

EXHIBIT C

**FRANCHISE AGREEMENT**

**PIZZA PATRÓN, INC.**  
**FRANCHISE AGREEMENT**  
**FOR A**  
**PIZZA PATRÓN STORE**

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### EXHIBITS:

- A: DESCRIPTION OF MARKS
- B: DESCRIPTION OF TRADE AREA
- C: AUTHORIZATION AGREEMENT FOR PREAUTHORIZED PAYMENTS
- D: ASSIGNMENT OF TELEPHONE NUMBER(S)

GLOSSARY OF TERMS  
GUARANTY AND ACKNOWLEDGMENT  
STATE SPECIFIC ADDENDA

**SUMMARY PAGE**

Effective Date: \_\_\_\_\_ Store No.: \_\_\_\_\_

Franchisee: \_\_\_\_\_

Entity type (circle one): Corporation    LLC    General Partnership    Ltd. Partnership

Store Street Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

General Manager: \_\_\_\_\_ Term: 10 years from the Effective Date

The Trade Area's boundaries are described in Exhibit B.

Franchise Fee (circle one): \$20,000 (1<sup>st</sup> Store)    \$18,000 (2<sup>nd</sup> Store)    \$15,000 (additional Store)

Royalty Rate: 5%    Ad Fund Rate: 2% (max.)    Website/Intranet Fees: \$50/month each (max.)

Scheduled Opening Date: \_\_\_\_\_

Insurance Coverage:

- (A) Comprehensive general liability insurance for any claims or losses arising or resulting from the development or operation of the Store, with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall be on an occurrence policy form and shall include blanket contractual, products liability, advertising injury, broad form property damage, and personal injury coverage.
- (B) Motor vehicle comprehensive liability and property insurance covering owned, non-owned, and hired vehicles for combined single limits of bodily injury and property damage of not less than \$1,000,000 per occurrence.
- (C) Umbrella excess liability insurance in an amount of not less than \$2,000,000 in excess of the liability insurance required under Sections (A) and (B).
- (D) Workers' compensation insurance on all employees of the Store, as prescribed or permitted by applicable state law.

Addresses for Notices:

Company:    PIZZA PATRÓN, INC.,  
                  10999 Petal Street, Suite 200  
                  Dallas, Texas 75238  
                  Attn. Antonio Swad, President

Franchisee: \_\_\_\_\_  
                  \_\_\_\_\_  
                  \_\_\_\_\_

**FRANCHISE AGREEMENT  
FOR A  
PIZZA PATRÓN STORE**

THIS AGREEMENT is entered into by and between Pizza Patrón, Inc., a Texas corporation ("Company"), and the Franchisee identified on the Summary Page. Certain terms are used in this Agreement with the meanings assigned in the Glossary of Terms appended to this Agreement. That Glossary is incorporated into and made an integral part of this Agreement by reference.

**1. Recitals.** Company has developed a System to guide and govern the operation of Stores that make and sell pizza and operate under the Pizza Patrón® trade name. Company franchises the operation of Stores (in addition to conducting other business activities). Franchisee has completed the site selection requirements of a Development Agreement for a Store to be located at the address shown in the Summary Page. The parties are now ready to embark on a franchise relationship and have entered into this Agreement to evidence the terms and conditions of their relationship.

**2. Grant of Franchise.**

(a) Subject to the terms, conditions and limitations of this Agreement, Company grants Franchisee a franchise to operate a Store at the location shown in the Summary Page. Franchisee's use of any of the Marks or any element of the System in the operation of a business at any other location or in any other channel of distribution without Company's express written authorization will constitute willful infringement of Company's rights in the Marks and the System.

(b) The franchise includes the following rights and licenses:

(1) Authorization to operate the Store under the Pizza Patrón trade name, in association with the Marks and in accordance with the System;

(2) Authorization to install the Trade Dress and exterior and interior signs bearing the Pizza Patrón name and logo at the Store;

(3) Authorization to provide Catering in the Trade Area, with prior written approval only; and

(4) Authorization to use the Marks to identify, advertise and promote the Store's products and services.

(c) Franchisee shall acquire no rights or authority under this Agreement or as an element of the franchise:

(2) To sell to any wholesale or retail customer Spice Kits, uncooked pizzas, or the pizza sauce or dough (cooked or refrigerated) with which Pizza Patrón brand pizza is made;

(3) To operate a Satellite, to provide Catering, or to sell pizza or other products or services at or from any location other than the Store without written authorization from Company;

(4) To provide Delivery Service; or

(5) To sell Pizza Patrón brand pizza, memorabilia or other merchandise from catalogues, an Internet Website or a Special Outlet without Company's express prior permission.

(d) Company reserves all rights that this Agreement does not expressly grant to or confer upon Franchisee.

### **3. Franchise Fee.**

(a) In consideration of Company's granting the franchise, Franchisee must pay Company a franchise fee of \$20,000, if this Agreement covers Franchisee's first Store, of \$18,000 if this Agreement covers Franchisee's second Store, or of \$15,000, if this Agreement covers Franchisee's third or a later Store. The franchise fee will be payable in full when Franchisee signs this Agreement, with the following exceptions:

(i) If this Agreement relates to Franchisee's first Store, Franchisee will receive a credit against the franchise fee equal to the option fee Franchisee paid under the Development Agreement.

(ii) If this Agreement relates to Franchisee's second or subsequent Store, Franchisee will receive a credit against the franchise fee equal to one \$7,500 component of the development fee Franchisee paid under the Development Agreement.

(b) Franchise fees are not refundable under any circumstances.

### **4. Competitive Protection.**

(a) Company does not grant exclusive territories, but does provide its franchisees protection against some forms of competition inside a geographic Trade Area. Exhibit B describes the Trade Area that Company has assigned to the Store. Franchisee will enjoy competitive protection in the Trade Area to the extent the following paragraphs of this Section 4 expressly provide.

(b) Company will not open or authorize anyone except Franchisee to operate a Store or a Satellite in the Trade Area.

(c) Franchisee will have no competitive protection from Special Outlets that Company, a franchisee or a licensee operates, either permanently, temporarily or seasonally, in the Trade Area.

(d) Franchisee will have no protection against competition from Stores, Satellites, Special Outlets or other establishments located anywhere outside the Trade Area's physical boundaries, whether or not these establishments market their products and services in, provide Catering in, or draw customers from the Trade Area. On the other hand, there will be no limitation on the geographic area in which Franchisee may advertise and promote the Store, or from which the Store may draw customers, or in which Franchisee may provide Catering (although the Operations Manual's product quality standards may effectively limit the size of the area in which Franchisee can provide Catering).

(e) This Section 4 will not to any extent prohibit or restrict Company or its Affiliates from engaging in the distribution of private label pizza sauce, frozen or refrigerated pizza or pizza dough,

shirts, hats and other memorabilia, and other products and merchandise, whether or not identified by or associated with the Pizza Patrón brand name or logo, to or through commercial establishments that are not affiliated with Company or associated with the Pizza Patrón Network, including (for example) department stores, supermarkets and convenience stores. Company and its Affiliates may exercise their distribution rights, both inside and outside the Trade Area, without infringing Franchisee's competitive protection rights.

(f) This Section 4 will not to any extent prohibit or restrict Company or its Affiliates from selling private label products, memorabilia and other merchandise to customers inside the Trade Area through catalogues, telemarketing campaigns, an Internet website and other direct-order techniques. Company and its Affiliates may distribute catalogues and similar sales solicitation materials in the Trade Area, broadcast television and radio commercials for direct-order merchandise into the Trade Area, initiate telephone contact with and accept telephone orders from residents of the Trade Area, and fill customer orders for direct-order merchandise in the Trade Area, without in any such case infringing Franchisee's competitive protection rights.

(g) Franchisee acknowledges and agrees that Company has no express obligation or implied duty to insulate or protect Franchisee's revenues from erosion as the result of the Store's competing with other Stores, with Satellites or with Special Outlets in the ways and to the extent this Section 4 provides or contemplates. Franchisee expressly waives and relinquishes any right to assert any claim against Company based on the existence, actual or arguable, of any such obligation or duty.

## **5. Modification of Concept, Trade Dress and Equipment Standards.**

(a) Company reserves the right to modify the Store concept, Trade Dress and equipment package from time to time for a variety of reasons. These reasons include the need (i) to respond to changes in consumer expectations and buying trends, (ii) to seize efficiencies made possible by growth of the Pizza Patrón Network, (iii) to implement efficiencies made possible by technological advances or as a result of Company's research and development activities, (iv) to implement co-branding alliances with other companies, and (v) to meet competition. Company reserves the right and discretion (1) to add new and different menu items to the list of authorized Store merchandise, (2) to withdraw menu items from the list of authorized Store merchandise, or to change their names, recipes and image, (3) to change the Trade Dress, equipment and fixtures standards for Stores, (4) to add or change the standards for customer services (such as Catering), (5) to abandon the use of equipment, fixtures and merchandising displays for any menu item that Company withdraws from the list of authorized Store merchandise, and (6) to require the use of new or different electronic data processing and communications equipment and facilities.

(b) If the addition of a menu item or product to the authorized merchandise list would not require the installation of new fixtures or equipment (other than items Company classifies as smallwares), Company may instruct Store franchisees to begin offering the new menu item as of a date specified in a supplement to the Operations Manual. Similarly, if the deletion of a menu item or product from the authorized Store merchandise list would not require the removal of fixtures or equipment (other than items Company classifies as smallwares), Company may direct Store franchisees to cease offering the product as of a date specified in a supplement to the Operations Manual. Franchisee will comply with Company's instructions as of the date Company specifies, which need not be more than 30 days after Company distributes the Operations Manual supplement.

(c) If Company abandons or adopts changes in the Store operating concept that

necessitate the addition or removal of furniture, fixtures, equipment, signs or Trade Dress items, Company may instruct Store franchisees to adapt their Stores to the concept change through a supplement to the Operations Manual. Company, in consultation with Franchisee, will establish a schedule for Franchisee to implement the concept change that will depend, among other factors, on the Store's size, age, and the amount Franchisee has spent in recent periods to refurbish and upgrade the Store. Franchisee will remove from the Store any items Company designates as obsolete and will purchase and install any different or additional items Company specifies as meeting its new standards, all in accordance with the schedule Company establishes for Franchisee's Store.

(d) If Company allows the Store to participate in any new product test, Franchisee will participate in the test in accordance with Company's standards and specifications and will discontinue offering any product that Company decides not to add permanently to the authorized Store merchandise list. Franchisee shall not participate in any product tests without the express, written permission of Company.

(e) If Franchisee develops or suggests an innovation or improvement that Company decides to incorporate into the System, either temporarily or permanently, the innovation or improvement will become Company's property without compensation other than Company's giving Franchisee recognition and credit for the innovation or improvement in announcing it to members of the Pizza Patrón Network. Franchisee hereby assigns each such innovation or improvement to Company and agrees to execute and deliver all such additional instruments and documents as Company may request to evidence the assignment and Company's ownership of the innovation or improvement.

## **6. Company Services and Assistance.**

(a) **Development Stage Assistance.** Company will provide the following services and assistance to Franchisee before Franchisee opens the Store.

(1) Company will furnish Franchisee a list that describes or shows the specifications for the fixtures and equipment that Franchisee must install in the Store. Company will also provide Franchisee's architect or general contractor information about the sequence of events and procedures that must be followed in building out and equipping a Store.

(2) At Franchisee's request and for a separate fee, Company will provide Franchisee a set of construction documents for the Store's build-out and will assist Franchisee in locating an experienced general contractor. If Franchisee elects not to use this service, Company will furnish Franchisee a list that generally describes the mechanical, electrical and plumbing specifications for a Store.

(3) Company will furnish Franchisee lists of the inventory, supplies, paper goods and smallwares needed to stock and operate a Store, together with the names of any suppliers Company has designated or approved, including Company and its Affiliates. These lists include the quality and grade specifications that Company has adopted for cheese, flour, tomato sauce and other ingredients and supplies Franchisee will need.

(4) Company will provide Franchisee a list of the qualifications a General Manager should possess.



(5) Company will provide a training program at its training facility in Dallas, Texas. If this Agreement relates to Franchisee's first Store, Company will provide training without tuition charge for Franchisee and the General Manager (or for Franchisee and one other individual if Franchisee will act as the General Manager). If this Agreement relates to Franchisee's second or subsequent Store, Company will provide training without tuition charge for the Store's General Manager. Subject to availability of pupil space and to payment of a reasonable tuition charge, Franchisee may re-enroll or enroll others in the training program from time to time for initial or refresher training. In all cases, Franchisee must pay the travel, lodging and incidental expenses that Franchisee, the General Manager and Franchisee's other designated trainees incur to attend the training program.

(6) When Franchisee arrives for training, Company will loan Franchisee one set of the Operations Manual.

(7) Company will help Franchisee establish an account with the distribution company from which members of the Pizza Patrón Network purchase Spice Kits, pizza boxes and other inventory items.

(8) Company will help Franchisee find a local supplier of perishable ingredients, paper goods and supplies that meet Company's specifications.

(b) **Operational Assistance.** Company will provide the following services and assistance to Franchisee after the Store opens.

(1) If this Agreement covers Franchisee's first Store, Company will send an operations specialist to the Store for at least four days during the period the Store first opens for business to verify that Franchisee is operating the Store in accordance with the Operations Manual. If this Agreement covers Franchisee's second or a later Store, Company may send an operations specialist to the Store for the amount of time that Company considers adequate.

(2) Company will advise and assist Franchisee in planning publicity and promotions for the Store's opening and in identifying community involvement opportunities for the General Manager.

(3) Company will make its staff accessible to the General Manager for consultation by telephone, fax, written communication, e-mail and other forms of electronic communication. Company will occasionally visit the Store to conduct BCE Reviews and to consult with the General Manager regarding standards compliance, but will not provide routine field supervision.

(4) Company will arrange for the production and distribution of Spice Kits in quantities sufficient to satisfy the Store's reasonable needs. Company will be relieved of any obligations to Franchisee under this Section 6(b)(4) if Franchisee fails to maintain a satisfactory payment history with the distributor from which Franchisee purchases Spice Kits, or if Franchisee becomes significantly or habitually late in paying royalties or marketing fees on time.

(5) Company will loan Franchisee additions and supplements to the Operations Manual as they become available, and will disclose to Franchisee additional Trade Secrets, if any, Company develops that relate to the operation of Stores.

(6) So long as Franchisee complies with Franchisee's financial, operational and

reporting obligations under this Agreement, Company will invite Franchisee to attend (at Franchisee's expense) all conventions, seminars and other Franchisee-oriented functions Company from time to time plans and sponsors.

(7) Company will permit Franchisee to purchase equipment and inventory from or through any distribution network Company establishes.

## **7. Franchisee's Performance.**

(a) **Business Entity Requirements.** If Franchisee is a Business Entity, the following requirements apply:

(1) Franchisee must be newly organized and its Charter Documents must provide that Franchisee's purposes and activities are restricted exclusively to operating Pizza Patrón Stores.

(2) True, complete and duly authenticated copies of Franchisee's Charter Documents and of a resolution of Franchisee's board of directors, general partner or other managing body authorizing Franchisee to enter into and perform this Agreement must be furnished to Franchisor prior to the execution of this Agreement.

(3) Franchisee's Charter Documents shall impose transfer restrictions that give effect to Section 13(a), and each certificate representing an ownership interest in Franchisee shall contain or have conspicuously noted upon its face a statement in a form satisfactory to Franchisor to the effect that any assignment or transfer of the certificate is subject to all restrictions this Agreement imposes on transfers and assignments.

(4) Franchisee shall maintain a list of all record and beneficial owners of equity interests in Franchisee and shall furnish a current version of the list to Franchisor between December 15<sup>th</sup> and 31<sup>st</sup> of each year and upon request.

### **(b) Pre-Construction Procedures.**

(1) Within 30 days after the Effective Date, Franchisee must locate and furnish Company the name of an experienced general contractor who has built at least two restaurants that engage primarily in baking operations. The contractor must furnish Company a statement of the contractor's qualifications, including at least five client references, and a copy of the construction contract the contractor proposes to sign with Franchisee. Company will have 10 calendar days after it receives these documents to advise Franchisee of any reservations Company has about the contractor's reputation or ability. If Franchisee decides not to hire a particular contractor, Franchisee will have an additional 15 days to locate another general contractor and to submit the new candidate's qualifications to Company for its review.

(2) Unless Franchisee obtains construction documents for the Store from Company, within 15 days after Franchisee selects a general contractor, Franchisee must submit for Company approval a complete set of construction documents for the Store, including mechanical, electrical and plumbing specifications. Franchisee must develop the documents in cooperation with the general contractor, and must base them on the standards and information Company provides, including the kitchen/storage area lay-out Company suggests and Company's required Trade Dress package. The documents will be subject to Company's review and approval. Franchisee agrees to defer signing contracts for the Store's construction, equipment, fixtures or signage until Franchisee

has received Company's written approval of Franchisee's final construction documents.

(c) **Construction and Operations.** In connection with the construction and operation of the Store, Franchisee agrees to fulfill the requirements, to perform the obligations and to observe the restrictions stated in this Section 7(c).

(1) Franchisee will construct, finish out, equip, furnish and decorate the Store in compliance with Company's equipment, Trade Dress, Information Systems and signage specifications and the construction documents Company approves in accordance with Section 7(b)(2). After the Store opens, Franchisee will not alter its fixtures, equipment, signs or Trade Dress in any fashion without Company's express prior permission. All equipment must comply with the Company's standards, and must be maintained in good condition and working order.

(2) Franchisee will affix to an exterior window or display prominently on an interior wall of the Store a decal or placard containing the following statement: "This store is owned and operated by \_\_\_\_\_ under a license from Pizza Patrón, Inc." and never make a statement or representation to any Person that is contrary to or inconsistent with Section 22 of this Agreement.

(3) Unless Franchisee is an individual who will operate and manage the Store personally, Franchisee will recruit and hire a full-time General Manager who satisfies Company's eligibility standards, as stated in the Operations Manual. If the initial or any successor General Manager resigns or otherwise leaves Franchisee's employment, Franchisee will notify Company promptly and will recruit and hire a suitably qualified replacement General Manager within a reasonable time, which will in no case exceed 30 days. Any General Manager (including all replacement General Managers) and any person holding a supervisory or management position above General Manager must be trained within 60 days of assuming the duties of his or her position.

(4) Franchisee will attend and send the General Manager and all other persons required to attend training pursuant to Section 7(c)(3), above, to the training program described in Section 6(a)(3) on a space-available basis at no charge. Company reserves the right to charge a reasonable training fee. Franchisee and the General Manager must both complete Company's training program with a passing grade before the Store may open for business. At Company's election, Company may require that all Store employees successfully complete initial and periodic training as Company prescribes. To facilitate such training, Company may establish and implement a "train the trainer" program pursuant to which Franchisee's General Manager or other employees may become certified to administer training to Store level employees. From time to time, Company also may offer additional training programs and classes, attendance at which may be optional or mandatory, at Company's election, for Franchisee, its General Manager and/or other of Franchisee's employees. Such training may be provided at Company's headquarters or such other place as Company designates. Company may impose a reasonable fee for any training program or class that it administers.

(5) As soon as Franchisee obtains a telephone number for the Store, Franchisee will sign and deliver to Company an Assignment of Telephone Number(s) for the number in the form attached to this Agreement as Exhibit D. If the Store's telephone number changes during the franchise's term, or if Franchisee adds additional lines for a modem or other purposes, Franchisee will promptly sign and deliver to Company a new Assignment of Telephone Number(s) for the new or additional number(s).

(6) Franchisee will open the Store for business not later than the Scheduled Opening Date specified on the Summary Page and will operate it continuously throughout the entire term of the franchise solely under the Pizza Patrón trade name and System. If the Store's completion is interrupted by a natural disaster, fire or other casualty, labor dispute, materials shortage or similar event over which Franchisee lacks control, the Scheduled Opening Date will be extended for the time reasonably necessary for the effects of the occurrence to abate.

(7) Franchisee will (i) comply with and adhere to the policies and procedures set forth in the Operations Manual, as revised and supplemented from time to time, (ii) follow Company procedures in the storage, preparation, presentation and dispensing of pizza, other authorized menu items and other authorized Store merchandise, (iii) purchase and use fresh, processed and prepackaged ingredients that satisfy or exceed the minimum grade or quality standards Company from time to time specifies; (iv) purchase from a source Company designates and exclusively use the Spice Kit and other proprietary ingredients in all pizzas the Store produces; and (v) purchase inventory and supplies only from suppliers Company designates or approves from time to time.

(8) Franchisee will provide appropriate training, supervision and security for all personnel employed in the Store, maintain standards of prompt and courteous customer service, and instruct all employees of the Store in the proper use and display of the Marks and the confidential handling of the Trade Secrets and the Operations Manual, as stated in Section 12.

(9) Franchisee will ensure that all the Store's employees follow Company's grooming and dress code as set forth in the Operations Manual and wear the Pizza Patrón uniform items developed or approved by Company.

(10) Franchisee will compensate each General Manager in accordance with a bonus policy that Company approves in advance of a General Manager's hiring, and will ensure that each new General Manager is employed on a full-time basis (with no second jobs of any sort) and is properly trained to understand and perform a General Manager's duties.

(11) Without prior permission of the affected employer, Franchisee will not, directly or through others, contact, solicit or offer any inducements to any employee of Company, a Company Affiliate or another Pizza Patrón franchisee for the purpose of persuading or attempting to persuade the employee to accept employment by Franchisee in any capacity.

(12) Franchisee will offer all foods and beverages included on Company's standard Store menu, as revised from time to time, and will not offer any foods, beverages or other merchandise that is not included on Company's authorized Store menu, as revised from time to time, without Company's prior written consent.

(13) Franchisee will imprint the Pizza Patrón logo on all cups, containers, pizza boxes, take-out menus and other paper goods used in the Store in accordance with instructions in the Operations Manual, and will purchase items imprinted with the Pizza Patrón logo only from suppliers Company designates or approves.

(14) Franchisee will purchase as they become available and display in the Store all (i) product identification materials, (ii) point-of-purchase promotional materials, (iii) promotional memorabilia, merchandise and prizes, and (iv) other advertising and marketing materials Company creates or authorizes for use by Store operators. Franchisee will purchase these materials from a source Company designates or approves.

(15) At Company's request, Franchisee will display in a prominent, accessible place a "franchise opportunity" display furnished by Company at its expense for the purpose of increasing public awareness of the availability of Store franchises.

(16) Franchisee will follow Company procedures as described in the Operations Manual in (i) maintaining and cleaning the Store's equipment and fixtures, (ii) maintaining the lobby, kitchen, storage and restroom areas of the Store in a safe and sanitary condition at all times, and (iii) purchasing used equipment for use in the Store or at an event.

(17) Franchisee will maintain the physical appearance and integrity of the Store in accordance with the repair, refurbishing and remodeling standards stated in the Operations Manual.

(18) Franchisee will permit Company representatives to conduct unannounced BCE Reviews of the Store at any time during normal business hours and to sample food, free of charge, for the purpose of testing for quality. Franchisee will promptly correct any condition noted as "unsatisfactory" or "needs improvement" in a BCE or staff evaluation report.

(19) Franchisee will maintain Store business hours and days of operation in accordance with System standards, unless Company grants a written exception.

(20) Franchisee will comply strictly with all federal, state and local laws and government regulations applicable to Franchisee's franchised business, including those relating to taxation, employment and promotion practices, employee wages, child and immigrant labor, disabled persons, workers' compensation, truth-in-advertising, occupational safety and health, and sanitation.

(21) Franchisee will (i) adopt and follow Company's fiscal year for accounting purposes, (ii) adopt and follow the accounting principles, policies and practices Company prescribes, including use of Company's standard chart of accounts, (iii) acquire, install and use the Information Systems Company specifies from time to time in the Operations Manual, (iv) install and continually maintain a dedicated telephone line that facilitates communication between Company's computer system and Franchisee's Information Systems, and (v) furnish Company the dedicated line's telephone or other access number, as originally assigned and as changed from time to time.

(22) Franchisee will accurately calculate and report Gross Sales to Company at the times and through the procedures Company from time to time specifies (which may include a web-based reporting system and a daily reporting requirement). Franchisee acknowledges that Company may electronically poll the Store's Information Systems to obtain Gross Sales data, as well as other financial and operating information. Franchisee agrees to maintain continual data network access to the Store's Information Systems for use by Company through a separate, dedicated line (either a data line or dial-up line, as deemed appropriate by the Company), that will be used for no other purpose. If at any time Company is not able to connect to Franchisee's POS system, Company may require Franchisee to pay an administrative fee not to exceed \$200 per occurrence.

(23) At Company's request, Franchisee will furnish Company copies of all federal and state income and sales tax returns filed by Franchisee with respect to the Store's income or sales.

(24) Franchisee will permit Company, at any time during the term of the franchise and for three years after it expires or terminates, to conduct a special audit of Franchisee's books

and records relating to the Store's operation. To assist Company in planning and conducting its audit program, Franchisee expressly authorizes Company to obtain from any vendor with which Franchisee does business copies of invoices and other sales data related to Franchisee's account with the vendor. If an audit establishes that Franchisee's royalty/marketing fee reports or profit and loss statements have understated Gross Sales for any fiscal year by more than 1%, Franchisee shall pay the audit's cost, including the travel, lodging and meal expenses of the individuals who conduct the audit. Otherwise, Company will bear the audit's entire cost. Franchisee shall promptly pay Company any royalty and marketing fee deficiencies established by an audit, together with interest as provided in Section 14.

(25) Franchisee will maintain complete and accurate books and records relating to the operation of the Store in accordance with Section 7(b)(21), permit Company representatives to inspect such books and records at reasonable times and, within 45 days after the end of each fiscal year of the Store, submit to Company a balance sheet, income statement and statement of cash flow for the year then ended. These financial statements shall disclose separately the items specified by Company on forms it provides, and shall be prepared in accordance with the accounting principles and practices Company prescribes. If Franchisee is at any time required to furnish any lender, lessor, government agency or other Person audited financial statements with respect to Franchisee's franchised business, Franchisee shall concurrently furnish Company a copy of such audited financial statements.

(26) (i) Franchisee will carry continuously during the term of the franchise insurance of the types (including worker's compensation and various special liability coverages), in the amounts and with the coverages the Operations Manual specifies from time to time. Until the Operations Manual specifies otherwise, Franchisee will carry insurance with the policy limits specified in the Summary Page. Each policy must (1) be obtained from an insurance carrier that has and maintains a Best's Insurance Reports rating of A, Class VIII, or better; (2) name Company as an additional insured and afford separate coverage to each named insured; (3) provide for a deductible of not more than \$500 per occurrence; (4) contain no provision that limits or reduces Franchisee's coverage on account of a claim against Franchisee by Company; and (5) provide for not less than 30 days' prior notice to Company of cancellation or non-renewal.

(ii) Franchisee shall furnish Company certificates of insurance to prove that such insurance coverage is in effect, both prior to the opening of the Store and within 10 days after each policy renewal date. If Franchisee fails to maintain the required insurance, Company may obtain coverage on Franchisee's behalf and charge the cost to Franchisee. Franchisee agrees to reimburse Company for the premium costs it incurs to provide such coverage, plus interest as provided in Section 14, within ten days after Company submits a statement for its costs.

(27) (i) Franchisee will indemnify, hold harmless and timely defend Company, Company's Affiliates and their respective officers, directors, shareholders, employees, agents, successors and assigns (collectively, "Indemnified Parties") from and against any and all claims, demands, legal proceedings, administrative inquiries, investigations and proceedings, damages, losses, judgments, settlements, fines, penalties, remedial actions, costs and expenses (including attorneys' fees) asserted against, incurred or sustained by any Indemnified Party, whether or not separately insured, that arise out of or are attributable to Franchisee's operation of the Store or use of any Internet site or Intranet network Company develops.

(ii) Company may elect (but under no circumstance will be obligated) to undertake or assume the defense of any such claim, demand, inquiry, investigation or proceeding (an "Indemnified Matter"), and to conduct and supervise all settlement negotiations related to any

Indemnified Matter. Company will pay the legal fees and other expenses it incurs in connection with the investigation, defense and settlement of any Indemnified Matter it undertakes to defend or assumes. If a proposed settlement of any Indemnified Matter will result in an admission of liability or financial contribution by Franchisee, Company will not settle the Indemnified Matter without Franchisee's participation and concurrence. Otherwise, Company's election to undertake or assume the defense or settlement of an Indemnified Matter will in no way or circumstance extinguish or diminish Franchisee's obligation to indemnify and hold the Indemnified Parties harmless.

(28) Franchisee will not, without Company's prior written consent, sell any interior or exterior sign bearing or representing any of the Marks, sell all or substantially all the Store's assets, or assign or sublease the Store's premises to any Person who has not agreed in accordance with Section 13 to continue operating a Store in the premises.

(29) Franchisee shall attend Pizza Patrón Network meetings as deemed necessary by the Company, which shall be no more than twice a year.

(30) Franchisee shall provide to Company advance written notice of the time and place of all meetings at which franchisees are scheduled to attend for the purpose of discussing the franchise system, and Company shall have the right to send a representative to all such meetings.

(31) Franchisee shall occasionally be required to come to Company headquarters for a review of Franchisee's business, as deemed necessary by Company but no more than four times per year. The review may include, but it not limited to, a discussion of local area marketing, accounting, human resources and operations. Franchisee's executive team, corporate staff and Area Supervisors may all be required to attend. Franchisee shall be responsible for all travel and lodging expenses incurred when attending the review.

(32) Franchisee shall be responsible for ensuring that all vendors used by Franchisee comply with Company's standards as set forth in the Operations Manual.

(33) Upon opening its fourth Store, Franchisee shall hire an Area Supervisor. The Area Supervisor shall be fluently bilingual in Spanish and English and shall have experience in the restaurant industry. The Area Supervisor must live in the state in which the Stores he or she supervises are located and must satisfy Company's criteria and training requirements for Area Supervisors.

(34) Franchisee's Area Supervisor, General Manager and any other employee in a supervisory or management position above General Manager shall be fluently bilingual in Spanish and English, must be familiar with Hispanic culture (Company may establish testing criteria to determine whether this requirement has been met) and must be approved by Company before assuming his or her duties.

(35) To the extent that Company develops or authorizes the sale of gift certificates and/or stored value cards, Franchisee shall acquire and use all computer software and hardware necessary to process their sale and to process purchases made using them. All proceeds from the sale of all gift certificates and stored value cards belong exclusively to Company, and Franchisee shall remit the proceeds of such sales to Company according to the procedures that Company prescribes periodically. Company shall reimburse or credit Franchisee (at Company's option) the redeemed value of gift certificates and stored value cards accepted by Franchisee as payment for products and services sold by the Store.

## 8. Advertising and Promotions.

### (a) Ad Fund.

(1) Company has established a separate and segregated advertising fund ("Ad Fund") that it administers for the purpose of enhancing the goodwill and public image of the Pizza Patrón franchise system through advertising and promotions. All Stores, both Company-operated and franchised, are obligated to make contributions to the Ad Fund. Franchisee agrees to make contributions to the Ad Fund in the manner (including payment by automatic debit), and at the rate Company establishes. Except for increases authorized in accordance with Section 8(a)(5), Company may not establish an Ad Fund contribution rate in excess of 2% of annual Gross Sales.

(2) Company will use the Ad Fund (i) to create marketing materials relating to the Pizza Patrón franchise system and the products Stores sell, (ii) to place and run advertisements, commercials and promotional materials in local, regional and national media, (iii) to pay for public relations projects (including sponsorships) intended to enhance the goodwill and public image of the Pizza Patrón franchise system, and (iv) to reimburse Company or its Affiliates (based on reasonable allocations calculated by Company's management) (a) for salaries and other overhead expenses that are directly related to projects of a character described in clauses (i), (ii) and (iii), and (b) for part of the cost of maintaining the Pizza Patrón Website, as authorized in Section 9(a)(3). However, Company will not use Ad Fund contributions to pay for those components of the Website that publicize the Pizza Patrón franchise program or the sale of Pizza Patrón franchises.

(3) Company will, at its option, either (i) furnish Franchisee one slick, master or other "suitable for reproduction" sample of all newspaper inserts, direct mail flyers, point-of-purchase promotional pieces, television and radio commercials, and other marketing and product identification materials that Company creates with Ad Fund contributions, or (ii) provide Franchisee copies of such materials that have been customized to provide information about the Store. If Company provides customized copies, it may charge Franchisee a reasonable customization fee. In all cases, Franchisee must pay to reproduce, place and run any of these materials in any local advertising campaign that Franchisee pursues independently of the Ad Fund.

(4) Company will use Ad Fund contributions in a manner that provides marketing benefits to all Stores. However, Company reserves the right to allocate Ad Fund contributions to various permitted uses as it sees fit. To the greatest extent feasible, Company will strive to spend Ad Fund contributions in a manner that provides advertising benefits to all participating Stores. However, Company does not guarantee that all Stores will receive identical media exposure or equal advertising benefits in view of regional differences in media costs, varying degrees of market penetration in different DMAs and other relevant factors.

(5) The Ad Fund contribution rate may be increased above 2% of Gross Sales by the affirmative vote of franchisees who own a majority of the Stores that comprise the Pizza Patrón Network at the time a vote is taken. Any increase in the Ad Fund contribution rate approved in accordance with the preceding sentence will constitute an amendment to this Agreement and will be binding on Franchisee without the need for a signed amendment. Company may not vote on a proposal to increase the contribution rate.

(6) Company reserves the right to structure the Ad Fund's organization and administration in ways that, in Company's judgment, most effectively and efficiently accomplish the Ad Fund's objectives. Company may therefore organize or reorganize the Ad Fund as a separate non-profit corporation or other appropriate entity and transfer the Ad Fund's assets to the entity. If



Company establishes a separate entity to administer the Ad Fund, Franchisee agrees to become a member of the entity and, in that regard, to sign a participation agreement and take such other steps as Company reasonably specifies.

**(b) Local Advertising.**

(1) Franchisee agrees to spend a reasonable percentage of Gross Sales to advertise and promote the Store locally. Company imposes no minimum expenditure requirement, but recommends that franchisees spend at least 4% of Gross Sales on local advertising and promotions.

(2) Franchisee agrees to participate in all system-wide promotions Company originates. Franchisee also agrees to participate in all system-wide advertising campaigns Company creates. Except for Franchisee's commitments to participate in system-wide promotions and advertising campaigns and to use Company-produced marketing materials in accordance with Section 7(b)(13), Franchisee will initially have discretion over the approach Franchisee takes to local advertising and promotions. This discretion will continue until an Area Cooperative is established in the Store's DMA under Section 8(c). As provided in Section 13(a)(6), Company reserves the right to approve in advance of use by Franchisee any graphic materials or commercials developed by Franchisee that feature any of the Marks.

(3) Within 30 days after the end of each fiscal quarter, Franchisee shall submit a Local Area Marketing ("LAM") Report to Company on a form Company provides. Each LAM Report shall show the amount Franchisee spent for local advertising and promotions during the preceding quarter and the way Franchisee spent those funds. Upon Company's request, Franchisee shall also submit documents substantiating that Franchisee incurred and paid particular expenditures during the quarter.

**(c) Area Cooperatives.**

(1) At the time the DMA in which the Store is located encompasses Stores operated by at least two owners, the owners in the DMA will, at Company's request and with its advice and assistance, form a cooperative advertising association among themselves (an "Area Cooperative") for the purpose of jointly advertising and promoting their Stores.

(2) If, in connection with an Area Cooperative's formation or functioning, its members are unable to reach agreement with respect to any disagreement over organization, administration, "spill" policy, contribution waivers or exceptions, budget or other matters that the members cannot resolve within 45 days, the issue will be referred to Company for resolution. Company's decision with respect to the issue's resolution will be binding on all members of the Area Cooperative. In addition, Company reserves the right to review each Area Cooperative's contribution rate on an annual basis and to disapprove a rate of less than 1% of Gross Sales.

(3) Franchisee agrees (i) to join, participate in, and actively support any Area Cooperative established in the Store's DMA, and (ii) to make contributions to each Area Cooperative on the payment schedule adopted by the Area Cooperative's members and at the contribution rate approved by Company.

**(d) Loyalty Programs, Prize Promotions and Meal Deals.**

(1) Franchisee shall participate in and offer to its customers: (a) all customer loyalty and reward programs; (b) all contests, sweepstakes and other prize promotions, and (c) all meal deals, which Company may develop from time to time. Company will communicate to Franchisee in writing the details of each such program, promotion and meal deal, and Franchisee shall promptly display all point-of-sale advertising and promotion-related information at such places within the Store as Company may designate. Franchisee shall purchase and distribute all coupons, clothing, toys and other collateral merchandise (and only the coupons, clothing, toys and collateral merchandise) designated by Company for use in connection with each such program, promotion or meal deal.

**9. Concerning the Internet.**

**(a) Pizza Patrón Website.**

(1) Company has established and plans to maintain the Pizza Patrón Website to provide information about the Pizza Patrón concept and the products and services that Stores offer. Company will have sole discretion and control over the Pizza Patrón Website's design and contents. Company will have no obligation to maintain the Pizza Patrón Website indefinitely, but may dismantle it at any time without liability to Franchisee.

(2) The Pizza Patrón Website includes a series of interior pages that identify participating Stores by name, address, telephone number and e-mail address. Company will include information about Franchisee's Store in those pages.

(3) Franchisee agrees to contribute a reasonable amount toward the cost of the Pizza Patrón Website's maintenance and further development, which amount may not exceed \$50 per month. Company will set the contribution amount in March of each year, and Franchisee will pay one quarter of its annual contribution quarterly within 30 days after Company sends Franchisee an invoice for the contribution. Any balance of a quarterly payment that remains unpaid 30 days after the invoice date will bear interest from that date until paid at the rate of 12% per annum (or, if less, the highest rate permitted by applicable law). In addition or alternatively, Company may use part of the Ad Fund contributions that Company collects under Section 8(a) to maintain and further develop the Pizza Patrón Website.

(4) If Franchisee fails to pay when due any fees or other amounts payable to Company under this Agreement, Company may remove information about Franchisee's Store from the Pizza Patrón Website until such time as Franchisee pays its outstanding obligation in full.

(5) Franchisee will have no right, license or authority to use any of the Marks on or in connection with the Internet, except as stated in and permitted by this Section 9(a).

**(b) Pizza Patrón Intranet.**

(1) Company may, at its option, establish and maintain a so-called intranet through which members of the Pizza Patrón Network may communicate with each other and through which Company may disseminate updates to the Operations Manual and other confidential information. Company will have no obligation to maintain the Pizza Patrón Intranet indefinitely, but may dismantle it at any time without liability to Franchisee.

(2) Company will establish policies and procedures for the Pizza Patrón Intranet's use. These policies, procedures and other terms of use will address issues such as (a) restrictions on the use of abusive, slanderous or otherwise offensive language in electronic communications; (b) restrictions on communications between or among Franchisees that endorse or encourage breach of any Franchisee's Franchise Agreement; (c) confidential treatment of materials that Company transmits via the Intranet; (d) password protocols and other security precautions; (e) grounds and procedures for Company's suspending or revoking a Franchisee's access to the Pizza Patrón Intranet; and (f) a privacy policy governing Company's access to and use of electronic communications that franchisees post on the Pizza Patrón Intranet. Company expects to adopt and adhere to a reasonable privacy policy. However, Franchisee acknowledges that, as administrator of the Pizza Patrón Intranet, Company can technically access and view any communication that anyone posts on the Pizza Patrón Intranet. Franchisee further acknowledges that the Pizza Patrón Intranet facility and all communications that are posted to it will become Company's property, free of any claims of privacy or privilege that Franchisee or any other Person may assert.

(3) Upon receipt of notice from Company that the Pizza Patrón Intranet has become operational, Franchisee agrees to purchase and install all necessary additions to the Store's Information System and to establish and continually maintain electronic connection with the Pizza Patrón Intranet that allows Company to send messages to and receive messages from Franchisee. Franchisee's obligation to maintain connection with the Pizza Patrón Intranet will continue until the Franchise Agreement's expiration or termination (or, if earlier, until Company dismantles the facility).

(4) Franchisee agrees to contribute a reasonable amount, not to exceed \$50 per month, toward the cost of the Pizza Patrón Intranet's maintenance and further development. Company will set the contribution amount in March of each year and Franchisee will pay one quarter of its annual contribution quarterly within 30 days after Company sends Franchisee an invoice for the contribution. Any balance of a quarterly payment that remains unpaid 30 days after the invoice date will bear interest from that date until paid at the rate of 12% per annum (or, if less, the highest rate permitted by applicable law).

(5) If Franchisee fails to pay when due any amount payable to Company under the Franchise Agreement, or if Franchisee fails to comply with any policy or procedure governing the Pizza Patrón Intranet, Company may temporarily suspend Franchisee's access to any chat room, bulletin board, list serve or similar feature the Pizza Patrón Intranet includes until such time as Franchisee fully cures the breach.

## **10. Royalties.**

(a) In consideration for Franchisee's continuing use of the Marks and the System, Franchisee agrees to pay Company continuing royalties equal to 5% of Gross Sales.

(b) Royalties (and Ad Fund contributions under Section 8(a)) will be payable weekly by automatic debit of Franchisee's account. Franchisee will authorize Company and its bank to debit Franchisee's account directly by signing and delivering an Authorization Agreement for Preauthorized Payments in the form attached to this Agreement as Exhibit D. Royalties will be payable without notice or demand on Monday of each week with respect to Franchisee's Gross Sales for the week ending the preceding Saturday. By notice in writing to all franchisees, Company may from time to time change the payment interval, the payment date, the manner of payment.

(c) By noon on Monday of each week, Franchisee must report Gross Sales for the week ending the prior Saturday night in accordance with Section 7(d)(22). If Franchisee properly calculates and reports Gross Sales by the noon Monday deadline, Company will calculate Franchisee's royalty payment and draft Franchisee's account based on the amount Franchisee reported. If Franchisee fails to report Gross Sales for any week by the noon Monday deadline, Company will calculate Franchisee's royalty payment on the basis of 200% of Gross Sales for last week in which Franchisee reported Gross Sales and will draft Franchisee's account accordingly. Adjustments in the royalties actually due will be calculated and settled within 10 days after Franchisee furnishes the required Gross Sales information.

(d) Franchisee will not be entitled to withhold payment of royalties on account of Company's breach or alleged breach of its obligations under this Agreement; Company's performance under this Agreement constitutes no part of the consideration for Franchisee's obligation to pay royalties.

## **11. Term and Renewal.**

(a) The franchise will continue for a primary term of 10 years from and after the Effective Date, subject to earlier termination in accordance with Sections 16 and 17.

(b) If, upon the expiration of the 10-year primary term, Franchisee is in full compliance with Franchisee's agreements and obligations under this Agreement, Franchisee shall have the option to renew the franchise for an additional term of 10 years by (1) notifying Company of Franchisee's intention to renew not earlier than 180 days nor later than 90 days before the primary term's scheduled expiration date, (2) signing Company's then current renewal form of Franchise Agreement (which will define Franchisee's subsequent renewal rights), and (3) not later than 30 days before the primary term's scheduled expiration date, completing the remodeling, refurbishing and modernizing of the Store's interior and exterior, including its furniture, fixtures, signs, equipment, Information Systems and Trade Dress, to conform to the standards Company then stipulates. Franchisee will not be required to pay a renewal fee.

(c) Franchisee's failure or refusal to comply with any of the three conditions to renewal stated in Section 11(b), each of which Franchisee acknowledges to be reasonable and material, will be interpreted as a conclusive, irrevocable election on Franchisee's part not to renew the term of the franchise.

(d) The relationship between Company and Franchisee during the renewal period will be governed by the provisions of Company's then current renewal form of Franchise Agreement, including those pertaining to royalties, advertising, competitive protection and concept modifications. Whether or not Franchisee actually signs a then current renewal form of Franchise Agreement, Franchisee will be conclusively presumed to have assented to and to have agreed to be bound by its terms by continuing to operate the Store for one day past the primary term's expiration date.

(e) If Franchisee does not qualify to renew, or elects not to renew, the franchise, Company will permit Franchisee to transfer the franchise to a qualified purchaser in accordance with Section 13. If, in the exercise of diligent, good faith efforts by Franchisee, the transfer cannot be completed before the franchise's scheduled expiration date, Company may, in its sole discretion, extend the franchise's term from month-to-month for so long as Company believes that Franchisee is continuing to make a conscientious effort to negotiate and complete a transfer. If Company allows Franchisee to extend in order to complete a transfer, Franchisee will operate the Store during the

interim period in accordance with Company's then current form of Franchise Agreement.

(f) If Franchisee does not qualify to renew, or elects not to renew, the franchise and it therefore expires, immediately after expiration, Franchisee must comply with the requirements of Section 17(a), and Company will have the rights and remedies provided in Sections 17(a) through 17(j).

## **12. Use of Intellectual Property.**

(a) **Marks and Copyrighted Materials.** Franchisee acknowledges that Company is authorized by law to prevent the unauthorized use of the Marks, to control the quality of goods and services associated with the Marks, and to control the copying and distribution of the Copyrighted Materials. Recognizing the importance to Company and other members of the Pizza Patrón franchise system of the protection and preservation of the Marks and Copyrighted Materials, Franchisee agrees to perform and abide by the following provisions:

(1) Franchisee acknowledges that Company is the lawful and rightful owner of each and all of the Marks and the Copyrighted Materials, that Franchisee's interest in the Marks and the Copyrighted Materials is solely that of a licensee, and that all uses of the Marks and the Copyrighted Materials by Franchisee will be attributed to Company for purposes of trademark and copyright law. Franchisee unconditionally disclaims any ownership interest in any of the Marks and the Copyrighted Materials.

(2) Franchisee shall not use "Pizza Patrón", "Patrón" or any abbreviation, acronym or variation of those words as part of its name or as part of the name of any Business Entity in which Franchisee owns or holds an interest. However, Franchisee may, if required by law, file an assumed name or fictitious name certificate to the effect that Franchisee is operating the Store under a trade name that includes the Pizza Patrón service mark.

(3) Franchisee shall not use any of the Marks or the Copyrighted Materials in connection with the advertisement, promotion, sale or distribution of any merchandise not listed in Company's authorized Store menu, or of any service not customarily offered by Stores. Specifically, Franchisee shall not use menus, guest checks, pizza boxes, drink cups, discount coupons, labels or other materials bearing the Pizza Patrón trademark, service mark or logo to advertise, promote, sell or distribute any unapproved merchandise, product or service.

(4) Franchisee shall not copy, distribute or otherwise disseminate any of the Copyrighted Materials in violation of the restrictions and limitations imposed by this Agreement.

(5) Franchisee shall not use any of the Marks or the Copyrighted Materials in connection with the development or operation of any Store (except the one covered by this Agreement) until Company and Franchisee have both signed a Franchise Agreement for the additional Store, or of any Special Outlet until Company has given Franchisee written authorization to install and operate the Special Outlet.

(6) Franchisee shall (i) adopt and use all additional trade names, trademarks, brand names, copyrighted materials, slogans, commercial symbols and logos Company develops from time to time, (ii) use all the Marks in the precise form Company prescribes, and (iii) observe Company directions regarding the use, copying and distribution of the Copyrighted Materials, the presentation of the Marks and the manner of the Marks' display and use. Franchisee shall promptly abandon and discontinue the use of any Mark or Copyrighted Materials that Company judges to be