

**EXHIBIT B
(TO FRANCHISE OFFERING CIRCULAR)**

FRANCHISE AGREEMENT

QUIZNO'S FRANCHISING II LLC
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ATTACHMENT

Guaranty and Assumption of Franchisee's Obligations

THIS AGREEMENT (the "**Agreement**") is entered into between **QUIZNO'S FRANCHISING II LLC**, a Delaware limited liability company located at 1475 Lawrence Street, Suite 400, Denver, Colorado 80202 ("**Franchisor**"), and the person(s) or entity listed as the Franchisee on the signature block of this Agreement ("**Franchisee**"), as of the date signed by Franchisor and set forth opposite Franchisor's signature on this Agreement (the "**Effective Date**").

1. PURPOSE

1.1 Franchisor and its affiliates have developed methods for establishing, operating, and promoting restaurants offering submarine sandwiches, salads, other food products and beverages, and related restaurant and carry out services ("**QUIZNOS Restaurants**" or "**Restaurants**"), which include the use and license of certain valuable trade names, service marks, and trademarks (the "**Marks**") owned by an affiliate of Franchisor and licensed to Franchisor, including the Mark "QUIZNOS," and the affiliate's distinctive techniques, expertise, and knowledge in establishing, operating, and promoting restaurants and related licensed methods of doing business (the "**Licensed Methods**").

1.2 Franchisor grants the right to others to establish and operate Restaurants under the Marks and using the Licensed Methods.

1.3 Franchisee recognizes and acknowledges the benefits to be derived from being identified and associated with Franchisor, and being able to utilize the Restaurant system and concepts, and therefore desires to establish a Restaurant at an approved location. Franchisor is willing to grant Franchisee the right to operate a Restaurant under the terms and conditions contained in this Agreement.

2. GRANT OF FRANCHISE

2.1 **Grant of Franchise.** Franchisor grants to Franchisee, and Franchisee accepts from Franchisor, the right to use the Marks and Licensed Methods in connection with establishing and operating a Restaurant at the location described in Section 3. Franchisee agrees to use the Marks and Licensed Methods, as they are changed, improved, and further developed by Franchisor and its affiliates from time to time, only in accordance with the terms and conditions of this Agreement.

2.2 **Scope of Franchise Operations.** Franchisee agrees at all times faithfully, honestly, and diligently to perform its obligations under this Agreement, to use best efforts to promote its Restaurant, and not to engage in any other business or activity that conflicts with the operation of the Restaurant in compliance with this Agreement. Franchisee agrees to utilize the Marks and Licensed Methods to operate all aspects of Franchisee's Restaurant in accordance with the methods and systems developed and prescribed from time to time by Franchisor, all of which are a part of the Licensed Methods. Franchisee's Restaurant shall offer all products and services designated by Franchisor. Franchisee shall implement any additions and changes to the products and services offered by its Restaurant that Franchisor requires.

3. FRANCHISED LOCATION

3.1 **Franchised Location.** Franchisee is granted the right to own and operate a Restaurant at a specific address and location ("**Franchised Location**") which will have been approved by Franchisor pursuant to this Section and Section 6 of this Agreement. Franchisee shall select and propose to Franchisor for approval a specific site for the Franchised Location. Franchisor, at its option, may also present sites to Franchisee for consideration. Franchisor will approve or disapprove a proposed location in accordance with the terms of this Agreement and Franchisor's then-current site selection and approval criteria and procedures. Franchisor may use a variety of criteria and procedures to evaluate a site Franchisee proposes and, if more than one franchisee is seeking a site in a particular area, to determine which franchisee will operate a Restaurant at a particular location. Franchisor may change its procedures from time to time. Franchisee agrees that, if Franchisor identifies a general area in which Franchisee is to concentrate its efforts to search for an acceptable site for the Franchised Location, this area is designated simply for purposes of focusing Franchisee's search and is not the grant of, or right to, an exclusive or protected territory. If Franchisee is unable or refuses to locate or secure a site that meets Franchisor's criteria within that area within the timeframe Franchisor specifies, Franchisor may allow another franchisee to search for a site in that area. In addition, if Franchisee is presented with a site that meets Franchisor's criteria, as determined in its sole discretion, and Franchisee refuses to secure the site for any reason, including because Franchisee does not agree with the lease provisions Franchisor negotiates on Franchisee's behalf, Franchisor may present the site to another Franchisee. Nothing contained herein obligates Franchisor to continue to utilize the procedure described above. Franchisor makes no guaranty or assurance that any particular site in which Franchisee has expressed an interest prior to signing this Agreement will be available or approved by Franchisor, and Franchisee agrees that its obligations under this Agreement are not conditioned upon securing any particular site. There are no restrictions on Franchisor in any area, either before or after the Franchised Location is selected and approved, as provided in Section 3.5 below.

Franchisor has the right to designate a real estate broker whom Franchisee must use to contact the landlord of a proposed site, in which case Franchisee may not contact the landlord directly without Franchisor's approval.

Franchisee acknowledges and agrees that the Franchised Location will be a specific numbered street or mall address at which Franchisee's Restaurant will be physically located. The "Franchised Location" cannot and will not under any circumstances be defined as a geographic area or be described in terms other than a specific numbered street or mall address. During the term of this Agreement, the Franchised Location shall be used exclusively to operate a Restaurant.

Franchisee further acknowledges and warrants that Franchisor's approval of the Franchised Location does not constitute a guarantee, recommendation, or endorsement of the Franchised Location and that the success of the Restaurant to be operated at the Franchised Location depends upon Franchisee's abilities as an independent businessperson. Once Franchisor has approved the Franchised Location, Franchisor will be deemed to have complied with its obligations under this Agreement to assist Franchisee by providing criteria for the

Franchised Location and determining fulfillment of the requisite criteria for the Franchised Location, such determination based on information provided by Franchisee.

3.2 **Limitation on Franchise Rights.** The rights granted to Franchisee are for the specific Franchised Location and cannot be transferred to any other location, except with Franchisor's prior written approval. The Marks and Licensed Methods are licensed only for the Franchised Location.

3.3 **Non-Traditional Restaurants.** Franchisee may not operate a Restaurant located within a host facility (such as a gas station, convenience store, airport, stadium, university, or hotel), in another "non-traditional" venue, or at any other location where the operation of the Restaurant will, because of its location, vary from the operation of a traditional Restaurant (all referred to as "**Non-Traditional Restaurants**"), except with Franchisor's prior written consent. Franchisor and Franchisee shall execute an Addendum for Non-Traditional Restaurant if the Restaurant will be located in a convenience store, gas station or other non-traditional or non-standard facility as determined by Franchisor. Franchisor will determine whether a proposed Restaurant should be classified as a Non-Traditional Restaurant.

3.4 **Special Products.** From time to time, Franchisor may offer supplemental programs to be incorporated in certain Restaurants ("**Special Products**"). Franchisee may not offer a Special Product except with Franchisor's prior written permission, in which case Franchisor and Franchisee shall execute an addendum to this Agreement specified by Franchisor.

3.5 **Franchisor's Reservation of Rights.** Franchisee acknowledges that the franchise granted under this Agreement is nonexclusive, that Franchisee has no territorial protection, and that Franchisor and all of its affiliates retain the right: (1) to use, and to license others to use, the Marks and Licensed Methods for the operation of Restaurants at any location other than the Franchised Location; (2) to use the Marks and Licensed Methods in connection with services and products, in connection with promotional and marketing efforts or related items, or in alternative channels of distribution, without regard to location; (3) to use and license the use of alternative proprietary marks or methods in connection with the operation of restaurants or other businesses under names which are not the same as or confusingly similar to the Marks, which businesses may be the same as, or similar to, or different from Restaurants; and (4) to engage in any other activities not expressly prohibited in this Agreement.

4. INITIAL FEES

4.1 **Initial Franchise Fee.** Franchisee agrees to pay to Franchisor, concurrently with signing this Agreement, an initial franchise fee ("**Initial Franchise Fee**") in the amount set forth in Section 23.14. Franchisee acknowledges and agrees that the Initial Franchise Fee represents payment for the initial grant of the right to use the Marks and Licensed Methods, that Franchisor has earned the Initial Franchise Fee upon receipt, and that the Initial Franchise Fee is not refundable to Franchisee after it is paid.

5. ROYALTIES

5.1 **Royalty.** Franchisee will pay to Franchisor a weekly royalty ("**Royalty**") equal to seven percent (7%) of the total amount of its Gross Sales, defined in Section 5.2, generated from or through its Restaurant.

5.2 **Gross Sales.** "**Gross Sales**" is defined as sales of any kind for all services or products from or through the Restaurant, including any sale of services or products made for cash or upon credit, or partly for cash and partly for credit, regardless of collection of charges for which credit is given, and regardless of whether such sale is conducted in compliance with or in violation of the terms of this Agreement, or whether such sale is at the Franchised Location or off-site, but exclusive of discounts, sales taxes, or other similar taxes and credits. Gross Sales also include the fair market value of any services or products received by Franchisee in barter or exchange for its services and products and all insurance proceeds received by Franchisee for loss of business due to a casualty to or similar event at the Franchised Location.

5.3 **Royalty Payments.** Royalty payments will be paid weekly and sent to Franchisor or for Franchisor's and its affiliates' benefit by electronic funds transfer, due on Thursday (for the preceding Monday through Sunday period) or such other specific day of the week which Franchisor designates from time to time ("**Due Date**").

On the Due Date each week, Franchisee shall report by telephone, electronic means, or in written form, as Franchisor directs (as more fully described in Section 15), Franchisee's Gross Sales and such additional information requested by Franchisor. Franchisor shall have the right to verify such Gross Sales reports from time to time as it deems necessary in any reasonable manner. If Franchisee fails to have sufficient funds in its account or otherwise fails to pay any Royalties due as of the Due Date, Franchisee shall owe, in addition to such Royalties, a late charge equivalent to two percent (2%) per month of any late Royalty payment; provided, however, in no event shall Franchisee be required to pay a late payment at a rate greater than the maximum commercial contract interest rate permitted by applicable law.

5.4 **Electronic Funds Transfer.** Franchisee authorizes Franchisor and its affiliates to initiate debit entries and credit correction entries to Franchisee's checking, savings or other account for the payment of Royalties, Marketing and Promotion Fees, and any other amounts due from Franchisee under this Agreement or otherwise. Franchisee shall comply with Franchisor's and its affiliates' procedures and instructions in connection with the direct debit process, and shall sign any document or take any action that may be required to effect this authorization.

Franchisor may require Franchisee to pay the Royalty, Marketing and Promotion Fees, and other amounts due under this Agreement or otherwise by means other than automatic debit whenever Franchisor deems appropriate, and Franchisee agrees to comply with Franchisor's payment instructions.

5.5 **Application of Payments.** Notwithstanding any designation Franchisee might make, Franchisor may apply any payments made by Franchisee to any of Franchisee's past due indebtedness to Franchisor or its affiliates. Franchisee acknowledges that Franchisor has the

right to set-off any amounts Franchisee owes Franchisor or its affiliates against any amounts Franchisor or its affiliates might owe Franchisee.

6. DEVELOPMENT OF FRANCHISED LOCATION

6.1 **Approval of Franchised Location.** Franchisor, either directly or through its affiliate, shall make the final determination to approve or reject any site which Franchisee proposes to Franchisor. That determination may be based on various criteria and procedures which may change from time to time in Franchisor's discretion. If Franchisee proposes a site, and Franchisor determines that it does not meet its criteria, it will be rejected, and Franchisee will be required to propose an alternative site. Franchisee may operate a QUIZNOS Restaurant only at a site approved by Franchisor. Franchisee shall follow Franchisor's site selection procedures in locating a Franchised Location for the Restaurant, as provided in Section 3.1 above. Franchisee shall submit a completed site submittal package, including demographics and other materials requested by Franchisor, containing all information reasonably required by Franchisor to assess a proposed Franchised Location. The Franchised Location shall be deemed approved upon approval by Franchisor of the site and lease pursuant to this Section 6.

6.2 **Lease Approval.** Unless Franchisor approves otherwise, its affiliate or designated representatives will negotiate the terms of Franchisee's lease, including review by our affiliate for the benefit of the QUIZNOS system to ensure that it meets minimum QUIZNOS requirements. When a negotiated lease is presented to Franchisee, Franchisee will have the option of proceeding with or passing on the site. Franchisee acknowledges that it has been advised to obtain the advice of its own professional advisors before Franchisee signs a lease. If Franchisee does not agree with the lease provisions that Franchisor's affiliate or representative has negotiated, Franchisee may elect not to sign the lease, but Franchisee would then have to find another suitable site for the Franchised Location. If Franchisee rejects a site because Franchisee does not agree with the lease provisions that Franchisor's affiliate or representative has negotiated, Franchisor may permit another franchisee to enter into a lease for such site, whether on the terms rejected by Franchisee or on other terms, or to search for a site in Franchisee's initially identified area. Franchisee will then have to search for another suitable site, which may be in that area or outside of that area. Franchisee must not, without Franchisor's prior written consent, enter into any contract to purchase or lease the premises Franchisee intends to use as a Franchise Location. Franchisee acknowledges that doing so may result in its being obligated on a lease for premises which Franchisor will not allow to be developed as a QUIZNOS Restaurant.

Franchisee acknowledges that Franchisor's lease negotiations and approval of locations are for Franchisor's sole benefit and are not intended to imply or guarantee the success or profitability of the Franchised Location, and Franchisee agrees that it is not relying on Franchisor's lease negotiations or site approval for such purposes. Upon submission of a proposed Franchised Location for the Restaurant, Franchisee shall pay Franchisor or its designated supplier (which may be an affiliate of Franchisor) a lease review fee of One Thousand Four Hundred Fifty Dollars (\$1,450) for a full lease review, or Five Hundred Dollars (\$500) for a cursory review (if the lease meets certain criteria) ("**Lease Review Fee**"). The Lease Review Fee pays the expenses incurred to review and (if Franchisor so chooses) to negotiate certain provisions of the lease. Franchisee is not a third-party beneficiary of the lease

negotiation or review. Franchisee agrees that Franchisor does not guarantee that the terms, including rent, will represent the most favorable terms available in that market. Franchisor shall charge Franchisee only one (1) Lease Review Fee unless Franchisee refuses to sign a lease that Franchisor has certified as acceptable for the Franchised Location, and Franchisor then is required to engage in one or more additional lease reviews for the Franchised Location (or for a different Franchised Location if Franchisee refuses to sign any lease for the first proposed Franchised Location), in which case Franchisee shall pay Franchisor or its designated supplier a Lease Review Fee for the first lease review as well as a Lease Review Fee for each additional lease review.

6.3 **Schedule.** Franchisee acknowledges and agrees that it has twelve (12) months from the Effective Date of this Agreement within which to obtain an executed lease for the Franchised Location, complete the initial training program described in Section 7.1, perform all other pre-opening obligations and commence operation of the Restaurant. If Franchisee does not commence operation of the Restaurant by the end of such twelve (12) month period, and Franchisor determines, in its sole discretion, that Franchisee is making reasonable and continuing efforts to actively and diligently obtain a site acceptable to Franchisor so that Franchisee can reasonably be expected to open the Restaurant within twenty-four (24) months from the Effective Date of this Agreement, Franchisor will extend the deadline to commence operation for another twelve (12) months so long as Franchisee continues to actively and diligently seek to obtain a suitable location and/or lease and otherwise pursue the opening of the Restaurant. Franchisee acknowledges and agrees that, unless Franchisor extends the deadline, Franchisor may terminate this Agreement any time after the expiration of the first twelve (12) month period if Franchisee has not commenced operation of the Restaurant. Franchisee further acknowledges and agrees that, if Franchisor extends the deadline and Franchisee fails, in Franchisor's sole discretion, to actively and diligently pursue the opening of the Restaurant during such period, Franchisor may, upon notice, rescind the extension and terminate this Agreement. Franchisor also has the right to terminate this Agreement upon the expiration of the twenty-four (24) month period. Any lease for the Franchised Location shall be collaterally assigned to Franchisor as security for Franchisee's performance of its obligations under this Agreement. Franchisee shall deliver a copy of the signed lease for the Franchised Location to Franchisor within five (5) days after it is signed.

6.4 **Conversion and Design.** Franchisee acknowledges that the layout, design, decoration, and color scheme of Restaurants are an integral part of the Licensed Methods, and, accordingly, Franchisee shall convert and decorate the Franchised Location in accordance with Franchisor's plans, designs, and specifications. Franchisee also shall obtain Franchisor's written consent to any conversion, design, or decoration of the Franchised Location before remodeling or decorating begins, recognizing that such remodeling and decoration, and any related costs, are Franchisee's sole responsibility.

6.5 **Signs.** Franchisee shall purchase or otherwise obtain for use at the Franchised Location and in connection with the Restaurant the maximum number and size of signs allowed by applicable building codes, which signs shall comply with Franchisor's standards and specifications. It is Franchisee's sole responsibility to ensure that all signs comply with applicable local ordinances, building codes, and zoning regulations. Any modifications to

Franchisor's standards and specifications for signs due to local ordinances, codes, or regulations shall be submitted to Franchisor for prior written approval. Franchisee acknowledges that the Marks, or any other name, symbol, or identifying marks on any signs, shall be used only in accordance with Franchisor's standards and specifications and only with Franchisor's prior written approval.

6.6 **Equipment.** Franchisee shall purchase or otherwise obtain for use in connection with the Restaurant the equipment, including delivery vehicles (if the Restaurant is approved to offer delivery services) and computer hardware and software, of a type and in an amount which complies with Franchisor's and its affiliates' standards and specifications and only from suppliers or other sources approved and/or designated by Franchisor and its affiliates. Franchisor and its affiliates may approve one or more suppliers for certain items and/or may designate a single supplier for certain items. Franchisor and/or its affiliates may be an approved or the designated supplier for certain items. Franchisee acknowledges that the type, quality, configuration, capability, and performance of the Restaurant's equipment are all standards and specifications which are a part of the Licensed Methods. Franchisee shall purchase or lease (as Franchisor and its affiliates designate) for use in the Restaurant an electronic cash register or computer system, a music system, and a credit card processing system (the "**Systems**") approved by Franchisor and its affiliates. The cash register or computer system must accurately record every sale or other transaction. Franchisee shall purchase, or Franchisor or an affiliate may license to Franchisee for the license fee it determines, software to be used by Franchisee in conjunction with the Systems. Franchisee shall submit any required reports in a format designated from time to time by Franchisor. Franchisee grants Franchisor and its affiliates the right to access the Systems and to obtain sales, sales mix, and revenue information directly by modem or otherwise. Franchisee acknowledges that Franchisor and its affiliates will use information from required reports primarily to make business and marketing decisions. Franchisee shall be obligated to upgrade or update the Systems and the software, and any other equipment, at Franchisee's sole cost, to meet Franchisor's and its affiliates' then-current standards and specifications and to address technological developments or events. Franchisor and its affiliates have no obligation to reimburse Franchisee for any of these costs.

6.7 **Permits and Licenses.** Franchisee agrees to obtain all permits and licenses required for the lawful construction and operation of its Restaurant together with all certifications from government authorities having jurisdiction over the Franchised Location that all requirements for construction and operation have been met, including, without limitation, zoning, access, sign, health, fire, and safety requirements; building and other required construction permits; licenses to do business; fictitious name registrations; sales tax permits; health and sanitation permits; and ratings and fire clearances. Franchisee agrees to obtain all customary contractors' sworn statements and partial and final lien waivers for construction, remodeling, decorating, and installation of equipment at the Franchised Location. Franchisee shall keep copies of all health department, fire department, building department, and other reports of inspections on file and available for inspection by Franchisor. Franchisee shall immediately forward to Franchisor any such reports or inspections in which Franchisee has been found not to be in compliance with the underlying regulation.

6.8 **Commencement of Operations.** Franchisee shall obtain the written consent of Franchisor prior to commencing operation of the Restaurant, which consent shall not be unreasonably withheld, but cannot be granted until Franchisor has approved the Franchised Location and Franchisee has: (1) successfully completed the initial training program; (2) paid all fees and other amounts due to Franchisor and its affiliates; (3) furnished copies of all insurance policies required by this Agreement; (4) built out and equipped the Franchised Location in accordance with Franchisor's and its affiliates' standards and specifications and received a QUIZNOS certificate of occupancy from Franchisor; (5) purchased an inventory of approved products and supplies; and (6) otherwise completed all other aspects of developing the Restaurant as Franchisor has reasonably required. Notwithstanding the foregoing, Franchisee agrees to commence operation of the Restaurant within the deadline for commencement of operation described in Section 6.4 hereof and within ten (10) days after Franchisor has approved the Franchised Location for commencement of operation.

7. TRAINING

7.1 **Initial Training Program.** Franchisee (or, if Franchisee is a corporation, partnership, or limited liability company, its managing shareholder, partner, or member ("**Managing Owner**")) and the person designated by Franchisee to assume primary responsibility for managing the Restaurant ("**Designated Manager**") must attend and successfully complete the initial training program offered by Franchisor at one of Franchisor's designated training facilities. The Managing Owner must own at least twenty-five percent (25%) of the voting and economic interest of the franchisee entity. Franchisee acknowledges that successful completion of the initial training program will require, among other things, that each attendee be able to demonstrate that he/she can perform basic math and can read, write, and converse in English by passing a basic skills test. The Managing Owner and the Designated Manager (if designated at the time) must take and pass the basic skills test when Franchisee signs this Agreement and receive a passing score. Franchisee agrees that the Designated Manager will be fluent in the English language. Up to three (3) individuals (including the Managing Owner and Designated Manager) are eligible to participate in Franchisor's initial training program without paying any tuition or fee. Franchisor may require Franchisee (or its Managing Owner) and/or the Designated Manager (each a "**Trainee**") to pass certain tests prior to attending certain portions of the training program. These tests include the basic skills test, which each Trainee must have passed before he/she begins training (and which the Managing Owner must have taken and passed when Franchisee signed this Agreement). Franchisor may require a Trainee to take these tests at facilities operated by Franchisor and its affiliates or at test facilities operated by independent third parties. Any costs related to taking these tests, including travel, lodging or test administration fees charged by third parties, will be borne by Franchisee. Franchisee shall be responsible for any and all travel and living expenses incurred in connection with attending the training program as well as wages or salaries, if any, of the person(s) receiving training or undergoing testing. Franchisee (or its Managing Owner) and the Designated Manager must successfully complete the initial training program before Franchisee begins operating the Restaurant. Franchisor reserves the right to waive all or a portion of the training program or alter the training schedule.

Franchisee (or its Managing Owner) and its Designated Manager may request additional training during the initial training program, to be provided at no additional charge, if Franchisee (or its Managing Owner) and the Designated Manager do not feel completely trained in the operation of a QUIZNOS Restaurant. However, if Franchisee (or its Managing Owner) and the Designated Manager satisfactorily complete Franchisor's initial training program, and do not inform Franchisor in writing at the end of the initial training program that Franchisee (or its Managing Owner) and the Designated Manager do not feel completely trained in the operation of a QUIZNOS Restaurant, then Franchisee will be deemed to have been trained sufficiently to operate a QUIZNOS Restaurant.

7.2 **Additional Training Programs.** Franchisor reserves the right to conduct training programs or seminars at locations to be determined by Franchisor to discuss relevant business trends and share new information relating to the Restaurant business. Attendance at periodic market meetings by Franchisee (or its Managing Owner) or its Designated Manager is required. All such mandatory training will be offered without tuition or a fee; provided, however, Franchisee will be responsible for any and all transportation and living expenses incurred in attending such additional training programs or seminars.

8. OPERATIONS MANUAL

8.1 **Operations Manual.** Franchisor agrees to loan to Franchisee one (1) or more manuals, technical bulletins, or other written or videotaped materials (collectively referred to as "**Operations Manual**") covering the Restaurant's operating and marketing techniques and any Special Product(s) applicable to the Restaurant. Franchisee agrees that it shall comply with the Operations Manual, as amended from time to time, as an essential part of its obligations under this Agreement. Franchisee shall at all times be responsible for ensuring that its employees and all other persons under its control comply with the Operations Manual in all respects. Franchisee shall not duplicate the Operations Manual nor disclose its contents to persons other than employees or officers who need the information to perform their jobs. If Franchisee's copy of the Operations Manual is lost, destroyed, or significantly damaged, Franchisee agrees to obtain a replacement copy from Franchisor at Franchisor's then applicable charge.

At Franchisor's option, Franchisor may post some of all of the Operations Manual on a restricted Website, intranet, or extranet to which Franchisee will have access. (For purposes of this Agreement, "Website" means an interactive electronic document contained in a network of computers linked by communications software, including, without limitation, the Internet and World Wide Web home pages.) If Franchisor does so, Franchisee agrees to monitor and access the Website, intranet, or extranet for any updates to the Operations Manual. Any password or other digital identification necessary to access the Operations Manual on a Website, intranet or extranet will be deemed to be Franchisor's proprietary information, subject to Section 20.5 below.

8.2 **Changes to Operations Manual.** Franchisor reserves the right to revise the Operations Manual from time to time as it deems necessary to update operating and marketing techniques or standards and specifications in any manner, including updates contained in monthly newsletters. Franchisee shall in turn update its copy of the Operations Manual as

instructed by Franchisor and conform its operations with the updated provisions. Franchisee acknowledges that the master copy of the Operations Manual maintained by Franchisor at its principal office controls in the event of a dispute over its contents.

9. DEVELOPMENT ASSISTANCE

9.1 **Franchisor's Development Assistance.** To assist Franchisee in establishing the Restaurant, Franchisor and/or its designated representatives (which may include its affiliates) shall provide the following:

(a) Assistance related to accepting a site for the Restaurant, although Franchisee acknowledges that Franchisor has no obligation to select or acquire a site on behalf of Franchisee. Franchisor's assistance will consist of, at a minimum, providing general criteria for a satisfactory site, determining whether a proposed site fulfills the requisite criteria prior to formal acceptance of a site selected by Franchisee, and (at Franchisor's election) designating a real estate broker whom Franchisee must use to contact the landlord of a proposed site. Site selection, acquisition, and development shall be the sole obligation of Franchisee, except as set forth in this Agreement or any other written agreement executed by Franchisor. Franchisee acknowledges that Franchisor is under no obligation to provide additional site selection services other than as set forth in a written, executed agreement and that Franchisor's acceptance of the site does not imply or guarantee the success or profitability of the site in any manner whatsoever.

(b) Standards and specifications for the build out, interior design, layout, floor plan, signs, designs, color, and decor of the Restaurant.

(c) Advice regarding the standards and specifications for the equipment, supplies, and materials used in, and the menu items offered for sale by, the Restaurant and advice regarding selecting suppliers for and purchasing such items.

(d) Guidance in implementing advertising and marketing programs, operating and sales procedures, and bookkeeping and accounting programs.

(e) The initial training in accordance with Section 7.1.

(f) Opening assistance consisting of one (1) or more representatives on site at the Franchised Location for not less than five (5) days to assist Franchisee in opening the Restaurant; provided, however, that Franchisee shall hire and be exclusively responsible for the training, compensation, and control of its employees.

(g) One (1) copy of the Operations Manual, as described in Section 8, which shall be loaned to Franchisee during the term of this Agreement.

9.2 **Responsibilities of Area Director.** Franchisor reserves the right to retain the services of an area director ("**Area Director**") or other representative (including one or more of its affiliates) in the geographic area in which Franchisee's Restaurant will be located. In such event, the Area Director or other representative, on behalf of Franchisor, will perform certain sales, site assistance, and/or supervisory services directed by Franchisor. Franchisee agrees in

advance to any such delegation and assignment by Franchisor of any portion or all of Franchisor's obligations and rights under this Agreement. Franchisee also acknowledges that it is not a third party beneficiary of any Area Director Marketing Agreement or other agreement between Franchisor and any Area Director or other representative.

10. OPERATING ASSISTANCE

10.1 **Franchisor's Assistance.** Franchisor agrees that, during Franchisee's operation of the Restaurant, Franchisor and/or its designated representatives (which may include its affiliates) shall make available to Franchisee the following assistance:

(a) Upon the reasonable request of Franchisee, telephone consultation regarding the continued operation and management of a Restaurant and advice regarding Restaurant services, product quality control, menu items, and customer relations issues.

(b) Access to advertising and promotional materials developed by Franchisor and its affiliates through the Marketing and Promotion Fund (as defined below).

(c) On-going updates of information and programs regarding menu items and their preparation, the Restaurant business, and related Licensed Methods, including information about special or new services or products developed and made available to franchisees of Franchisor.

(d) The initial training program to replacement or additional Designated Managers during the term of this Agreement. Although Franchisor does not currently charge a tuition or fee, Franchisor reserves the right to charge a tuition or fee, payable in advance, commensurate with the then-current published prices of Franchisor for such training. Franchisee shall be responsible for all travel and living expenses incurred by its personnel during the training program.

11. FRANCHISEE'S OPERATIONAL COVENANTS

11.1 **Business Operations.** Franchisee acknowledges that it is solely responsible for the successful operation of its Restaurant and that its continued operation depends on, among other things, Franchisee's compliance with this Agreement and the Operations Manual. In addition to all other obligations contained in this Agreement and the Operations Manual, Franchisee agrees that:

(a) Franchisee shall maintain a clean, safe, and high quality Restaurant operation and promote and operate the business in accordance with the Operations Manual and otherwise conduct itself so as not to detract from or adversely reflect upon the name and reputation of Franchisor and the goodwill associated with the QUIZNOS name and Marks.

(b) Franchisee will conduct itself and operate its Restaurant in compliance with all applicable laws, regulations, and other ordinances and in such a manner so as to promote a good public image in the business community and to enhance the goodwill of QUIZNOS Restaurants, QUIZNOS name, and the Marks. Franchisee will be solely and fully responsible for

obtaining any and all licenses to operate the Restaurant. Franchisee shall keep copies of all health department, fire department, building department, and other similar reports of inspections on file and available for inspection by Franchisor and its affiliates. Franchisee shall immediately forward to Franchisor and/or its designated representatives (which may include its affiliates) any such reports or inspections in which Franchisee has been found not to be in compliance with the underlying regulation.

(c) Franchisee acknowledges that proper management of the Restaurant is important and shall ensure that Franchisee (or its Managing Owner) or a Designated Manager who has completed the initial training program will be responsible for managing the Restaurant after commencement of operations and be present at the Franchised Location during its operation. Franchisee (or its Managing Owner) or the Designated Manager must work full-time at the Restaurant.

(d) Franchisee acknowledges that the franchise requires and authorizes Franchisee to offer only authorized products and services as described in the Operations Manual, which may include, without limitation, submarine and other sandwiches, salads, other authorized food and beverage products, and related restaurant and carry out or delivery services. Separate certification or approval may be required from time to time in order to be authorized to offer certain products or services. Franchisee shall maintain at all times a sufficient supply of all menu items and related food and paper products to ensure, insofar as possible, that such items are at all times available to its customers. Franchisee shall offer all types of services and products from time to time prescribed by Franchisor and shall not offer any other types of services or products, or operate or engage in any other type of business or profession, from or through the Restaurant, unless Franchisor's written consent is first obtained. Franchisor may prescribe the maximum prices that Franchisee may charge customers for products and services offered and sold by the Restaurant, and Franchisee agrees to comply with these maximum prices.

(e) Franchisee shall promptly pay when due all taxes and other obligations owed to third parties, including, without limitation, all federal, state, and local taxes and any and all accounts payable or other indebtedness incurred by Franchisee in operating the Restaurant.

(f) Franchisee shall comply with all agreements with third parties related to the Restaurant, including, in particular, all provisions of any premises lease or Sublease.

(g) Franchisee agrees to renovate, refurbish, remodel, or replace, at its own expense, the real and personal property and equipment used in operating the Restaurant when reasonably required by Franchisor in order to comply with the image, standards of operation, and performance capability established by Franchisor from time to time. If Franchisor changes its image or standards of operation, it shall give Franchisee a reasonable period of time within which to comply with such changes.

(h) Franchisee shall at all times during the term of this Agreement own and control the Restaurant. Upon request of Franchisor, Franchisee shall promptly provide satisfactory proof of such ownership to Franchisor. Franchisee represents that the Statement of Ownership in Section 23.15 below is true, complete, accurate, and not misleading. Franchisee

shall promptly provide Franchisor with a written notification if it wishes to change any of the information contained in the Statement of Ownership at any time during the term of this Agreement and shall comply with the applicable transfer provisions contained in Section 16. Franchisee acknowledges that, if Franchisee is other than an individual(s), Franchisor may require that the individual owners or members of Franchisee guarantee the performance of Franchisee and sign the Guaranty and Assumption of Franchisee's Obligations attached to this Agreement.

(i) Franchisee shall at all times during the term of this Agreement keep its Restaurant open during the business hours designated by Franchisor from time to time in the Operations Manual. Any deviations from the required hours first must be approved in writing by Franchisor which approval may be revoked or rescinded by Franchisor at any time on notice.

(j) Franchisee shall procure, maintain, and provide evidence of insurance for the Restaurant and its operations of the types, in the minimum amounts, and with such minimum terms and conditions as Franchisor from time to time prescribes in the Operations Manual or otherwise. All of the required policies of insurance shall name Franchisor, and any affiliates of Franchisor that Franchisor periodically designates, as additional insureds and provide for thirty (30) days' advance written notice to Franchisor of their cancellation or modification. Franchisee acknowledges that, by establishing required minimum insurance, Franchisor is not advising Franchisee that such minimum insurance is sufficient or all that Franchisee needs or should procure for its business or the Restaurant. Franchisee agrees to seek the advice of its insurance advisor with respect to the sufficiency of such insurance.

(k) Franchisee will provide proof of insurance to Franchisor before beginning operations at its Restaurant. This proof will show that the insurer has been authorized to inform Franchisor in the event any policies lapse or are canceled or modified. Franchisor has the right to change the insurance Franchisee is required to maintain by giving Franchisee reasonable prior notice. Noncompliance with these insurance provisions shall be deemed a material breach of this Agreement. If Franchisee fails to provide proof of insurance or in the event of any lapse in insurance coverage: (i) Franchisor or its affiliates may obtain insurance coverage for Franchisee, and Franchisee must pay the premiums by electronic funds transfer from Franchisee's bank account; and (ii) in addition to all other remedies, Franchisor may demand that Franchisee cease operations of the Restaurant until coverage is reinstated.

(l) Franchisee will participate in promotion campaigns and advertising and other marketing programs periodically established or approved by QUIZNOS Restaurants by the Marketing Fund, as described in section 12 below, whether on a national, regional or local basis. In some instances, while participation in a particular marketing program may be mandatory, Franchisor may, on written notice, allow Franchisee to participate at price points which are different than that described in the program, subject to Franchisor's right to set maximum pricing as set forth in paragraph (d) above.

12. ADVERTISING

12.1 **Approval and Use of Advertising.** Franchisee shall obtain Franchisor's prior written approval of all written advertising or other marketing or promotional programs not previously approved by Franchisor regarding the Restaurant, including, without limitation, "Yellow Pages" advertising, newspaper ads, flyers, brochures, coupons, direct mail pieces, specialty and novelty items, radio and television advertising, Internet "web" pages, and other home pages or domain names on any common carrier electronic delivery system. Any proposed uses not previously approved by Franchisor shall be submitted to Franchisor or its affiliates at least ten (10) days prior to publication, broadcast, or use. Franchisee acknowledges that advertising and promoting the Restaurant in accordance with Franchisor's and its affiliates' standards and specifications are essential aspects of the Licensed Methods, and Franchisee agrees to comply with all advertising standards and specifications. Franchisee also agrees to participate in any promotion campaigns and advertising and other programs that Franchisor and its affiliates periodically establish.

12.2 **Grand Opening.** Franchisee agrees to conduct a grand opening advertising and promotional program for the Restaurant at the time and in the manner specified by Franchisor and agrees to spend a minimum of Six Thousand Dollars (\$6,000) for the grand opening program. Franchisee agrees to provide Franchisor with a summary of grand opening program expenditures within one hundred twenty (120) days after the Restaurant opens. Franchisee's grand opening program will utilize the marketing and public relations programs and media and advertising materials that Franchisor has either developed or approved.

12.3 **Marketing and Promotion Fee.** Franchisee agrees to pay to Franchisor or its designee (which may be one or more of Franchisor's affiliates), in addition to Royalties, a Marketing and Promotion fee ("**Marketing and Promotion Fee**") of one percent (1%) of the total amount of Franchisee's Gross Sales. The Marketing and Promotion Fee shall be in addition to and not in lieu of Franchisee's Local Advertising Fee. The following terms and conditions will apply to the Marketing and Promotion Fee payment:

(a) The Marketing and Promotion Fee shall be payable weekly, concurrently with the payment of the Royalties, based on Gross Sales (as defined in Section 5.2) for the immediately preceding reporting period. Franchisee shall execute such forms that Franchisor and its affiliates require to allow preauthorized payment of Marketing and Promotion Fees by electronic transfer of funds from Franchisee's bank account to the bank account designated by Franchisor. Any Marketing and Promotion Fee collected by or for Franchisor will be deposited in one (1) or more separate accounts (referred to collectively as the "**Fund**"), all designated as "**QUIZNOS Marketing and Promotion Fund.**" The Marketing and Promotion Fees will be subject to the same late charges as the Royalties. Upon written request by Franchisee, Franchisor or its affiliates will make available to Franchisee, no later than one hundred twenty (120) days after the end of each calendar year, an annual unaudited financial statement for the Fund which indicates how deposits to the Fund have been spent. Franchisor and its affiliates have the right to deposit into the Fund any advertising, marketing, or similar allowances paid by suppliers who deal with Restaurants and with whom Franchisor and its affiliates have agreed that they will (or if Franchisor and its affiliates otherwise choose to) so deposit these allowances.

QUIZNOS Restaurants that Franchisor or its affiliates own will contribute to the Fund on the same basis as franchisees.

(b) The Fund will be administered and controlled by Franchisor or its designated representatives (which may be one or more of Franchisor's affiliates) and may be used for production and placement of media advertising, direct response literature, direct mailings, brochures, collateral advertising material, surveys of advertising effectiveness, other advertising or public relations expenditures relating to advertising QUIZNOS Restaurants services and products, providing professional services, materials, and personnel to support the marketing function, and creating, producing, and implementing websites for Franchisor and/or its franchisees. Franchisor may reimburse itself or its designated representatives (which may be one or more of Franchisor's affiliates) for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting, and legal expenses, taxes, and other reasonable direct and indirect expenses incurred by Franchisor or its representatives in connection with the programs funded by and the administration and operation of the Fund. The Fund will not be Franchisor's asset. Franchisor and its representatives will not be liable for any act or omission that is consistent with this Agreement and done in good faith. Franchisor and its representatives may spend in any fiscal year more or less than the aggregate contribution of all Restaurants to the Fund in that year, and the Fund may borrow from Franchisor or others (including Franchisor's affiliates) to cover deficits or invest any surplus for future use. All interest earned on monies contributed to the Fund will be used to pay advertising costs before other assets of the Fund are expended. Franchisor may cause the Fund to be incorporated or operated through a separate entity at such time as Franchisor deems appropriate, and such successor entity, if established, will have all rights and duties specified in this Section. Franchisor and its representatives undertake no obligation to ensure that the Fund benefits each Restaurant in proportion to its respective contributions. The Fund's primary purpose is to support sales by the entire QUIZNOS System and to build brand identity. Franchisee agrees to participate in any promotion campaigns and advertising and other programs that the Fund periodically establishes.

(c) Franchisor and its representatives have the right, but no obligation, to use collection agents and institute legal proceedings to collect Fund contributions at the Fund's expense. Franchisor and its representatives also may forgive, waive, settle, and compromise all claims by or against the Fund. Franchisor and its representatives may at any time defer or reduce contributions of a franchisee and, upon thirty (30) days' prior written notice to Franchisee, reduce or suspend Fund contributions and operations for one (1) or more periods of any length and terminate (and, if terminated, reinstate) the Fund. If the Fund is terminated, all unspent monies will be distributed to the contributors in proportion to their respective Fund contributions during the preceding twelve (12) month period.

12.4 **Local Advertising.** Franchisee agrees to spend not less than three percent (3%) of the total amount of its Gross Sales each calendar quarter for local advertising ("**Local Advertising Fee**"). Franchisor may request that Franchisee prepare and submit a quarterly report to Franchisor which accounts for the use of the Local Advertising Fee no later than ten (10) days following the end of each calendar quarter during the term of this Agreement. Franchisor may collect and designate all or a portion of the Local Advertising Fee for the Marketing and Promotion Fund.

12.5 **Regional Advertising Programs.** Although not obligated to do so, Franchisor or its designees (which may be one or more of Franchisor's affiliates) may create a regional advertising program ("**Regional Advertising**") for the benefit of the Restaurants located within a particular region. Franchisor has the right to (i) allocate any portion of the Marketing and Promotion Fund to the Regional Advertising program; and (ii) collect and designate all or a portion of the Local Advertising Fee for a Regional Advertising program. If a Regional Advertising program is established, Franchisor may increase the Local Advertising Fee by one percent (1%); provided that in no event shall Franchisee be required to spend more than a total of five percent (5%) of its Gross Sales, in the aggregate, for the Local Advertising Fee, Regional Advertising, and Marketing and Promotion Fee contributions, including Yellow Pages advertising. Franchisor and its designees have the right to determine the composition of all geographic territories and market areas for the implementation of Regional Advertising and promotion campaigns and to require that Franchisee participate in such Regional Advertising programs as and when established. The fees designated to the Regional Advertising programs may be used to pay regional, multi-regional or national marketing expenses, including, but not limited to, administrative costs of Franchisor and/or its designees (including its affiliates) incurred in maintaining and administering the Regional Advertising programs. Franchisor and its designees also reserve all other rights with respect to the use of Regional Advertising fees, and the conduct of Regional Advertising programs, as those retained in Section 12.3 above with respect to the Marketing and Promotion Fund. Franchisor and its designees may at any time, upon thirty (30) days' prior written notice to Franchisee, suspend a Regional Advertising program for one (1) or more periods of any length and terminate (and, if terminated, reinstate) the Regional Advertising program.

12.6 **Local Advertising Cooperative.** Franchisor may develop a program to permit QUIZNOS Restaurants in a geographical area to establish a local advertising cooperative ("Local Advertising Cooperative") in accordance with the policies prescribed by Franchisor from time to time. If Franchisor develops and implements such a program, formation of a Local Advertising Cooperative will be at the option of the franchisees of QUIZNOS Restaurants in the geographical area. However, each Local Advertising Cooperative will be organized and governed in the form and manner that Franchisor determines in advance and all advertising, marketing or promotional plans or materials will be subject to Franchisor's prior written approval.

Any contributions made to a Local Advertising Cooperative shall be in addition to, and not in lieu of, Franchisees obligations under Sections 12.1 through 12.5 of this Agreement.

13. QUALITY CONTROL

13.1 **Standards and Specifications.** Franchisor will establish, and Franchisee shall comply with, standards and specifications for services and products offered at or through the Restaurant and the uniforms, recipes, materials, forms, menus, items, and supplies used in connection with the franchised business. Franchisor and its affiliates reserve the right, from time to time, to change standards and specifications for services and products offered at or through the Restaurant or for uniforms, recipes, materials, forms, items, and supplies, and Franchisee agrees to comply with such changes as they are communicated by Franchisor.

13.2 **Inspections.** Franchisor and its affiliates shall have the right to interview customers or examine the Franchised Location and to examine and copy its books, records, and documents, including, without limitation, the inventory, products, equipment, materials, or supplies, to ensure compliance with all standards and specifications set by Franchisor and its affiliates. Franchisor and its affiliates shall conduct such inspections without prior notice to Franchisee.

13.3 **Restrictions on Services and Products.** Franchisee is prohibited from offering or selling any services or products from or through the Restaurant that have not been previously authorized by Franchisor. However, if Franchisee proposes to offer, conduct, or utilize any services, products, materials, forms, items, or supplies in connection with or for sale through the Restaurant that are not approved by Franchisor, Franchisee shall first notify Franchisor in writing requesting approval. Franchisor may withhold such approval; however, in order to make such determination, Franchisor may require submission of specifications, information, or samples of such services, products, materials, forms, items, or supplies. Franchisor will advise Franchisee within a reasonable time whether such products, supplies, or services meet its specifications. A charge not to exceed the actual cost of the review may be made by Franchisor and shall be paid by Franchisee.

13.4 **Approved Suppliers.** Franchisee shall purchase all equipment, products, services, supplies, and materials required for the operation of the Restaurant from manufacturers, suppliers, or distributors designated by Franchisor and its affiliates or, if there is no designated supplier for a particular product, equipment, service, supply, or material, from such other suppliers who meet all of Franchisor's and its affiliates' specifications and standards as to quality, composition, finish, appearance, and service and adequately demonstrate their capacity and facilities to supply Franchisee's needs in the quantities, at the times, and with the reliability requisite to an efficient operation. Franchisor and its affiliates reserve the right to designate, from time to time, a single supplier for any services, products, equipment, supplies, or materials and to require Franchisee to use such a designated supplier exclusively, which exclusive designated supplier may be Franchisor or its affiliates. Franchisor and its affiliates may receive payments from suppliers on account of such suppliers' dealings with Franchisee and other franchisees and may use all amounts so received without restriction and for any purpose Franchisor and its affiliates deem appropriate (unless Franchisor and its affiliates agree otherwise with the supplier).

13.5 **Request for Change of Supplier.** In the event Franchisee desires to purchase equipment, products, services, supplies, or materials from manufacturers, suppliers, or distributors other than those previously approved by Franchisor and its affiliates, Franchisee shall, prior to purchasing any such equipment, products, services, supplies, or materials, give Franchisor a written request to change supplier. Franchisor shall notify Franchisee in writing of the approval or rejection of the proposed supplier within a reasonable time after completion of the investigation of the proposed supplier. Franchisor and its affiliates may from time to time inspect any manufacturer's, supplier's, or distributor's facilities and products to assure proper production, processing, storing, and transportation of equipment, products, services, supplies, or materials to be purchased from the manufacturer, supplier, or distributor by Franchisee. Permission for such inspection shall be a condition of the continued approval of such

manufacturer, supplier, or distributor. Franchisor and its affiliates may, for any reason whatsoever, elect to withhold approval of the manufacturer, supplier, or distributor; however, in order to make such determination, Franchisor and its affiliates may require that samples from a proposed new supplier be delivered for testing prior to approval and use. A charge not to exceed the actual cost of the test may be made by Franchisor and shall be paid by Franchisee. Franchisee acknowledges that Franchisor and its affiliates are likely to reject Franchisee's request for a new supplier without conducting any investigation if Franchisor and its affiliates already have designated an exclusive supplier for the equipment, products, services, supplies, or materials proposed to be offered by the new supplier, as permitted in Section 13.4 above.

14. MARKS, TRADE NAMES AND PROPRIETARY INTERESTS

14.1 **Marks**. Franchisee acknowledges that Franchisor and its affiliates have the sole right to license and control Franchisee's use of the Marks and that such Marks shall remain under the sole and exclusive ownership and control of Franchisor and its affiliates. Franchisee acknowledges that it does not acquire any right, title, or interest in the Marks except for the right to use the Marks in operating its Restaurant under this Agreement. Franchisee shall display the Marks prominently at the Restaurant, on packaging and serving materials, and in connection with forms, advertising, and marketing, all in the manner Franchisor prescribes. Franchisee further agrees that no Marks other than "QUIZNOS," "QUIZNOS CLASSIC SUBS," or such other trademarks specified by Franchisor shall be used in the marketing, promotion, identification, or operation of the Restaurant, except with Franchisor's prior written consent. Franchisee may not, either during or after this Agreement's term, use any of the Marks or any similar word, phrase or symbol, except as allowed by Franchisor in writing, as part of any domain name or electronic address it maintains on the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system.

14.2 **Licensed Methods**. Franchisee hereby acknowledges that one or more of Franchisor's affiliates own and control the distinctive plan for establishing, operating, and promoting Restaurants and all related licensed methods of doing business, previously defined as the Licensed Methods, which include, but are not limited to, recipes, menu items, and cooking methods; technical restaurant equipment standards; order and take-out fulfillment methods; customer relations; marketing techniques; written promotional materials and Operations Manual contents; advertising; and accounting systems; all of which constitute trade secrets of such affiliate(s) and have been licensed to Franchisor, and Franchisee acknowledges that Franchisor and its affiliates have valuable rights in and to such trade secrets. Franchisee further acknowledges that it has not acquired any right, title, or interest in the Licensed Methods, except for the right to use the Licensed Methods in operating the Restaurant, and that any and all innovations, additions, or improvements made to the Licensed Methods, even if by Franchisee, shall belong to Franchisor and its affiliates.

14.3 **Trademark Infringement**. Franchisee agrees to notify Franchisor in writing of any possible infringement of a Mark or use by others of a trademark confusingly similar to the Marks coming to its attention. Franchisee acknowledges that Franchisor and its affiliates shall have the sole right to determine whether any action will be taken in response to any possible

infringement or illegal use and to control any action taken. Franchisee agrees to fully cooperate with Franchisor and its affiliates in any litigation or other action.

14.4 **Franchisee's Business Name.** Franchisee acknowledges that Franchisor and its affiliates have a prior and superior claim to the QUIZNOS trade name. Franchisee shall not use the word "QUIZNOS" in the legal name of its corporation, partnership, or any other business entity. Franchisee also agrees not to register or attempt to register a trade name using the word "QUIZNOS" or any portion thereof in Franchisee's name or that of any other person or business entity.

14.5 **Change of Marks.** In the event Franchisor decides to modify or discontinue use of any proprietary Marks, or to develop additional or substitute marks, Franchisee shall, within a reasonable time after receipt of written notice, take such action, at Franchisee's sole expense, necessary to comply with such modification, discontinuation, addition, or substitution. Franchisor and its affiliates need not reimburse Franchisee for its direct expenses of changing the Restaurant's signs, for any loss of revenue due to any modified or discontinued Mark, or for its expenses of promoting a modified or substitute trademark or service mark.

15. REPORTS, RECORDS AND FINANCIAL STATEMENTS

15.1 **Franchisee Reports/Bookkeeping Services.** Franchisee shall use the bookkeeping services described below for the first twelve (12) months Franchisee's first Restaurant is operating or, regardless of the age of the Restaurant, for the first 12 months that Franchisee owns the Restaurant if Franchisee purchased the Restaurant from another QUIZNOS Franchisee. After that, Franchisee may discontinue the bookkeeping service ninety (90) days following completion of the following: Franchisee retains a full-time professional accountant (approved in writing by Franchisor) to provide bookkeeping services (at Franchisee's expense), and that accountant agrees in writing (on a form acceptable to Franchisor) to provide timely financial statements, in the form and format and with the frequency required by this Section 15. If Franchisee fails to provide such financial statements more than two (2) times in any twelve (12) month period, then, in addition to any other remedies, Franchisor may require Franchisee to use Franchisor's bookkeeping services at the then-current fee.

(a) Franchisee shall use Franchisor's designated vendor (the "**Service Provider**") to provide certain accounting and bookkeeping services (collectively "**Bookkeeping Services**") to the Restaurant and for payroll services. Franchisee agrees to comply with all requirements Franchisor prescribes with regard to said services. The Bookkeeping Services do not include cash management or payroll services. Franchisor reserves the right to designate different Service Providers for various portions of the Bookkeeping Services.

The Service Provider will provide the following Bookkeeping Services on a period basis for the Restaurant: Balance Sheet; Profit and Loss Statement; Unpaid Invoice Register; Bank Reconciliation; Check Register; Printed Period Accounts Payable Checks; prepare necessary sales tax reports; prepare necessary personal property tax reports; and prepare necessary use tax reports. The Service Provider will review all period-end financial information before issuance.

(b) In order for a Service Provider to provide the most timely and useful information to the Restaurant, it is essential that the Service Provider receive information from Franchisee as soon as possible after the applicable accounting period closes. The Service Provider will provide the Bookkeeping Services to Franchisee within ten (10) working days upon receiving the last information for the relevant accounting period.

Each week, in accordance with Franchisor's procedures, Franchisee agrees to submit to the Service Provider completed Profit Planners worksheets; payroll changes and current hours worked; bank statements; manual check stubs with invoice copies; invoices to be paid; and any other documents required to properly record all transactions affecting the Restaurant's financial activity.

(c) In consideration for the services the Service Provider provides to the Restaurant, Franchisee shall pay to Franchisor the sum of Seventy-Five Dollars (\$75) per week, due and payable at the same time and in the same manner as Royalties. Upon receipt of the approved income statement each month, Franchisor will pay to the Service Provider from the fees collected from Franchisee the sum of \$70 for each week covered by the income statement. Franchisor will retain from such sums and for its own account (for services rendered) an amount equal to \$5 multiplied by the number of weeks covered by the approved income statement. Franchisor may increase the fee after twelve (12) months following the date the Restaurant commences operations, and thereafter annually, to an amount equal to the market rate for similar services as determined by Franchisor.

(d) If Franchisee fails to (i) submit Restaurant-related items when required pursuant to this Section, or (ii) pay fees due to Franchisor for these services, Franchisor shall have the right to terminate the Agreement as provided in Section 18.2. Franchisor also shall have the separate and independent right to terminate Bookkeeping Services upon ninety (90) days' written notice to Franchisee.

Franchisee shall provide to Franchisor financial and accounting reports in the manner and form Franchisor requires (including, without limitation, electronically), including:

(i) Weekly summary reports, submitted by no later than the Due Date each week (defined in Section 5.3) and containing information relative to the previous weekly reporting period operations;

(ii) Any other data, information, and supporting records reasonably requested by Franchisor from time to time (including, without limitation, daily and weekly reports of product sales by category);

(iii) Within fifteen (15) days after the end of each month, an income statement of Franchisee's Restaurant for such month and for the fiscal year to date, prepared in accordance with generally accepted accounting principles ("**GAAP**") consistently applied, in Franchisor's recommended format;

(iv) By July 15 and January 15 of each calendar year, reports on the status of any loans outstanding as of the previous June 30 and December 31, respectively, for which the Restaurant or any of the Restaurant's equipment is collateral. Franchisee also must deliver to Franchisor, within five (5) days after receipt, copies of any default notices received by Franchisee from any of its lenders. Franchisee agrees that Franchisor or its affiliates may contact Franchisee's bank, other lenders, and vendors to obtain information regarding the status of Franchisee's loan(s) and account(s) (including, without limitation, payment histories and any defaults), and Franchisee hereby authorizes its bank, other lenders, and vendors to provide such information to Franchisor and its affiliates; and

(v) Within ninety (90) days after the end of Franchisee's fiscal year, which shall be the calendar year, an income statement and balance sheet of Franchisee's Restaurant for such fiscal year (reflecting all year-end adjustments) and a statement of changes in cash flow of the Restaurant, prepared in accordance with GAAP consistently applied and in Franchisor's recommended format. Franchisor reserves the right to require that Franchisee have reviewed financial statements prepared on an annual basis.

15.2 **Financial Records Use and Access.** Franchisor reserves the right to disclose financial and accounting data received from Franchisee or otherwise available to Franchisor. Franchisor reserves the right to require that Franchisee install and maintain a telephone modem and dedicated line at the Restaurant which Franchisor or its authorized representatives may access to obtain sales information and data of the System (defined in Section 6.7), and Franchisee agrees to cooperate with Franchisor's procedures regarding the System. With respect to the operation and financial condition of the Restaurant, Franchisee agrees to furnish the required financial and accounting reports in the form prescribed by Franchisor, which may include, without limitation, computer diskette, electronic mail, and facsimile transmission.

15.3 **Books and Records/Maximum Borrowing Commitment.** Franchisee shall maintain all books and records for its Restaurant in accordance with GAAP consistently applied and preserve such records, including cash register tapes, shift reports, weekly operating summaries, and sales tax returns, for at least three (3) years after the fiscal year to which they relate. Franchisee shall maintain all books and records for the Restaurant separate from any other businesses operated by Franchisee.

Franchisee acknowledges and agrees that Franchisor may from time to time designate the maximum amount of debt that the Restaurant may service. Franchisee shall not borrow in excess of this maximum allowed debt without Franchisor's prior written consent.

15.4 **Audit of Books and Records.** Franchisee shall permit Franchisor or its representatives (including Franchisor's affiliates) to inspect and audit the books, records, and other information of the Restaurant at any reasonable time, and at or away from the Franchised Location, at Franchisor's or its affiliate's expense. Franchisor and its affiliates may collect the Restaurant's books, records, and other information for review in any form or manner they reasonably determine, including, without limitation, requiring Franchisee to send documents to Franchisor's offices. If any audit discloses a deficiency in amounts owed to Franchisor, then such amounts shall become immediately payable to Franchisor by Franchisee, with interest from

the date such payments were due at the lesser of two percent (2%) per month or the maximum commercial contract interest rate allowed by law. In addition, if such audit discloses that the Gross Sales of the Restaurant have been understated by two (2%) or more during the audit period, Franchisee shall pay all reasonable costs and expenses that Franchisor or its affiliates incurred in connection with such audit.

16. TRANSFER

16.1 **Transfer by Franchisee.** Franchisee agrees that the rights and duties created by this Agreement are personal to Franchisee (or its shareholders, partners, members, or owners, if Franchisee is a corporation, partnership, limited liability company, or other business entity) and that Franchisor has entered into this Agreement in reliance upon Franchisor's perceptions of the individual or collective character, skill, aptitude, attitude, business ability, and financial capacity of Franchisee (or its shareholders, partners, members, or owners). Accordingly, without Franchisor's prior written consent, which will not be unreasonably withheld, neither this Agreement (or any interest in this Agreement), any part or all of the ownership of Franchisee, nor the Restaurant or all or a substantial portion of its assets may be transferred. Any unauthorized transfer is a breach of this Agreement, void, and of no effect. As used in this Agreement, the term "**transfer**" includes Franchisee's (or an owner's) voluntary, involuntary, direct, or indirect assignment, sale, gift, or other disposition of any interest in: (1) this Agreement; (2) the Franchisee entity; (3) the Restaurant governed by this Agreement; or (4) all or a substantial portion of the assets of the Restaurant. It also includes an assignment of day-to-day operational responsibilities for the Restaurant pursuant to an operating agreement or otherwise. A transfer of the Restaurant's ownership, possession, or control, or all or a substantial portion of its assets, may be made only with a transfer of this Agreement. In addition, Franchisee may not assign or pledge this Agreement or an ownership interest in Franchisee (other than to Franchisor) as additional security for any loans or other financing.

16.2 **Pre-Conditions to Franchisee's Transfer.** Franchisee agrees that there may be no transfers before the Restaurant has opened for business. Franchisor shall not be obligated to approve a proposed transfer unless Franchisee (and its owners) is in full compliance with this Agreement and all other franchise agreements with Franchisor. Franchisor shall not unreasonably withhold its approval of a proposed transfer that meets all the applicable requirements of this Section. The proposed transferee and its owners must be individuals of good moral character and otherwise meet Franchisor's then applicable standards for franchisees.

If the proposed transfer is of this Agreement and the Restaurant, day-to-day operational responsibilities for the Restaurant, or a controlling interest in Franchisee, or is one of a series of transfers (regardless of the time period over which these transfers take place) which in the aggregate transfer this Agreement and the Restaurant or a controlling interest in Franchisee, all of the following conditions must be met before or concurrently with the effective date of the transfer: (a) All amounts due and owing pursuant to this Agreement or otherwise (including under another franchise agreement) by Franchisee to Franchisor, its affiliates, or third parties whose debts or obligations Franchisor has guaranteed on behalf of Franchisee, if any, are paid in full; Franchisee has submitted all required reports and statements; and Franchisee has not violated any provision of this Agreement, the Restaurant's lease, or any other agreement with

Franchisor and its affiliates (including another franchise agreement) during both the sixty (60) day period before Franchisee requested Franchisor's consent to the transfer and the period between Franchisee's request and the effective date of the transfer; (b) the proposed transferee agrees to operate the Restaurant as a QUIZNOS Restaurant, signs the then-current form of franchise agreement, the provisions of which may differ materially from any and all of those contained in this Agreement, passes the English competency and other required tests, and satisfactorily completes the initial training program; (c) Franchisee provides written notice to Franchisor at least thirty (30) days prior to the proposed effective date of the transfer and includes information reasonably detailed to enable Franchisor to evaluate the terms and conditions of the proposed transfer, which at a minimum includes a written offer from the proposed transferee; (d) the proposed transferee provides information to Franchisor sufficient for Franchisor to assess the proposed transferee's business experience, aptitude, and financial qualification, and Franchisor approves the proposed transferee as a franchisee; (e) neither the transferee nor its owners or affiliates have an ownership interest in, or perform services as a director, officer, manager, employee, consultant, representative, agent, or otherwise for, a Competitive Business (defined in Section 20.1); (f) the proposed transferee agrees to renovate, refurbish, remodel, or replace, at its own cost, the real and personal property and equipment used in operating the Restaurant within the timeframe specified by Franchisor in order to comply with Franchisor's and its affiliates' then current image, standards of operation, and performance capability; (g) Franchisee's landlord allows Franchisee to transfer the Restaurant's lease to the transferee; (h) if Franchisee or its owners finance any part of the purchase price, such financing, together with any third-party financing, either does not exceed the maximum debt limits or debt service limits established by Franchisor for the Restaurant or, to the extent it does exceed such maximum debt limits, the excess portion of such financing is not secured by the Restaurant or its assets. Franchisee and/or its owners further agree that all of the transferee's obligations under promissory notes, agreements, or security interests reserved in the Restaurant are subordinate to the transferee's obligation to pay fees and other amounts due to Franchisor and its affiliates and otherwise to comply with this Agreement; (i) Franchisee, its owners and guarantors execute a non-disparagement agreement and general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor, its affiliates, and their respective shareholders, officers, directors, employees, and agents; (j) Franchisee, its owners and guarantors abide by all post-termination covenants, including, without limitation, the covenant not to compete set forth in Section 20.3; and (k) if Franchisee is an individual transferring this Agreement and the Restaurant to an entity wholly-owned by Franchisee, Franchisee agrees both to remain personally responsible for the entity's performance of its obligations under this Agreement and to continue to comply personally with all obligations under this Agreement. Neither the transferee nor its owners may, without Franchisor's prior written consent, take over possession of the Restaurant until the transfer process has been completed. Franchisee acknowledges and agrees that Franchisor may, but shall not be required to, release one or more guarantors of Franchisee's obligations upon transfer.

If Franchisor approves the proposed transfer, Franchisee or the proposed transferee will pay Franchisor a transfer fee in an amount equal to fifty percent (50%) of the then-current Initial Franchise Fee for the type of Restaurant being transferred, which fee is required to cover Franchisor's reasonable expenses related to the transfer, including training; provided, however, that no transfer fee will be charged (and Franchisor's right of first refusal will not apply) for a

transfer by Franchisee to an entity wholly-owned by Franchisee, between owners of a Franchisee entity, or to a spouse of Franchisee (or owner of the Franchisee) upon the death or disability of Franchisee (or the owner) so long as the transfer does not result in a change of control of the Franchisee.

A person will be deemed to have a controlling interest in Franchisee if that person has the right to vote twenty-five percent (25%) or more of the voting securities or other forms of ownership interest of a corporation, partnership, or other form of entity, or is entitled to receive twenty-five percent (25%) or more of the net profits of any such entity, or is otherwise able to direct or cause the direction of that entity's management or policies.

16.3 **Franchisor's Approval of Transfer.** Franchisor has thirty (30) days from the date of the written notice to approve or disapprove, in writing, Franchisee's proposed transfer (assuming the conditions specified in Section 16.2 above have been satisfied). Franchisee acknowledges that the proposed transferee shall be evaluated by Franchisor based on the same criteria as those currently being used to assess new franchisees and that the proposed transferee shall be provided with such disclosures required by state or federal law. Franchisor may review all information regarding the Restaurant that Franchisee gives the transferee, and Franchisor may give the transferee copies of any reports that Franchisee has given Franchisor or Franchisor has made regarding the Restaurant.

16.4 **Right of First Refusal.** Franchisee grants to Franchisor a thirty (30) day right of first refusal to purchase such rights, interest, or assets on the same terms and conditions as are contained in the written notice set forth in Section 16.2(c); provided, however, the following additional terms and conditions shall apply: (a) the right of first refusal will be effective for each proposed transfer, and any material change in the terms or conditions of the proposed transfer shall be deemed a separate offer for which Franchisor shall have a new thirty (30) day right of first refusal; (b) the thirty (30) day right of first refusal period will run concurrently with the period in which the Franchisor has to approve or disapprove the proposed transferee; (c) if the consideration or manner of payment offered by a proposed transferee is such that Franchisor cannot reasonably be expected to furnish the same, then Franchisor may purchase the interest proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the cash consideration, an independent appraiser shall be designated by Franchisor, whose determination will be binding upon the parties; all expenses of the appraiser shall be paid for equally by Franchisor and Franchisee; and, despite subparagraph (b), Franchisor will have fifteen (15) days after determination of the cash consideration to exercise its right of first refusal; and (d) if Franchisor chooses not to exercise its right of first refusal, Franchisee shall be free to complete the transfer subject to compliance with Sections 16.2 and 16.3. Franchisor has the unrestricted right to assign this right of first refusal to a third party, who then will have the rights described in this Section.

16.5 **Transfer by Franchisor.** Franchisee represents that it has not signed this Agreement in reliance on any shareholder, member, director, officer, or employee remaining with Franchisor in that capacity. Franchisor may change its ownership or form and/or assign this Agreement and any other agreement without restriction. After Franchisor's assignment of this

Agreement to a third party who expressly assumes the obligations under this Agreement, Franchisor no longer will have any performance or other obligations under this Agreement.

16.6 **Franchisee's Death or Disability.** Upon the death or permanent disability of Franchisee (or an individual controlling a Franchisee entity), the personal representative of such person shall transfer Franchisee's interest in this Agreement or such interest in the Franchisee entity to an approved third party. Such disposition of this Agreement or such interest (including, without limitation, transfer by bequest or inheritance) shall be completed within a reasonable time, not to exceed one hundred twenty (120) days from the date of death or permanent disability (unless extended by probate proceedings), and shall be subject to all terms and conditions applicable to transfers contained in this Section 16; provided, however, that for purposes of this Section, there shall be no transfer fee charged by Franchisor. Failure to transfer the interest within said period of time shall constitute a breach of this Agreement. The term "**permanent disability**" shall mean a mental or physical disability, impairment, or condition that is reasonably expected to prevent or actually does prevent Franchisee (or an owner controlling a Franchisee entity) from supervising the management and operation of the Restaurant for a period of one hundred twenty (120) days from the onset of such disability, impairment, or condition. In any event, the Restaurant shall at all times be managed by a Designated Manager who has complied with all of Franchisor's training requirements, regardless of any death or permanent disability covered by this Section.

17. TERM AND RENEWAL

17.1 **Term.** The primary term of this Agreement is for a period of fifteen (15) years from the Effective Date, unless sooner terminated.

17.2 **Renewal.** At the end of the primary term, Franchisee shall have the option to renew its franchise rights for an additional fifteen (15) year term, so long as Franchisee:

(a) Has complied with all provisions of this Agreement during the primary term, including the payment on a timely basis of all Royalties and other fees. "**Compliance**" shall mean, at a minimum, that Franchisee has not received written notification from Franchisor of a breach more than four (4) times during the primary term;

(b) Is not in default or under notification of breach of this Agreement at the time it gives notice under Section 17.3;

(c) Agrees to upgrade and remodel the Restaurant at Franchisee's sole expense (the necessity of which shall be at Franchisor's option) to conform with the then-current Operations Manual requirements;

(d) Executes (together with its owners and guarantors) a non-disparagement agreement and general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective shareholders, officers, directors, employees, and agents arising out of or relating to this Agreement or the parties' relationship; and

(e) Executes Franchisor's then-current form of Franchise Agreement, any and all of the terms of which may differ materially from those in this Agreement, including terms changing the Royalty and other fee amounts; provided that Franchisee shall not be required to pay a new Initial Franchise Fee.

17.3 **Exercise of Renewal.** Franchisee may exercise its option to renew by giving written notice of such exercise to Franchisor not more than one (1) year nor less than one hundred eighty (180) days prior to the expiration of the primary term. Franchisee must also pay a One Thousand Dollar (\$1,000) renewal fee to Franchisor concurrently with the execution of the then-current Franchise Agreement to cover Franchisor's expenses related to reviewing Franchisee's operations and approving the renewal. If Franchisee fails to comply with any of the conditions listed above (other than execution of the new Franchise Agreement or payment of the renewal fee), Franchisor shall give notice to that effect to Franchisee no later than ninety (90) days before expiration of the primary term.

18. DEFAULT AND TERMINATION

18.1 **Termination by Franchisee.** Franchisee shall have the right to terminate this Agreement if Franchisor materially fails to comply with this Agreement and fails to cure its default within thirty (30) days after delivery of written notice of the default from Franchisee. Notwithstanding the foregoing, if the breach is curable but is of a nature which cannot reasonably be cured within such thirty (30) day period and Franchisor has commenced and is continuing to make good faith efforts to cure the breach, Franchisor shall be given an additional reasonable period of time to cure the same, and this Agreement shall not terminate. Any termination by Franchisee other than in accordance with this Section will be deemed a termination by Franchisee without cause.

18.2 **Termination by Franchisor - Effective Upon Notice.** Franchisor shall have the right, at its option, to terminate this Agreement and all rights granted Franchisee, without affording Franchisee any opportunity to cure any default (subject to any state laws to the contrary, in which case state law shall prevail), effective upon delivery to Franchisee of a termination notice, upon the occurrence of any of the following events:

(a) **Unauthorized Opening.** If Franchisee begins operating the Restaurant without having obtained Franchisor's prior written consent, as required in Section 6.9;

(b) **Unauthorized Disclosure.** If Franchisee or any person under Franchisee's control intentionally or negligently discloses to any unauthorized person, or copies or reproduces, the contents or any part of the Operations Manual or any other trade secrets or confidential information of Franchisor or its affiliates;

(c) **Fraud or Conduct Affecting the Marks.** If Franchisee commits fraud in connection with the purchase or operation of the Restaurant or otherwise engages in conduct that, in the sole judgment of Franchisor, impairs or may impair the goodwill associated with the Marks or otherwise subjects the Marks or the QUIZNOS system to ridicule, scandal, reproach, scorn or indignity;

(d) **Abandonment.** If Franchisee ceases to operate the Restaurant or otherwise abandons the Restaurant for a period of five (5) consecutive days, or any shorter period that indicates an intent by Franchisee to discontinue operation of the Restaurant, unless and only to the extent that full operation of the Restaurant is suspended or terminated due to fire, flood, earthquake, or other similar causes beyond Franchisee's control and not related to the availability of funds to Franchisee;

(e) **Insolvency; Assignments.** If Franchisee becomes insolvent or is adjudicated a bankrupt; or any action is taken by Franchisee, or by others against Franchisee, under any insolvency, bankruptcy, or reorganization act (this provision might not be enforceable under federal bankruptcy law, 11 U.S.C. §§ 101 et seq.); or if Franchisee makes an assignment for the benefit of creditors; or a receiver is appointed for Franchisee;

(f) **Unsatisfied Judgments; Levy; Foreclosure.** If any material judgment (or several judgments which in the aggregate are material) is obtained against Franchisee and remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas or other appeal bond has been filed); or if execution is levied against Franchisee's business or any of the property used in operating the Restaurant and is not discharged within five (5) days; or if the real or personal property of Franchisee's business shall be sold after levy by any sheriff, marshal, or constable;

(g) **Criminal Conviction.** If Franchisee (or any of its Bound Parties, as defined in Section 20.1) is convicted of a felony, a crime involving moral turpitude, or any crime or offense reasonably likely, in the sole opinion of Franchisor, to materially and unfavorably affect the Licensed Methods, Marks, and associated goodwill and reputation;

(h) **Failure to Make Payments.** If Franchisee fails to pay any amounts due Franchisor or its affiliates within ten (10) days after delivery of notice that such fees or amounts are overdue;

(i) **Financial Reporting.** If Franchisee intentionally underreports Gross Sales in any amount or negligently underreports Gross Sales by five percent (5%) or more during any reporting period;

(j) **Failure to Complete Training or Open.** If Franchisee (or its Managing Owner or Designated Manager) is discovered to be cheating at the initial training program or fails to complete the initial training program to Franchisor's satisfaction or to commence operations of the Restaurant within the required time period;

(k) **Misuse of Marks.** If Franchisee misuses or fails to follow Franchisor's directions and guidelines concerning use of the Marks and fails to correct the misuse or failure within ten (10) days after delivery of notice from Franchisor;

(l) **Repeated Noncompliance.** If Franchisee has received three (3) notices of default from Franchisor within a twelve (12) month period, regardless of whether the defaults were cured by Franchisee;

(m) **Right to Possession of Property.** If Franchisee loses the right to occupy the Restaurant's premises because of its default under the lease or sublease or defaults under any agreement related to use or operation of the Restaurant;

(n) **Unauthorized Transfer.** If Franchisee sells, transfers, or otherwise assigns the franchise, an interest in the franchise or Franchisee entity, this Agreement, the Restaurant, or a substantial portion of the assets of the Restaurant without complying with the provisions of Section 16;

(o) **Termination of Other Franchise Agreement.** If Franchisor or any of its affiliates issues a notice of termination with respect to any other franchise agreement between Franchisor or any such affiliate and Franchisee (or any other legal entity in which Franchisee, or one of its owners with at least a twenty-five percent (25%) ownership interest in Franchisee, is the sole owner or managing owner) governing the operation of another Quizno's Restaurant;

(p) **Loan Default.** If Franchisee commits a default under any loan from or equipment lease with Franchisor, its affiliates, or a third party and fails to cure that default by the date specified by the lender or equipment lessor; or

(q) **Unsafe or Unsanitary Conditions.** If Franchisee creates or allows to exist any condition in or at the Restaurant, or on or about the Restaurant's premises, which Franchisor reasonably believes presents health or safety concerns for the Restaurant's customers or employees.

18.3 **Termination by Franchisor - Thirty Days Notice.** Franchisor shall have the right to terminate this Agreement (subject to any state laws to the contrary, in which case state law shall prevail), effective upon delivery of thirty (30) days' prior written notice to Franchisee, if Franchisee breaches any other provision of this Agreement, including, but not limited to, if Franchisee fails to comply with the Operations Manual, and fails to cure the default during such thirty (30) day period. In that event, this Agreement will terminate without further notice to Franchisee, effective upon expiration of the thirty (30) day period. Notwithstanding the foregoing, if the breach is curable, but is of a nature which cannot reasonably be cured within such thirty (30) day period and Franchisee has commenced and is continuing to make good faith efforts to cure the breach, Franchisee shall be given an additional reasonable period of time to cure the same, and this Agreement shall not terminate.

18.4 **Late Fee.** In addition to its other rights and remedies, Franchisor may charge Franchisee a late fee of one hundred dollars (\$100) per violation by Franchisee of any term or condition of this Agreement, including, without limitation, failure to pay (or to have adequate amounts available for electronic transfer of) amounts owed Franchisor or its affiliates or failure to timely provide required reports. This fee may be changed or eliminated by Franchisor.

18.5 **Failure to Comply with Reporting Requirements.** If Franchisee fails to prepare and submit any statement or report required under Section 15, then Franchisor shall have the right to treat Franchisee's failure as good cause for termination of this Agreement. In addition to all other remedies available to Franchisor, in the event that Franchisee fails to prepare

and submit any statement or report required under Section 15 for two (2) consecutive reporting periods, Franchisor shall be entitled to make an audit, at the expense of Franchisee, of Franchisee's books, records, and accounts, including Franchisee's bank accounts. The statements or reports not previously submitted shall be prepared by or under the direction and supervision of an independent certified public accountant selected by Franchisor. In addition to its other rights and remedies, if Franchisee fails to comply with the reporting requirements under Section 15, Franchisor shall have the right to collect, in addition to the late fee, Six Hundred Fifty Dollars (\$650) per week for Royalty payments and One Hundred Dollars (\$100) per week for advertising payments (or a greater amount if Franchisor reasonably estimates that the Restaurant is generating higher Gross Sales), provided that any amounts will be reconciled and adjusted as needed when Franchisor receives actual Gross Sales amounts.

18.6 Right to Repurchase. Except in the case of a renewal under Section 17, upon termination or expiration of this Agreement for any reason, Franchisor shall have the option to purchase the Restaurant, or a portion of the assets of the Restaurant (including any furniture, fixtures, equipment and improvements), which may include, at Franchisor's option, all of Franchisee's leasehold interest in and to the real estate upon which the Restaurant is located, but not including any other interest in real property. The purchase price for the assets to be transferred will be thirty percent (30%) of the Gross Sales of the Restaurant during the twelve (12) calendar months immediately preceding the date of termination or expiration and will be adjusted by setting off and reducing the purchase price by any amount then owing by Franchisee to Franchisor or its affiliates, including any amounts paid by Franchisor to cure Franchisee's defaults with third parties such as landlords (the decision to pay such cure amounts to be the sole decision of Franchisor). The following additional terms shall apply to Franchisor's exercise of this option:

(a) Franchisor's option shall be exercisable by providing Franchisee with written notice of its intention to exercise the option no later than seven (7) days following the effective date of termination, in the case of termination (unless Franchisee terminates without notice or Franchisee terminates for cause, in which case Franchisor shall have thirty (30) days after receipt of actual notice of the termination or such additional time as is reasonably necessary given the circumstances), or at least thirty (30) days prior to the expiration of the term of the franchise, in circumstances where no renewal is granted;

(b) Franchisor and Franchisee agree that the terms and conditions of this right and option to purchase may be recorded, if deemed appropriate by Franchisor, in the real property records, and Franchisor and Franchisee further agree to execute such additional documentation as may be necessary and appropriate to effectuate such recording;

(c) The closing for the purchase will take place no later than sixty (60) days after delivery to Franchisee of written notice of Franchisor's exercise of its option. Franchisor has the unrestricted right to assign this option to purchase at any time to a third party, who then will have the rights described in this Section. Franchisor will pay the purchase price in full at the closing or, at its option, in twenty-four (24) equal consecutive monthly installments, with interest at a rate equal to the prime lending rate as of the closing at Franchisor's primary bank. Franchisee must sign all documents of transfer reasonably necessary for purchase of the

Restaurant by Franchisor or the third party assignee, which documents shall include all customary representations and warranties from Franchisee as to ownership and condition of, and title to, the assets of the Restaurant being transferred. All assets must be transferred free and clear of all liens and encumbrances, with all sales and transfer taxes paid by Franchisee. Franchisee and its owners further agree to sign general releases, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective shareholders, officers, directors, employees, agents, successors, and assigns; and

(d) Franchisee agrees that it shall be obligated to operate the Restaurant, according to this Agreement's terms, during the period in which Franchisor or the third party assignee is deciding whether to exercise its option to purchase and until the closing takes place, and that a condition to closing is that the Restaurant has remained open during that time period. Franchisor or the third party assignee may decide not to exercise its option to purchase at any time before closing if it determines that any of the conditions noted above have not been or cannot be satisfied.

In the event that Franchisor or a third party assignee does not exercise its right to repurchase Franchisee's Restaurant as set forth above, Franchisee will be free, after such termination or expiration, to keep or to sell to any third party all of the physical assets of its Restaurant; provided, however, that all Marks are first removed in a manner approved in writing by Franchisor.

18.7 **Obligations of Franchisee Upon Termination or Expiration.** Franchisee is obligated upon termination or expiration of this Agreement to immediately:

(a) Pay all Royalties and other amounts then owed Franchisor or its affiliates pursuant to this Agreement or otherwise;

(b) Cease identifying itself as a QUIZNOS franchisee and cease using any Marks, trade secrets, signs, symbols, devices, trade names, or other materials of Franchisor and its affiliates;

(c) Immediately cease to identify the Franchised Location as being, or having been, associated with Franchisor and immediately cease using the Marks and Licensed Methods;

(d) Deliver to Franchisor all signs, sign-faces, advertising materials, forms, and other materials bearing any of the Marks or otherwise identified with Franchisor;

(e) Immediately deliver to Franchisor the Operations Manual and all other information, documents, and copies which are proprietary to Franchisor and its affiliates;

(f) Promptly take such action required to cancel all fictitious or assumed name or equivalent registrations relating to its use of any Marks or, at the option of Franchisor, assign the same to Franchisor or its designee;

(g) Notify the telephone company and all telephone directory publishers of the termination or expiration of Franchisee's right to use any telephone number and any regular,

classified, or other telephone directory listings associated with any Mark and authorize their transfer to Franchisor or its designee. Franchisee acknowledges that, as between Franchisee and Franchisor, Franchisor has the sole rights to and interest in all telephone, telecopy, or facsimile machine numbers and directory listings associated with any Mark. Franchisee authorizes Franchisor, and hereby appoints Franchisor and any of its officers as Franchisee's attorney-in-fact, to direct the telephone company and all telephone directory publishers to transfer any telephone, telecopy, or facsimile machine numbers and directory listings relating to the Restaurant to Franchisor or its designee, should Franchisee fail or refuse to do so, and the telephone company and all telephone directory publishers may accept such direction or this Agreement as conclusive of Franchisor's exclusive rights in such telephone numbers and directory listings and Franchisor's authority to direct their transfer; and

(h) Abide by all restrictive covenants set forth in Section 20 of this Agreement.

18.8 **State and Federal Law.** THE PARTIES ACKNOWLEDGE THAT, IN THE EVENT THAT THE TERMS OF THIS AGREEMENT REGARDING TERMINATION OR EXPIRATION ARE INCONSISTENT WITH APPLICABLE STATE OR FEDERAL LAW, SUCH LAW SHALL GOVERN FRANCHISEE'S RIGHTS REGARDING TERMINATION OR EXPIRATION OF THIS AGREEMENT.

18.9 **Assumption of Management.** Franchisor has the right (but not the obligation), under the circumstances described below, to enter the Restaurant and assume the Restaurant's management (or to appoint a third party to assume its management) for any time period it deems appropriate. If Franchisor (or a third party) assumes the Restaurant's management, Franchisee must pay Franchisor (in addition to the Royalty and Marketing and Promotion Fee) three percent (3%) of the Restaurant's Gross Sales, plus Franchisor's (or the third party's) direct out-of-pocket costs and expenses, during this time. If Franchisor (or a third party) assumes the Restaurant's management, Franchisee acknowledges that Franchisor (or the third party) will have a duty to utilize only reasonable efforts and will not be liable to Franchisee or its owners for any debts, losses, or obligations the Restaurant incurs, or to any of Franchisee's creditors for any supplies or services the Restaurant purchases, while Franchisor (or the third party) manages it.

Franchisor (or a third party) may assume the Restaurant's management under the following circumstances:

(a) if Franchisee abandons the Restaurant; or

(b) if Franchisee fails to comply with any provision of this Agreement and does not cure the failure within the time period Franchisor specifies in its notice to Franchisee.

The exercise of Franchisor's rights under subparagraphs (a) or (b) will not affect Franchisor's right to terminate this Agreement.

19. BUSINESS RELATIONSHIP

19.1 **Independent Businesspersons.** The parties agree that each of them is an independent businessperson, their only relationship is by virtue of this Agreement, and no fiduciary relationship is created under this Agreement. Neither party is liable or responsible for the other's debts or obligations, nor shall either party be obligated for any damages to any person or property directly or indirectly arising out of the operation of the other party's business. Franchisor and Franchisee agree that neither of them will hold themselves out to be the agent, employer, or partner of the other and that neither of them has the authority to bind or incur liability on behalf of the other (unless expressly provided in this Agreement).

19.2 **Payment of Third Party Obligations.** Franchisor shall have no liability for Franchisee's obligations to pay any third parties, including, without limitation, any product vendors, or for any sales, use, service, occupation, excise, gross receipts, income, property, or other taxes levied upon Franchisee, Franchisee's property, the Restaurant, or Franchisor in connection with the sales made or business conducted by Franchisee (except any taxes Franchisor is required by law to collect from Franchisee with respect to purchases from Franchisor and Franchisor's income taxes). Franchisee must reimburse Franchisor for any taxes that Franchisor must pay to any state taxing authority on account of either Franchisee's operation or payments that Franchisee makes to Franchisor.

19.3 **Indemnification.** Franchisee agrees to indemnify, defend, and hold harmless Franchisor and its affiliates, and their respective shareholders, directors, officers, employees, agents, successors, and assignees (the "**Indemnified Parties**"), against, and to reimburse them for, all claims, obligations, and damages described in this Section 19.3, any and all third party obligations described in Section 19.2, and any and all claims and liabilities directly or indirectly arising out of the operation of the Restaurant or the use of the Marks and Licensed Methods in any manner, including, without limitation, those alleged to be or found to have been caused by the Indemnified Party's negligence or willful misconduct, unless (and then only to the extent that) the claims and liabilities are determined to be caused solely by the Indemnified Party's gross negligence or willful misconduct in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction. For purposes of this indemnification, claims shall mean and include all obligations, actual and consequential damages, and costs reasonably incurred in the defense of any claim against the Indemnified Parties, including, without limitation, reasonable accountants', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses. Each Indemnified Party shall have the right to defend any such claim against it at Franchisee's expense and agree to settlements or take any other remedial, corrective, or other actions. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

20. RESTRICTIVE COVENANTS

20.1 **Non-Competition During Term.** Franchisee acknowledges that, in addition to the license of the Marks, Franchisor also has licensed commercially valuable information which comprises the Licensed Methods, including, without limitation, operations, marketing,

advertising, and related information and materials, and that the value of this information arises not only from the time, effort, and money which went into its compilation but also from the usage by all franchisees. Franchisee therefore agrees that, other than the Restaurant, neither Franchisee nor any of Franchisee's officers, directors, shareholders, members, partners or other owners, nor any spouse or other immediate family members of Franchisee or any of these individuals (collectively, "**Bound Parties**"), shall during the term of this Agreement:

(a) have any direct or indirect interest as a disclosed or beneficial owner in a "Competitive Business," as defined below, wherever located or operating;

(b) perform services as a director, officer, manager, employee, consultant, representative, agent, or otherwise for a Competitive Business, wherever located or operating;

(c) divert or attempt to divert any business related to the Restaurant, Franchisor's business, or any other QUIZNOS franchisee by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of Franchisor, any of its affiliates, or another franchisee, to any Competitive Business; or

(d) directly or indirectly solicit or employ any person who is employed by Franchisor, any of Franchisor's affiliates, or another franchisee without obtaining the employer's prior written consent.

The term "**Competitive Business**," as used in this Agreement, shall mean any business operating, or granting franchises or licenses to others to operate, a restaurant or other food service business deriving more than ten percent (10%) of its gross receipts, excluding gross receipts relating to the sale of alcoholic beverages, from the sale of submarine, hoagie, hero-type, and/or other sandwiches (other than another QUIZNOS Restaurant operated by Franchisee); provided, however, neither Franchisee nor the other Bound Parties shall be prohibited from owning securities in a Competitive Business if such securities are listed on a stock exchange or traded on the over-the-counter market and represent five percent (5%) or less of that class of securities issued and outstanding. Franchisee agrees that nothing in this Section 20 shall be construed to grant Franchisee any protected territory.

20.2 **Branded Business.** During the term of this Agreement, neither Franchisee nor any other Bound Party will operate, directly or indirectly, any Branded Business within a one-quarter ($\frac{1}{4}$) mile radius of the Restaurant without the written consent of Franchisor, which consent shall not be unreasonably withheld. The term "**Branded Business**" means any business marketed by a franchisor or chain under a locally, regionally, or nationally known or registered trademark or service mark.

20.3 **Post-Termination Covenant Not to Compete.** For a period of two (2) years from the effective date of termination or expiration of this Agreement for any reason, or the date on which Franchisee and all other Bound Parties begin to comply with this Section, whichever is later, neither Franchisee nor any other Bound Party shall have any direct or indirect interest as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative, agent, or in any other capacity in any Competitive Business located or operating

within a five (5) mile radius of the former Franchised Location (including at the former Franchised Location) or within a five (5) mile radius of any other QUIZNOS Restaurant existing on the later of the effective date of termination or expiration of this Agreement or the date on which Franchisee and all other Bound Parties begin to comply with this Section. The restrictions of this Section shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent five percent (5%) or less of the number of shares of that class of securities issued and outstanding. Franchisee and the other Bound Parties expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section will not deprive them of their personal goodwill or ability to earn a living.

20.4 **Additional Remedies for Breach.** In addition to any other remedies or damages allowed under this Agreement, if Franchisee breaches the covenants set forth in Sections 20.1, 20.2, or 20.3, Franchisee shall pay Franchisor a fee equal to Franchisor's then-current Initial Franchise Fee for each Competitive Business or Branded Business opened in violation of the covenants, plus eight percent (8%) of such Business's gross sales until expiration of the noncompetition period set forth in Section 20.3.

20.5 **Confidentiality of Proprietary Information.** Franchisee shall treat, and shall ensure that the Bound Parties treat, all information it receives which comprises the Licensed Methods (including, without limitation, the Operations Manual) as proprietary and confidential and not use such information in an unauthorized manner or disclose the same to any unauthorized person. Franchisee agrees that all such material is the sole property of Franchisor and its affiliates. Franchisee acknowledges that the Marks and the Licensed Methods have valuable goodwill attached to them, that their protection and maintenance are essential to Franchisor and its affiliates, and that any unauthorized use or disclosure of the Marks and Licensed Methods will result in irreparable harm to Franchisor and its affiliates. All ideas, concepts, techniques, or materials concerning a QUIZNOS Restaurant, whether or not protectable intellectual property and whether created by or for Franchisee or its owners or employees, must be promptly disclosed to Franchisor and will be deemed Franchisor's and its affiliates' sole and exclusive property, part of the QUIZNOS System, and works made-for-hire for Franchisor and its affiliates. To the extent any item does not qualify as a "work made-for-hire" for Franchisor and its affiliates, Franchisee assigns ownership of that item, and all related rights to that item, to Franchisor and its affiliates and must sign whatever assignment or other documents Franchisor and its affiliates request to show ownership or to help Franchisor and its affiliates obtain intellectual property rights in the item.

20.6 **Confidentiality Agreement.** Franchisor reserves the right to require that Franchisee cause each of its Bound Parties and Designated Managers (and, if applicable, the spouse of a Designated Manager) to execute a Nondisclosure and Noncompetition Agreement containing the above restrictions in a form approved by Franchisor.

21. DISPUTES

21.1 **Governing Law/Consent to Venue and Jurisdiction.** Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051 et seq.) or other federal law, this Agreement shall be interpreted under the laws of the State of Colorado, and any dispute between the parties, whether arising under this Agreement or from any other aspect of the parties' relationship, shall be governed by and determined in accordance with the substantive laws of the State of Colorado, which laws shall prevail in the event of any conflict of law. Franchisee and Franchisor have negotiated regarding a forum in which to resolve any disputes arising between them and have agreed to select a forum in order to promote stability in their relationship. Therefore, if a claim is asserted in any legal proceeding involving Franchisee or any Bound Party and Franchisor, the parties agree that the exclusive venue for disputes between them shall be in the District Court for the City & County of Denver, Colorado, or the United States District Court for the District of Colorado, and each party waives any objection it might have to the personal jurisdiction of or venue in such courts.

21.2 **Waiver of Jury Trial.** Franchisor, Franchisee, and the Bound Parties each waive their right to a trial by jury. Franchisee, the Bound Parties, and Franchisor acknowledge that the parties' waiver of jury trial rights provides the parties with the mutual benefit of uniform interpretation of this Agreement and resolution of any dispute arising out of this Agreement or any aspect of the parties' relationship. Franchisee, the Bound Parties, and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit.

21.3 **Remedies.** Except as set forth in Section 21.4, the court will have the right to award any relief which it deems proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the date due), lost profits, specific performance, injunctive relief, and attorneys' fees and costs. The parties agree that any claim for lost earnings or profits by Franchisee shall be limited to a maximum amount equal to the net profits of the Restaurant for the prior year as shown on Franchisee's federal income tax return. The parties further agree that, in addition to such other damages awarded by the court, if this Agreement is terminated because of a Franchisee default, Franchisee shall be liable to Franchisor for a lump sum amount equal to the net present value of the Royalties, Marketing and Promotion Fees, Local Advertising Fees, and Regional Advertising Fees that would have become due following termination of this Agreement for the period this Agreement would have remained in effect but for Franchisee's default. Royalties, Marketing and Promotion Fees, Local Advertising Fees, and Regional Advertising Fees for purposes of this Section shall be calculated based on the Restaurant's average monthly Gross Sales for the twelve (12) months preceding the termination date.

21.4 **Limitation of Claims.** Franchisee and the Bound Parties agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Except with regard to Franchisee's obligation to pay Franchisor and its affiliates Royalty payments, the Marketing and Promotion Fee and other advertising fees, and other payments due from Franchisee pursuant to this Agreement or otherwise, any claims between the parties must be commenced within one (1) year from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claim, or such claim shall be barred. The parties understand that such time

limit might be shorter than otherwise allowed by law. Franchisee and the Bound Parties agree that their sole recourse for claims arising between the parties shall be against Franchisor or its successors and assigns. Franchisee and the Bound Parties agree that the shareholders, directors, officers, employees, and agents of Franchisor and its affiliates shall not be personally liable nor named as a party in any action between Franchisor and Franchisee or any Bound Party; provided that this shall not preclude claims Franchisee has directly against an Area Director. Franchisor, Franchisee, and the Bound Parties further agree that, in connection with any such proceeding, each must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not submitted or filed as described above will be forever barred. The parties agree that any proceeding will be conducted on an individual, not a class-wide, basis, and that a proceeding between Franchisor and Franchisee or the Bound Parties may not be consolidated with another proceeding between Franchisor and any other person or entity, nor may any claims of another party or parties be joined with any claims asserted in any action or proceeding between Franchisor and Franchisee. No party will be entitled to an award of punitive or exemplary damages (provided that this limitation shall not apply to statutory penalties such as those set forth in 15 U.S.C. § 1117(a)). No previous course of dealing shall be admissible to explain, modify, or contradict the terms of this Agreement. No implied covenant of good faith and fair dealing shall be used to alter the express terms of this Agreement.

22. SECURITY INTEREST

22.1 **Collateral.** Franchisee grants Franchisor a security interest ("**Security Interest**") in all of the furniture, fixtures, equipment, signage, and realty (including Franchisee's interests under all real property and personal property leases) of the Restaurant, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds, and products thereof, wherever located, used in connection with the Restaurant. All items in which a security interest is granted are referred to as the "**Collateral.**"

22.2 **Indebtedness Secured.** The Security Interest is to secure payment of the following (the "**Indebtedness**"):

- (a) All amounts due under this Agreement or otherwise by Franchisee;
- (b) All sums which Franchisor (or its affiliates) may, at its option, expend or advance for the maintenance, preservation, and protection of the Collateral, including, without limitation, payment of rent, taxes, levies, assessments, insurance premiums, and discharge of liens, together with interest, or any other property given as security for payment of the Indebtedness;
- (c) All expenses, including reasonable attorneys' fees, which Franchisor (or its affiliates) incurs in connection with collecting any or all Indebtedness secured hereby or in enforcing or protecting its rights under the Security Interest and this Agreement; and

(d) All other present or future, direct or indirect, absolute or contingent, liabilities, obligations, and indebtedness of Franchisee to Franchisor or third-parties under this Agreement, however created, and specifically including all or part of any renewal or extension of this Agreement, whether or not Franchisee executes any extension agreement or renewal instruments.

22.3 **Additional Documents.** Franchisee will from time to time as required by Franchisor join with Franchisor in executing any additional documents and one or more financing statements pursuant to the Uniform Commercial Code (and any assignments, extensions, or modifications thereof) in form satisfactory to Franchisor.

22.4 **Possession of Collateral.** Upon default and termination of Franchisee's rights under this Agreement, Franchisor shall have the immediate right to possession and use of the Collateral.

22.5 **Remedies of Franchisor in Event of Default.** Franchisee agrees that, upon the occurrence of any default set forth above, the full amount remaining unpaid on the Indebtedness secured shall, at the option of Franchisor and without notice, become due and payable immediately, and Franchisor shall then have the rights, options, duties, and remedies of a secured party under, and Franchisee shall have the rights and duties of a debtor under, the Uniform Commercial Code of Colorado, including, without limitation, Franchisor's right to take possession of the Collateral and without legal process to enter any premises where the Collateral may be found. Any sale of the Collateral may be conducted by Franchisor in a commercially reasonable manner. Reasonable notification of the time and place of any sale shall be satisfied by mailing to Franchisee pursuant to the notice provisions set forth below.

22.6 **Special Filing as Financing Statement.** This Agreement shall be deemed a Security Agreement and a Financing Statement. This Agreement may be filed for record in the real estate records of each county in which the Collateral, or any part thereof, is situated and may also be filed as a Financing Statement in the counties or in the office of the Secretary of State, as appropriate, in respect of those items of Collateral of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code as in effect in the appropriate jurisdiction.

23. MISCELLANEOUS PROVISIONS

23.1 **Modification/Exercise of Judgment.** No amendment, waiver, or modification of this Agreement shall be effective unless it is in writing and signed by Franchisor and Franchisee. Franchisee acknowledges that Franchisor may modify its standards and specifications and operating and marketing techniques set forth in the Operations Manual unilaterally under any conditions and to the extent to which Franchisor deems necessary to protect, promote, or improve the Marks and the quality of the Licensed Methods as long as such modifications are not specifically prohibited by this Agreement.

Whenever Franchisor has reserved in this Agreement a right to take or to withhold an action, or to grant or decline to grant Franchisee a right to take or omit an action, Franchisor

may, except as otherwise specifically provided in this Agreement, make its decision or exercise its rights based on information readily available to Franchisor and its judgment of what is in its and/or the system's best interests at the time Franchisor's decision is made, without regard to whether Franchisor could have made other reasonable or even arguably preferable alternative decisions or whether Franchisor's decision promotes its financial or other individual interest.

23.2 **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes any and all prior agreements concerning its subject matter. Franchisee agrees and understands that Franchisor shall not be liable or obligated for any oral representations or commitments made prior to the execution of this Agreement or for claims of negligent or fraudulent misrepresentation, and that no modifications of this Agreement shall be effective except those in writing and signed by both parties. Franchisor does not authorize and will not be bound by any representation of any nature other than those expressed in this Agreement. Franchisee further acknowledges and agrees that no representations have been made to it by Franchisor or its affiliates regarding projected sales volumes, market potential, revenues, profits of Franchisee's Restaurant, or operational assistance other than as stated in this Agreement or in any disclosure document provided by Franchisor or its representatives. Any policies that the Franchisor adopts and implements from time to time to guide it in its decision-making are subject to change, are not a part of this Agreement, and are not binding on Franchisor.

23.3 **Delegation by Franchisor.** Franchisor shall have the right to delegate the performance of any portion or all of its obligations and duties under this Agreement to third parties, whether the same are agents or affiliates of Franchisor and/or Area Directors or independent contractors with which Franchisor has contracted to provide such services. Franchisee agrees in advance to any such delegation by Franchisor of any portion or all of its obligations under this Agreement to all such third parties. Franchisee acknowledges and agrees that Franchisor may not be bound, and this Agreement may not be modified, by any third party (including Area Directors) without Franchisor's prior written consent. Franchisee acknowledges and agrees that any delegation of Franchisor's duties and obligations to third parties does not assign or confer any rights under this Agreement upon such third parties and that such third parties are not third party beneficiaries of this Agreement.

23.4 **Agreement Effective.** This Agreement shall not be effective until accepted by Franchisor as evidenced by dating and signing by an officer or other duly-authorized representative of Franchisor. Notwithstanding that this Agreement shall not be effective until signed by Franchisor, Franchisor reserves the right to make the effective date of this Agreement the date on which Franchisee signed the Agreement.

23.5 **Review of Agreement.** Franchisee acknowledges that it has had a copy of Franchisor's Uniform Franchise Offering Circular in its possession for not less than ten (10) full business days, and this Agreement in its possession for not less than five (5) full business days, during which time Franchisee has had the opportunity to submit same for professional review and advice of Franchisee's choosing prior to freely executing this Agreement.

23.6 **Attorneys' Fees.** In the event of any default on the part of either party to this Agreement, in addition to all other remedies, the party in default will pay the prevailing party (as determined by the decision-maker in the proceeding) all amounts due and all damages, costs, and expenses, including reasonable attorneys' fees, incurred by the prevailing party in any legal action or other proceeding as a result of such default, plus interest at the lesser of two percent (2%) per month or the highest commercial contract interest rate allowable by law accruing from the date of such default. Additionally, if Franchisee withholds any amounts due Franchisor (or its affiliates), Franchisee shall reimburse Franchisor's (or its affiliates') costs of collecting such amounts, including reasonable attorneys' fees and expenses.

23.7 **Injunctive Relief.** Nothing herein shall prevent Franchisor or Franchisee from seeking injunctive relief in appropriate cases to prevent irreparable harm.

23.8 **No Waiver.** No waiver of any condition or covenant contained in this Agreement, or failure to exercise a right or remedy, by Franchisor or Franchisee shall be considered to imply or constitute a further waiver by Franchisor or Franchisee of the same or any other condition, covenant, right, or remedy.

23.9 **No Right to Set Off.** Franchisee shall not be allowed to set off amounts owed to Franchisor or its affiliates for Royalties, fees, or other amounts due against any monies owed to Franchisee, which right of set off is hereby expressly waived by Franchisee.

23.10 **Invalidity.** If any provision of this Agreement is held invalid by any tribunal in a final decision from which no appeal is or can be taken, such provision shall be deemed modified to eliminate the invalid element, and, as so modified, such provision shall be deemed a part of this Agreement as though originally included. The remaining provisions of this Agreement shall not be affected by such modification.

23.11 **Notices.** All notices required to be given under this Agreement shall be given in writing, by certified mail, return receipt requested, or by any delivery service providing documentation of receipt, at the address set forth in the first paragraph of this Agreement if to Franchisor, or in Section 23.14 if to Franchisee, or at the Franchised Location's address (after Franchisee's Restaurant has first opened for business), or at such other addresses as Franchisor or Franchisee may designate from time to time, and shall be deemed delivered (a) on the date shown on the return receipt or in the courier's records as the date of delivery or (b) on the date of first attempted delivery, if actual delivery cannot for any reason be made.

23.12 **Survival.** All of Franchisor's and Franchisee's (and its owners') obligations which expressly or by their nature survive this Agreement's expiration or termination will continue in full force and effort subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature expire (including, without limitation, the post-termination restrictive covenant, dispute resolution and notice, and confidentiality provisions).

23.13 **Acknowledgment.** BEFORE SIGNING THIS AGREEMENT, FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. FRANCHISEE ACKNOWLEDGES THAT:

(A) THE SUCCESS OF THIS BUSINESS VENTURE INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON FRANCHISEE'S ABILITY AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS, AND

(B) FRANCHISEE HAS NOT BEEN GIVEN ANY ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, BY FRANCHISOR OR ITS REPRESENTATIVES AS TO THE POTENTIAL SUCCESS OF THE RESTAURANT, THE VIABILITY OF ANY RESTAURANT LOCATION OR THE EARNINGS LIKELY TO BE ACHIEVED FROM THE OPERATION OF THE RESTAURANT, NOR HAS FRANCHISEE RELIED UPON ANY SUCH ASSURANCE OR WARRANTY IN EXECUTING THIS AGREEMENT; AND

(C) NO STATEMENT, REPRESENTATION, OR OTHER ACT, EVENT, OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS DOCUMENT AND IN ANY OFFERING CIRCULAR SUPPLIED TO FRANCHISEE, IS BINDING ON FRANCHISOR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

23.14 **Miscellaneous Information to be Completed.**

(a) **Initial Franchise Fee.** Franchisee shall pay to Franchisor an Initial Franchise Fee of: \$_____.

(b) **Training.** The following individuals shall attend Franchisor's initial training program, as described in Section 7.1 of this Agreement: _____, and, of these individuals, the **Designated Manager** shall be: _____.

(c) **Managing Owner.** The following individual is designated as the Managing Owner (if Franchisee is a corporation, partnership, or limited liability company, the Managing Owner must own at least 25%): _____

(d) **Address.** Franchisee's address is _____
_____.

23.15 **Statement of Ownership.**

Form of Ownership
(Check One)

____ Individual(s)

____ Legal Entity (check one):

____ Partnership

____ Corporation

____ Limited Liability Company

If a legal entity, attach a copy of the certificate of formation or articles of partnership and provide the following information:

(A) the name, address and percentage of ownership of each owner, member or partner and indicate whether each such person will be active in the business: _____

(B) if a corporation, the name and address of each officer and director:

Provide the address where Franchisee's financial records and partnership, corporate, or company records, as applicable, are maintained (Restaurant location will be deemed to be the address unless otherwise stated below):

IN WITNESS WHEREOF, the parties have executed this Franchise Agreement as of the Effective Date shown on the first page hereof.

QUIZNO'S FRANCHISING II LLC

By: _____

Title: _____

*Date: _____

*(Effective Date of Franchise Agreement)

FRANCHISEE:

Sign here if you are taking the franchise as an

INDIVIDUAL(S)

(Note: use these blocks if you marked in Section 23.15 that you are an individual or a partnership but the partnership is not a separate legal entity)

Sign here if you are taking the franchise as a

CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP

Print Name of Legal Entity

Signature

Print Name: _____

Date: _____

By: _____

Signature

Print Name: _____

Title: _____

Date: _____

Signature

Print Name: _____

Date: _____

Signature

Print Name: _____

Date: _____

Signature

Print Name: _____

Date: _____

GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the above Franchise Agreement (the "**Agreement**") by Quizno's Franchising II LLC ("**Franchisor**"), each of the undersigned hereby personally and unconditionally:

- (a) Guarantees to Franchisor and its successors and assigns, for the term of this Agreement, including renewals, that Franchisee as that term is defined in the Agreement ("**Franchisee**") shall punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement and any renewals thereof; and
- (b) Agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (and any renewals thereof), including, but not limited to, those specifically identified below.

Each of the undersigned waives the following:

1. Acceptance and notice of acceptance by Franchisor of the foregoing undertaking;
2. Notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
3. Protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; and
4. Any right he or she may have to require that any action be brought against Franchisee or any other person as a condition of liability.

Each of the undersigned consents and agrees that:

1. His or her direct and immediate liability under this guaranty shall be joint and several;
2. He or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so;
3. Such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person;
4. Such liability shall not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement, including renewals thereof;

5. He or she shall be bound by the restrictive covenants, confidentiality provisions, and indemnification provisions contained in the Agreement; and
6. The provisions contained in Section 21, and the costs and attorneys' fees provision contained in Section 23.6, of the Agreement shall govern this Guaranty and any disputes between Guarantor and Franchisor, and such provisions are incorporated into this Guaranty by this reference.

IN WITNESS WHEREOF, each of the undersigned has affixed his or her signature effective on the same day and year as the Agreement was executed.

GUARANTOR(S):

SIGNATURE

SIGNATURE

NAME - TYPED OR PRINTED

NAME - TYPED OR PRINTED

SPOUSE'S SIGNATURE

SPOUSE'S SIGNATURE

NAME - TYPED OR PRINTED

NAME - TYPED OR PRINTED

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NAME - TYPED OR PRINTED

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