent and then only upon disclosure of the terms and conditions contained herein being made to the prospective new holders of the stock; and

(8) All accrued money obligations of Franchisee to Franchisor, its subsidiaries or assignees, shall be satisfied prior to assignment or transfer.

b. If Franchisee is an individual and desires to assign and transfer its rights to a partnership:

(1) Said transferee partnership shall be newly organized and its partnership agreement shall provide that its activities are confined exclusively to acting as a PANCHERO'S franchisee as licensed under this Agreement;

(2) Franchisee shall be and shall remain the general partner with a majority interest of the transferee partnership;

(3) The individual Franchisee shall be and shall remain the principal partner of the partnership;

(4) The transferee partnership shall enter into a written assignment (in a form satisfactory to Franchisor), in which the transferee partnership assumes all of Franchisee's obligations hereunder;

(5) All partners of the transferee partnership shall enter into a written agreement, in a form satisfactory to Franchisor, jointly and severally guaranteeing the full payment and performance of the transferee partnership's obligations under this Agreement; and

(6) All accrued money obligations of Franchisee to Franchisor, its subsidiaries or assignees, shall be satisfied prior to assignment or transfer.

c. If the transfer, other than such transfer as is authorized under Paragraph XIX.B.2.a. or XIX.B.2.b. of this Agreement, if consummated alone or together with other related previous, simultaneous or proposed transfers, would have the effect of transferring control of the franchise licensed herein to someone other than an original signatory of this Agreement:

(1) The transferee(s) shall be of good moral character and reputation and shall have a good credit rating and competent business qualifications reasonably acceptable to Franchisor. Franchisee shall provide Franchisor with such information as Franchisor may require to make such determination concerning each such proposed transferee(s).

(2) The transferee(s) or such other individual(s) as shall be the actual manager of the franchise shall have successfully completed and passed the training course then in effect for franchisees, or otherwise demonstrated, to Franchisor's satisfaction, sufficient ability to operate the business being transferred.

(3) The transferee(s), including all shareholders, officers, directors and partners of the transferee(s), shall jointly and severally

execute any or all of the following, at Franchisor's sole discretion and as Franchisor shall direct:

- aa. A franchise agreement and other standard ancillary agreements with Franchisor on the current standard forms being used by Franchisor, except that an additional franchise fee shall not be charged; and/or
- bb. A written assignment from Franchisee in a form satisfactory to Franchisor, wherein transferee shall assume all of Franchisee's obligations hereunder.

(4) Approval by Franchisor of any transfer by Franchisee of the franchise herein granted or any of Franchisee's rights under this Agreement shall in no way be deemed a release by Franchisor of Franchisee's obligations pursuant to this Agreement. Consent by Franchisor to a transfer of the franchise shall not constitute or be interpreted as consent for any future transfer thereof.

(5) The term of said agreements required pursuant to SubParagraph XIX.B.2.b.(3) shall be for the unexpired term of this Agreement and for any extensions or renewals as provided herein.

(6) If transferee is a corporation:

- aa. Each stock certificate of the transferee corporation shall have conspicuously endorsed upon it a statement that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon assignments by this Agreement; and
- bb. No new shares of common or preferred voting stock in the transferee corporation shall be issued to any person, partnership, trust, foundation or corporation without obtaining Franchisor's prior written consent and then, only upon disclosure of the terms and conditions contained herein being made to the prospective new holders of the stock; and
- cc. All shareholders of the transferee corporation shall enter into a written agreement, in a form satisfactory to Franchisor, jointly and severally, guaranteeing full payment and the performance of the transferee corporation of all obligations under this Agreement.

(7) All accrued money obligations of Franchisee to Franchisor or its assignees, shall be satisfied prior to assignment or transfer and Franchisee shall not be in default under the terms of this Agreement.

(8) Franchisee, prior to the transfer, shall execute a general release, in a form prescribed by Franchisor, of any and all existing claims against Franchisor and their respective officers, directors, agents and employees, except such claims as are not permitted to be waived under applicable law.

3. Franchisee shall have fully paid and satisfied all of Franchisee's obligations to Franchisor and the transferee or Franchisee shall have fully paid to Franchisor a non-refundable transfer fee equal to fifty percent (50%) of the then-current franchise fee charged by Franchisor for start-up franchises. The transfer fee is used to cover expenses of Franchisor for the training, supervision, administrative costs, overhead, counsel fees, accounting and other Franchisor expenses in connection with the transfer. This transfer fee does not apply to an assignment of interest to a corporation under Paragraph XIX.B.2.a. of this Agreement.

4. No sale, assignment, transfer, conveyance, encumbrance or gift of any interest in this Agreement or in the franchise granted thereby, shall relieve Franchisee and the shareholders or partners participating in any transfer, of the obligations of the covenants contained in Paragraph XVI., except where Franchisor shall expressly authorize in writing.

C. Franchisee must promptly ("promptly" herein defined as within thirty (30) days of receipt of an offer to buy) give Franchisor written notice whenever Franchisee has received an offer to buy Franchisee's franchise. Franchisee must also give Franchisor written notice simultaneously with any offer to sell the franchise made by, for or on behalf of Franchisee. The purpose of this Paragraph XIX. is to enable Franchisor to comply with any applicable state or federal franchise disclosure laws or rules. Franchisee shall indemnify and hold harmless Franchisor for Franchisee's failure to comply with this Paragraph XIX.

D. Franchisee shall not, without prior written consent of Franchisor, place in, on or upon the location of the Franchised Restaurant, or in any communication media, any form of advertising or list with any business, real estate broker, agent or attorney any information relating to the sale of the Franchised Restaurant or the rights granted hereunder.

XX. DEATH OR INCAPACITY OF FRANCHISEE

A. In the event of the death or incapacity of an individual Franchisee, or any partner of a Franchisee which is a partnership or any shareholder owning fifty percent (50%) or more of the capital stock of a Franchisee which is a corporation, the heirs, beneficiaries, devisees or legal representatives of said individual, partner or shareholders shall, within ninety (90) days of such event:

1. Apply to Franchisor for the right to continue to operate the franchise for the duration of the term of this Agreement and any renewals hereof, which right shall be

granted upon the fulfillment of all of the conditions set forth in Paragraph XIX.B.2.b. of this Agreement (except that no transfer fee shall be required); or

2. Sell, assign, transfer or convey Franchisee's interest in compliance with the provisions of Paragraphs XIX.B. and XXI. of this Agreement; provided, however, in the event a proper and timely application for the right to continue to operate has been made and rejected, the ninety (90) days to sell, assign, transfer or convey shall be computed from the date of said rejection. For purposes of this Paragraph XX, Franchisor's silence on an application made pursuant to Paragraph XX.B. through the ninety (90) days following the event of death or incapacity shall be deemed a rejection made on the last day of such period.

B. In the event of the death or incapacity of an individual franchisee, or any partner or shareholder of a Franchisee which is a partnership or corporation, where the aforesaid provisions of Paragraph XIX. have not been fulfilled within the time provided, all rights granted to Franchisee under this Agreement shall, at the option of Franchisor, terminate forthwith and Franchisor shall have the option to purchase the Franchised Restaurant in accordance with Paragraph XVIII.K. herein.

XXI. RIGHT OF FIRST REFUSAL

If Franchisee or its owners propose to sell the Franchised Restaurant (or its assets) or part or all of the ownership of Franchisee, Franchisee or its owners shall obtain and deliver a bona fide, executed written offer to purchase same to Franchisor, which shall, for a period of fifteen (15) days from the date of delivery of such offer to Franchisor, have the right, exercisable by written notice to Franchisee or its owners, to purchase the Franchised Restaurant (or its assets) or such ownership for the price and on the terms and conditions contained in such offer, provided that Franchisor may substitute cash for any form of payment proposed in such offer. If Franchisor does not exercise this right of first refusal, the offer may be accepted by Franchisee or its owners, subject to the prior written approval of Franchisor, as provided in Paragraph XIX. hereof, provided that if such offer is not so accepted within six (6) months of the date thereof, Franchisor shall again have the right of first refusal herein described.

XXII. OPERATION IN THE EVENT OF ABSENCE, INCAPACITY OR DEATH

In order to prevent any interruption of the Franchised Restaurant which would cause harm to the Franchised Restaurant and thereby depreciate the value thereof, Franchisee authorizes Franchisor, in the event that Franchisee is absent or incapacitated by reason of illness or death and is not, therefore, in the sole judgment of Franchisor, able to operate the Franchised Restaurant, to operate the Franchised Restaurant for so long as Franchisor deems necessary and practical and without waiver of any other rights or remedies Franchisor may have under this Agreement. Provided, however, that Franchisor shall not be obligated to so operate the franchise. All monies from the operation of the business during such period of operation by Franchisor shall be kept in a separate account and the expenses of the Franchised Restaurant, including reasonable compensation and expenses for Franchisor's representative, shall be charged to said account. If, as herein provided, Franchisor temporarily operates for Franchisee the Franchised Restaurant, Franchisee shall indemnify and hold harmless Franchisor and any

representative of Franchisor who may act hereunder, from any and all claims arising from the operation of the Franchised Restaurant including, without limitation, the acts and omissions of Franchisor and its representative.

XXIII. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

A. This Agreement does not constitute Franchisee as an agent, legal representative, joint venturer, partner, employee or servant of Franchisor for any purpose whatsoever. Franchisee may not represent to third parties that it is an agent of Franchisor and it is understood between the parties hereto that Franchisee shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of Franchisor, or to create any obligation, express or implied, on behalf of Franchisor.

B. Franchisee shall prominently display, by posting of a sign within public view, on or in the Premises, a statement that clearly indicates that the Franchised Restaurant is independently owned and operated by Franchisee as a PANCHERO'S franchise of Franchisor and not as an agent thereof.

C. Franchisee shall defend at its own cost and indemnify and hold harmless Franchisor, its shareholders, directors, officers, employees and agents, from and against any and all loss, costs, expenses (including attorneys' fees), damages and liabilities, however caused, resulting directly or indirectly from or pertaining to the use, condition or construction, equipping, decorating, maintenance or operation of the Franchised Restaurant, including the sale of any food products, service or merchandise sold from the Franchised Restaurant. Such loss, claims, costs, expenses, damages and liabilities shall include, without limitation, those arising from latent or other defects in the Franchised Restaurant, whether or not discoverable by Franchisor, and those arising from the death or injury to any person or arising from damage to the property of Franchisee or Franchisor, their agents or employees, or any third person, firm or corporation, whether or not such losses, claims, costs, expenses, damages or liabilities were actually or allegedly caused wholly or in part through the active or passive negligence of Franchisor or any of its agents or employees or resulted from any strict liability imposed on Franchisor or any of its agents or employees.

XXIV. NON-WAIVER

No failure of Franchisor to exercise any power reserved to it hereunder, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms hereof. Waiver by Franchisor of any particular default by Franchisee shall not be binding unless in writing and executed by the party sought to be charged and shall not affect or impair Franchisor's right with respect to any subsequent default of the same or of a different nature; nor shall any delay, waiver, forbearance, or omission of Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants hereof, affect or impair Franchisor's rights nor shall such constitute a waiver by Franchisor of any right hereunder or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it

hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

XXV. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor: PANCHERO'S FRANCHISE CORPORATION
2475 Coral Court, Suite B
Coralville, Iowa 52241

Copy to: Jeff Hechtman, Esq.
Horwood, Marcus & Berk
333 W. Wacker Drive
Suite 2800
Chicago, Illinois 60606

Notices to Franchisee: _____

Copy to: _____

Any notice by certified mail shall be deemed to have been given at the date and time of mailing.

XXVI. COST OF ENFORCEMENT OR DEFENSE

If a claim for amounts owed by Franchisee to Franchisor is asserted in any legal proceeding, or if Franchisor or Franchisee is required to enforce this Agreement in a legal proceeding, the prevailing party shall be entitled to reimbursement of its costs, including reasonable accounting and legal fees, in connection with such proceeding.

XXVII. APPROVALS

A. Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefore, and except as otherwise provided herein, any approval or consent granted shall be effective only if in writing.

B. Franchisor makes no warranties or guarantees upon which Franchisee may rely and assumes no liability or obligation to Franchisee or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or services to

Franchisee in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefore.

XXVIII. ENTIRE AGREEMENT

This Agreement, any Exhibit attached hereto, and the documents referred to herein, shall be construed together and constitute the entire, full and complete agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersede all prior agreements. No other representation has induced Franchisee to execute this Agreement, and there are no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein, which are of any force or effect with reference to this Agreement or otherwise. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.

XXIX. SEVERABILITY AND CONSTRUCTION

A. Each Paragraph, part, term and/or provision of this Agreement shall be considered severable, and if, for any reason, any Paragraph, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, sections, parts, terms and/or provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid sections, parts, terms and/or provisions shall be deemed not part of this Agreement.

B. Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Franchisee and such of their respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under or by reason of this Agreement.

C. Franchisee shall be bound by any promise or covenant imposing the maximum duty permitted by law which is contained within the terms of any provision hereof, as though it were separately stated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

D. All captions herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof. The singular usage includes the plural, where appropriate in the context, and the masculine and neuter usages include the other and the feminine.

E. This Agreement may be executed in duplicate, and each copy so executed shall be deemed an original.

F. The recitals set forth in this Agreement are specifically incorporated into the terms of this Agreement and hereby constitute a part thereof.

XXX. APPLICABLE LAW

A. This Agreement takes effect upon its acceptance and execution by Franchisor. This Agreement shall be interpreted and construed under the laws of the State of Illinois, which laws shall prevail in the event of any conflict of law, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15, U.S.C. sections 1051 et seq).

B. Franchisee agrees that any action sought to be brought by either party, except those claims required to be submitted to arbitration shall be brought in the appropriate state or federal court with jurisdiction over Cook County, Illinois. The parties do hereby waive all questions of personal jurisdiction or venue for the purposes of carrying out this provision.

C. No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

D. Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

XXXI. ARBITRATION

A. Any monetary claim arising out of or relating to this Agreement, or any breach thereof, excluding any claim relating to the confidential information or the Marks and any controversy regarding the establishment of the fair market value of leasehold improvements and other Franchised Restaurant assets pursuant to Paragraph XIX.K. hereof, shall be submitted to arbitration in Cook County, Illinois, in accordance with the rules of the American Arbitration Association and judgment upon the award may be entered in any court having jurisdiction thereof. Nothing contained herein shall, however, be construed to limit or to preclude Franchisor from bringing any action in any court of competent jurisdiction for injunctive or other provisional relief as Franchisor deems to be necessary or appropriate to compel Franchisee to comply with his obligations hereunder or to protect the Marks or other property rights of Franchisor. In addition, nothing contained herein shall be construed to limit or to preclude Franchisor from joining with any action for injunctive or provisional relief all monetary claims that Franchisor may have against Franchisee which arise out of the acts or omissions to act giving rise to the action for injunctive or provisional relief. This arbitration provision shall be deemed to be self-executing and in the event that Franchisee fails to appear at any properly noticed arbitration proceeding, award may be entered against Franchisee notwithstanding his failure to appear.

B. Nothing herein contained shall bar the right of either party to seek and obtain temporary injunctive relief from a court of competent jurisdiction in accordance with applicable law against threatened conduct that shall cause loss or damage, pending completion of the arbitration.

C. It is the intent of the parties that any arbitration between Franchisor and Franchisee shall be of Franchisee's individual claim and that the claim subject to arbitration shall not be arbitrated on a classwide basis.

D. Franchisee hereby consents and agrees that any disputes arising between Franchisor and Franchisee be submitted to arbitration as provided in Paragraph XXXI.A. of this Agreement.

XXXII. FORCE MAJEURE

Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, except the payment of monies, neither party shall be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of the parties, and in any event said time period for the performance of an obligation hereunder shall be extended for the amount of time of the delay. This clause shall not apply or not result in an extension of the term of this Agreement.

XXXIII. "FRANCHISEE" DEFINED AND GUARANTY

As used in this Agreement, the term "Franchisee" shall include all persons who succeed to the interest of the original Franchisee by permitted transfer or operation of law and shall be deemed to include not only the individual or entity defined as "Franchisee" in the introductory Paragraph of this Agreement, but shall also include all partners of the entity that executes this Agreement, in the event said entity is a partnership, and all shareholders, officers and directors of the entity that executes this Agreement, in the event said entity is a corporation. By their signatures hereto, all partners, shareholders, officers and directors of the entity that signs this Agreement as Franchisee acknowledges and accepts the duties and obligations imposed upon each of them, individually, by the terms of this Agreement. All partners of the entity that executes this Agreement, in the event said entity is a partnership, and all shareholders, officers and directors of the entity that executes this Agreement, in the event said entity is a corporation, shall execute the Guaranty and Assumption of Obligations attached hereto as Exhibit B and made a part hereof.

XXXIV. CAVEAT

The success of the business venture contemplated to be undertaken by Franchisee by virtue of this Agreement is speculative and depends, to a large extent, upon the ability of Franchisee as an independent businessperson, and its active participation in the daily affairs of the business as well as other factors. Franchisor does not make any representation or warranty, express or implied, as to the potential success of the business venture contemplated hereby.

XXXV. ACKNOWLEDGMENTS

A. Franchisee represents and acknowledges that it has received, read and understood this Agreement and Franchisor's Uniform Franchise Offering Circular; and that Franchisor has fully and adequately explained the provisions of each to Franchisee's satisfaction; and that

Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this Agreement.

B. Franchisee acknowledges that it has received a copy of this Agreement and the attachments thereto, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that Franchisee has received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, at least ten (10) business days prior to the date on which this Agreement was executed.

C. Franchisee has been advised to consult with its own advisors with respect to legal, financial and other aspects of this Agreement, the business franchised hereby and the prospects for that business. Franchisee has either consulted with such advisors or has deliberately declined to do so.

D. The covenants not to compete set forth in this Agreement are fair, reasonable and shall not impose any undue hardship on Franchisee, since Franchisee has other considerable skills, experience and education which afford Franchisee the opportunity to derive income from other endeavors.

E. Franchisee affirms that all information set forth in any and all applications, financial statements and submissions to Franchisor is true, complete and accurate in all respects, with Franchisee expressly acknowledging that Franchisor is relying upon the truthfulness, completeness and accuracy of such information.

F. Franchisee has conducted an independent investigation of the business contemplated by this Agreement and recognizes that, like any other business, an investment in a PANCHERO'S Franchised Restaurant involves business risks and that the success of the venture is primarily dependent upon the business abilities and efforts of Franchisee.

G. Franchisee hereby consents and agrees that any disputes arising between Franchisor and Franchisee be submitted to arbitration as provided in Paragraph XXXI.A. of this Agreement.

H. Franchisee understands and acknowledges that all representations of fact contained herein are made solely by Franchisor. All documents, including Franchisor's Franchise Agreement and Uniform Franchise Offering Circular and all exhibits thereto, have been prepared solely in reliance upon representations made and information provided by Franchisor, its officers and its directors. Franchisee further agrees to indemnify and hold harmless the preparer of any and all such franchise agreements, offering circulars and exhibits thereto and Franchisor's attorneys from any and all loss, costs, expenses (including attorneys' fees), damages and liabilities resulting from any representations and/or claims made by Franchisor in such documents.

I. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received nor relied upon, any warranty or guaranty, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement. Franchisee acknowledges that it has read this Agreement and Franchisor's Uniform

Franchise Offering Circular and that it has no knowledge of any representations by Franchisor, or its officers, directors, shareholders, employees or agents that are contrary to the statements made in Franchisor's Uniform Franchise Offering Circular or to the terms herein.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have duly executed, sealed and delivered this Agreement in duplicate the day and year first above written.

ATTEST:

PANCHERO'S FRANCHISE CORPORATION:

By: _____
Title: _____

ATTEST/WITNESS:

FRANCHISEE:

By: _____
Title: _____

By: _____
Title: _____