



**ROTELLI PIZZA & PASTA, INC.**

**FRANCHISE AGREEMENT**

**UFOC EXHIBIT "A"**

**ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT  
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## FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made in Broward County, Florida, as of the \_\_\_\_\_, 2006~~5~~ by and between **ROTELLI PIZZA & PASTA, INC.**, a Florida Corporation, (hereinafter called "Franchisor") and \_\_\_\_\_ an individual (hereinafter, called "Franchisee").

### RECITALS

Franchisee hereby acknowledges receipt of a **ROTELLI PIZZA & PASTA** Franchise Offering Circular including a copy of this Franchise Agreement, which Franchisee received at the earlier of: 1) the first personal meeting with Franchisor; 2) ten (10) business days prior to the signing of this Franchise Agreement or any related agreement(s); or 3) ten (10) business days before any payment by Franchisee to Franchisor.

This Agreement is for offer and sale of a franchise license for the establishment and operation of a **ROTELLI PIZZA & PASTA** restaurant, for the retail sale of Pizza, Pasta, Calzones, Sandwiches, Salads, Desserts, Beverages and related products, all as presently designated by Franchisor and as may be improved, further developed, or otherwise modified by Franchisor from time to time.

The distinguishing characteristics of a **ROTELLI PIZZA & PASTA** restaurant include, but are not limited to: the name "**ROTELLI PIZZA & PASTA**;" readily recognizable color schemes, designs, and layouts for the restaurant; specialized paper products, menus and signs, containing logos, trade names, trademarks, and service marks identifying the restaurant; and confidential recipes, operating systems, and methods for preparing, serving, and merchandising the food products and for operating the restaurant (hereinafter collectively the "System").

Franchisee is desirous of obtaining a franchise to operate a **ROTELLI PIZZA & PASTA** restaurant utilizing the concepts, methods, and techniques under the System. Franchisee has submitted an application and other pertinent information, including financial statements, to Franchisor, which fully and truthfully set forth the information therein, and Franchisee has further advised Franchisor of all persons who will hold interests in the franchise.

Franchisee has read this Agreement and understands and accepts the terms, conditions, and covenants contained in this Agreement as being reasonably necessary to maintain Franchisor's standards of quality, ~~and~~ service and the uniformity of those standards at all **ROTELLI PIZZA & PASTA** restaurants in order to protect and preserve the trademarks and the goodwill associated therewith.

THEREFORE, Franchisor and Franchisee, intending to be legally bound, for and in consideration of the mutual covenants hereinafter following, do mutually covenant and agree:

#### I. LICENSE, LICENSED MARKS, AND PROTECTED TERRITORY

##### A. License

Franchisor hereby grants Franchisee the right to use the service mark "**ROTELLI PIZZA & PASTA**" and such other service marks, trademarks, trade names, and copyrights as Franchisor may designate from time to time, and Franchisee is hereby licensed as a participant in the System for the

operation a **ROTELLI PIZZA & PASTA** restaurant (hereinafter called "Restaurant"). The operation of the Restaurant shall be conducted by Franchisee only at the accepted location (hereinafter called "Franchise Location"). If, at the time of execution of this Agreement, the Franchise Location is not designated as a specific address on Exhibit A, then the Franchisee agrees to execute the **ROTELLI PIZZA & PASTA** Franchise Agreement - Location Acceptance Form, attached hereto as Exhibit A-1, pursuant to the requirements of Section IV of this Agreement.

Franchisee agrees not to open the Restaurant for business to the public without the prior written permission of Franchisor or to change the location of the Restaurant thereafter without the prior written permission of Franchisor.

#### B. Licensed Marks

Franchisee, in operating the Restaurant, shall use such service marks, trademarks, trade names, commercial symbols and logos (hereinafter the "Proprietary Marks") only in such manner as is specified from time to time by Franchisor. Franchisee's right to use the Proprietary Marks is derived solely from this Agreement and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement. This Agreement confers no goodwill or other interest in the Proprietary Marks upon Franchisee, other than the right to use the Proprietary Marks in the operation of the Restaurant in compliance with this Agreement and all applicable standards, specifications and operating standards, specifications and procedures prescribed by Franchisor from time to time. Franchisee agrees not to contest Franchisor's title in the Proprietary Marks. Any goodwill established in the Proprietary Marks by reason of Franchisee's use of them shall inure to Franchisor's exclusive benefit. Any unauthorized use of the Proprietary Marks by Franchisee shall constitute a breach of this Agreement. All provisions of this Agreement applicable to the Proprietary Marks shall apply to any additional Proprietary Marks hereafter authorized for use by, and licensed to, Franchisee by Franchisor.

Franchisor may seek to obtain federal trademark or service mark registrations for any or all of the Proprietary Marks. There can be no assurance that any such registrations will be granted. There may be similar trademarks or service marks, either registered or not registered, owned by third parties. Such third parties may have rights in such trademarks or service marks that are superior to Franchisor's rights in the Proprietary Marks, thereby restricting the ability of Franchisor to expand the System into certain geographic areas. Franchisor makes no representations concerning the possible rights of such third parties. Franchisee is advised to satisfy itself as to the status of the Proprietary Marks prior to entering into this Agreement.

Franchisee shall use the Proprietary Marks as the sole identification of the Restaurant, provided that Franchisee shall identify himself/herself as the independent owner of the Restaurant in the manner prescribed by Franchisor. Franchisee shall not use the Proprietary Marks as part of any corporate or trade name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than commercial logos licensed to Franchisee hereunder), or in any modified form, nor may Franchisee use any Proprietary Marks in connection with the performance or sale of any unauthorized services or goods or in any other manner not expressly authorized in writing prior to use by Franchisor. Franchisee shall prominently display the Proprietary Marks on such signs, merchandise, paper goods, uniforms, and other articles as designated by Franchisor and only in accordance with Franchisor's instructions. Franchisee shall give such notices of trade and service marks registrations as Franchisor specifies and shall obtain such fictitious or assumed name registrations as may be required under applicable law, all at Franchisee's expense.

Franchisor shall have the sole right to handle disputes with third parties concerning the System, including, without, limitation, the Proprietary Marks. In that regard:

1) If Franchisee receives notice, or is informed, of: (a) any claim, suit or demand against it on account of any alleged infringement, unfair competition or similar matter by reason of its use of the System in accordance with this Agreement, including, without limitation, its use of the Proprietary Marks, or (b) any claim by any person of any rights in all or any part of the System or in any Proprietary Mark, Franchisee shall notify the Franchisor in writing within ten (10) days of such claim, suit or demand. Franchisee has no right to settle or compromise any such claim, suit, or demand. Franchisor shall have sole discretion to take such action as it deems appropriate (which, except in the case of suit, may include taking no action) and the right to exclusively control any litigation, United States Patent and Trademark Office or other proceeding arising out of any such infringement, challenge or claim or otherwise relating to the System or any Proprietary Mark. Franchisee shall cooperate fully with Franchisor and execute such documents and perform such actions as may, in the judgment of Franchisor, be necessary, appropriate or advisable in the defense of such claims, suits or demands and to protect and maintain the interests of Franchisor in the System and/or in the Proprietary Marks which are the subject of challenge. Franchisor will indemnify Franchisee for all actual damages (other than loss of income) and out-of-pocket expenses incurred by Franchisee in connection with any claim made by any third party for infringement, unfair competition or similar matter arising out of Franchisee's use of the Proprietary Marks or the System; provided, however, the foregoing obligation of Franchisor to reimburse Franchisee exists only if Franchisee has used the name or mark which is the subject of the challenge in strict accordance with the provisions of this Agreement, the Confidential Manual (as hereinafter defined) and any other written procedures, requirements or instructions of Franchisor, has notified Franchisor of the challenge as set forth above, and has otherwise fully cooperated with Franchisor.

2) If Franchisee receives notice, or is informed, of any infringing or unauthorized use of the System, Franchisee shall notify the Franchisor in writing within ten (10) days of such infringing use. Franchisor need not initiate suit against imitators or infringers, nor take any other action to enforce or protect the System.

If it becomes advisable at any time in Franchisor's sole discretion for Franchisor and/or Franchisee to modify or discontinue use of any Proprietary Mark, and/or use one or more additional or substitute trade or service marks, Franchisee agrees to comply with Franchisor's directions to modify or otherwise discontinue the use of such Proprietary Marks within a reasonable time after notice thereof by Franchisor. Franchisor shall not be obligated to compensate Franchisee for any costs incurred by Franchisee in connection with such modification or discontinuance.

Upon expiration or termination of this Agreement, Franchisor may, if Franchisee does not do so, execute in Franchisee's name an abandonment of the use of all Proprietary Marks which have been registered as assumed or fictitious names by Franchisee.

### C. Territory

1) No protected or exclusive area or territory is granted by Franchisor to Franchisee during the initial term (and any renewal) of this Agreement. Furthermore, Franchisor and/or its affiliates may open or operate Company-owned or franchised restaurants in similar or dissimilar business, under different trademarks, service marks, and commercial symbols.

2) Franchisor retains the right, in its sole discretion, to: (a) engage in wholesale operations or service to "Captive Markets," (military bases; schools; hospitals; limited access roads; stadiums; arenas; convention centers; hotels; entertainment parks; airports; bus and train stations; mall food courts; business or industrial contract feeding settings; and similar venues); and (b) distribute or license the manufacture and/or distribution of products, regardless of whether such products are authorized for **ROTELLI PIZZA & PASTA** restaurants, under the Proprietary Marks either licensed hereunder or otherwise held by Franchisor, through grocery stores, retail food stores, the internet, and other channels of distribution.

3) Franchisee acknowledges Franchisor's right and the right of Franchisor's affiliates to develop, operate and franchise similar and/or dissimilar systems, under trademarks, service marks and commercial symbols other than the Proprietary Marks, without offering them to Franchisee.

## II. TERM

### A. Initial Term

The initial term of this Agreement shall be for a period of ten (10) years, from the date of the execution of this Agreement, unless the lease (which shall also include a sublease) for the Franchise Location, if any, shall be for a shorter period of time, in which event, the initial term of the Franchise Agreement shall be equal to the term of the lease.

### B. Renewal Option - Renewal Fees

Franchisee shall have the option to renew the Franchise Agreement for an additional period of ten (10) years, or for such lesser periods as are available under the lease for the Franchise Location, if any. In all cases, renewal shall require that:

- 1) Franchisee is not in material default or in violation of the Franchise Agreement or any other agreement with Franchisor;
- 2) Franchisee has received satisfactory inspection reports during the expiring term;
- 3) Franchisee gives Franchisor written notice of Franchisee's election to renew not less than six (6) months prior to the end of the term then in effect; and
- 4) No later than sixty (60) days prior to the end of the term then in effect, Franchisee has completed all steps necessary to effectively renew, which may include, but are not necessarily limited to:
  - (a) execution of the most current form of Franchise Agreement and any ancillary agreements then customarily used by Franchisor in the grant or renewal of franchises for the operation of Restaurants, which Franchise Agreement shall reflect the then-current royalty rate, advertising fees, and non-competition provisions (with appropriate modifications to reflect the fact that the Franchise Agreement relates to the grant of a renewal franchise);

- (b) Franchisee and Franchisee's owners, if Franchisee is a business organization, executing a general release(s), in a form satisfactory to Franchisor, of any and all claims against Franchisor and its officers, directors, employees, and agents;
- (c) Franchisee makes such capital improvements necessary to meet Franchisor's then existing criteria and standards for Restaurants; and
- (d) Franchisee pays the renewal fee of \$5,000.

If Franchisee does not comply with the conditions for renewal to the satisfaction of Franchisor, in its sole discretion, Franchisee agrees that Franchisor shall have good cause to refuse to renew the Franchise Agreement. Failure or refusal by Franchisee to execute any agreements, instruments and documents required by Franchisor in connection with such renewal within a reasonable time after delivery to Franchisee, shall be deemed an election by Franchisee not to renew the franchise. If local law modifies, alters, or amends all or part of the renewal provisions, then such provisions shall be modified, altered, or amended accordingly, so as to be in full compliance with such local law.

Franchisee's right to renew the franchise is subject to Franchisee's ability to continue to occupy the Franchise Location, or relocating the Restaurant to a mutually acceptable new location, within thirty (30) days after the expiration or termination of the right to occupy the current Franchise Location.

### III. FRANCHISE FEE

In consideration of the grant of the franchise license by the Franchisor, the Franchisee agrees to pay a Franchise Fee of \$25,000. If the Franchisee later agrees to purchase additional **ROTELLI PIZZA & PASTA** franchises, the Franchise Fee will be reduced as follows:

|                                |          |
|--------------------------------|----------|
| Secondary Franchise Location   | \$20,000 |
| Additional Franchise Locations | \$15,000 |

The Franchise Fee is fully earned by the Franchisor upon the execution of this Agreement and is non-refundable. In the event Franchisee does not submit an acceptable site for the Franchise Location within one hundred eighty (180) days after execution of this Agreement, this Agreement shall be deemed canceled. Franchisor shall have no obligation to refund any portion of the Franchise Fee previously paid.

### IV. RESTAURANT SITE SELECTION

A. In the event the site for the Franchise Location has not been accepted by the Franchisor upon execution of this Agreement and entered on Exhibit "A" hereto, it shall be the sole obligation of the Franchisee to locate a site suitable for the operation of the Restaurant within one hundred and eighty (180) days after execution of this Agreement. The site must meet Franchisor's criteria for demographic characteristics, traffic patterns, parking, character of neighborhood, competition from and proximity to other businesses and other **ROTELLI PIZZA & PASTA** Restaurants, the nature of other businesses in proximity to the site, other commercial characteristics and the size, appearance and other physical characteristics of the proposed site. The proposed site must be accepted by the Franchisor prior to Franchisee executing a binding lease or otherwise securing the proposed site. Franchisor will accept or decline a proposed site for the Restaurant within thirty (30) days after



Franchisor receives from Franchisee a complete site report and any other materials Franchisor requests. The Franchisor's acceptance of a site does not constitute a representation or warranty that the Franchise Location will be profitable or that the Franchisee's sales will attain any predetermined levels. Such acceptance is intended only to indicate that the proposed site does not warrant rejection under Franchisor's minimum criteria for site selection. The Franchisee agrees that the Franchisor's acceptance or rejection of a proposed site shall not impose any liability or obligation on the Franchisor. In the event Franchisee does not submit an acceptable lease within the foregoing One-Hundred Eighty (180) day period, Franchisor may in its sole discretion terminate this Agreement.

B. If the Restaurant site is to be leased directly by Franchisee, the terms and form of Franchisee's lease are subject to Franchisor's prior review and written consent. Franchisor shall have the right to accept or reject the terms of any lease for the Franchise Location. All leases must either have Exhibit "B" hereto attached as a rider or expressly contain the provisions of Exhibit "B." Franchisee shall not execute any lease prior to obtaining Franchisor's written consent, which shall not be unreasonably withheld. Franchisor's failure to reject a lease in writing within thirty (30) days after Franchisee submits such lease shall constitute Franchisor's permission to proceed. Franchisor shall also have the right to require Franchisee to execute such additional documents, which provide for the protection of Franchisor's rights and interests, as Franchisor may require.

C. Franchisee agrees to construct (or renovate) and equip the Restaurant, at Franchisee's sole cost and expense, in a good and workmanlike manner, in conformity with all applicable governmental requirements and in accordance with the plans and specifications acceptable to the Franchisor prior to the start of construction by the Franchisee. Franchisee shall only purchase and use such equipment fixtures and furnishings as Franchisor has designated or shown as acceptable. In that regard, Franchisor may designate by brand name the equipment, including ovens, refrigeration, fountain and dispensing equipment, cash register/computer systems and all other mechanical equipment for use in the Restaurant. At a minimum, exterior signage, identifying the Restaurant shall be no less in size proportionately, than is the square footage of the Restaurant to the entire premises, in the event the Franchised Location occupies only a portion of the entire building, premises, or structure. Interior decor must be as specified in the Confidential Manual. Franchisee shall retain, at Franchisee's expense, an architect or engineer to prepare architectural and mechanical plans and specifications for the Restaurant. Franchisor shall be available to consult with Franchisee on site development and other pre-opening obligations. Franchisee will cause any mechanics' liens, material men's liens or other liens which may be recorded or perfected or which may otherwise attach to all or any portion of the Restaurant as a result of work done by or for the Franchisee to be discharged or released of record or fully bonded, within ten (10) days after notification of the existence of any such lien.

D. Franchisee agrees that the Restaurant shall be completed and open for sales to the public no later than one hundred eighty (180) days from the date of the execution of the lease (hereinafter referred to as the "Specified Opening Date"), unless delayed by causes beyond the reasonable control of Franchisee. In the event Franchisee is not open for sales to the public on the Specified Opening Date, Franchisor shall be entitled to receive from Franchisee, in lieu of the Royalty Franchisor would have received, the sum of Fifty Dollars (\$50.00), for each day after the Specified Opening Date during which Franchisee is not open for sales to the public. Franchisor may also terminate this Agreement upon ten (10) day's prior written notice, if the Restaurant is not open for business by the Specified Opening Date. Upon such a termination of this Agreement, Franchisor shall be entitled to keep as liquidated damages and not as a penalty, all amounts Franchisee has previously

paid to Franchisor, including but not limited to the Franchise Fee, and Franchisor may pursue such other remedies as are available to it at law and in equity. The Specified Opening Date shall be extended for the number of days during which the opening is delayed for causes beyond Franchisee's reasonable control.

E. The Franchise Location shall be used for no purpose other than the operation of a **ROTELLI PIZZA & PASTA** Restaurant, unless otherwise agreed to in writing by Franchisor.

## V. TRAINING

Franchisor shall provide an initial training program for Franchisee. If Franchisee is an individual, Franchisee must attend. If Franchisee is a business organization, all owners must attend. In addition, Franchisee's designated general manager and management team must attend, as must Franchisee's spouse, if said spouse will be involved in the operation of the Restaurant. The initial training will be conducted at such place as designated by Franchisor, following execution of this Agreement. Franchisee shall be responsible for all travel, lodging, and subsistence expenses of those persons attending the training session. Such training is to be completed prior to the opening of the Restaurant and will be for a minimum of one hundred sixty (160) hours, or as modified by Franchisor. Franchisor's training program will include an overview of food service industry, on-site food preparation, Restaurant operation, customer service procedures, and management techniques, together with inventory, cost accounting, and general business procedures.

Franchisee acknowledges that it is of paramount importance that Franchisee and its employees or representatives understand the System and therefore, failure to complete Franchisor's initial training program to the satisfaction of Franchisor, shall be grounds for Franchisor to elect to terminate this Agreement. This Agreement is contingent not only upon the Franchisee's satisfactory completion of training, but also upon Franchisee's taking charge of the Restaurant operations after securing Franchisor's consent.

Franchisor may require Franchisee and/or previously trained and experienced personnel to attend periodic refresher courses at locations designated by Franchisor. Franchisee shall be responsible for all travel, lodging and living expenses that Franchisee and each such person incur in connection with any subsequent training program.

Franchisee has the right to request additional training from time to time and Franchisor shall, at its sole discretion, provide such training to Franchisee or to Franchisee's personnel at such times, places, and for such duration as Franchisor deems necessary. Franchisee must pay the cost of such additional training, including the cost of transportation, subsistence, lodging, and the current charge for the services of Franchisor's representative(s), which costs shall be paid in advance or upon receipt of an invoice for such services.

Franchisee specifically agrees that only persons trained by Franchisor shall have overall responsibility for the operation of the Restaurant and that Franchisee will at Franchisee's sole cost and expense; send each such person to Franchisor for training, unless such training is waived by Franchisor.

## VI. RESTAURANT OPERATION

In order to maintain uniform standards of operation for all Restaurants and to protect the

goodwill of Franchisor, it is agreed as follows:

A. Standards

Franchisee acknowledges that each and every detail of the appearance, layout, decor, food products, beverages, paper and plastic goods, materials, and supplies utilized, services offered, and operation of the Restaurant are proprietary in nature and is important to the Franchisor, as well as other **ROTELLI PIZZA & PASTA** franchisees. Franchisee shall comply with all mandatory specifications, standards and operating procedures relating to:

- 1) type, quality, purity, taste, portions, weight and/or dimensions, ingredients, uniformity, and manner of preparation and sale of food products and beverages sold by the Restaurant;
- 2) layout, decor, and color scheme of the Restaurant;
- 3) exterior design and materials;
- 4) appearance of employees and uniform specifications;
- 5) appearance, cleanliness, sanitation, standards of services, and operation of the Restaurant;
- 6) materials, supplies, distributors and suppliers; and
- 7) hours and days during which the Restaurant will be open for business.

Mandatory specifications, standards, and operating procedures may be prescribed from time to time by Franchisor in the Confidential Operating Manual and Confidential Recipe Manual (hereinafter called "Confidential Manuals"), or otherwise communicated to Franchisee in writing, via electronic mail or through the proprietary Franchise Website and intranet. All references herein to this Agreement shall include all such mandatory specifications, standards, and operating procedures.

B. Confidential Manuals

The requirements of Franchisor's Confidential Manuals, which shall be loaned to Franchisee by Franchisor during the initial term and any renewal of this Agreement, shall govern the operation of the Restaurant. Changes in such requirements may be made by Franchisor from time to time as deemed advisable by Franchisor. Franchisee will operate the Restaurant in accordance with the standards, specifications, and procedures set forth in the Confidential Manuals, will comply with any changes in such standards, specifications, and procedures as may become necessary and desirable from time to time, and will accept as reasonable any modifications, revisions, and additions to the Confidential Manuals which Franchisor, in the exercise of its sole discretion, believes to be necessary and desirable.

C. Maintenance of Exterior and Interior Decor

Franchisee shall at all times maintain the interior and exterior of the Restaurant and the surrounding area in the highest degree of cleanliness, orderliness, and sanitation, and shall also comply with the requirements of the Confidential Manuals regarding the upkeep and decor of the Restaurant. Franchisee shall immediately comply with all orders and regulations of applicable state and local health and safety administrators. Franchisee shall repair, refinish, or paint the exterior and the

interior of the Restaurant at Franchisee's own expense at such times as reasonably directed by Franchisor or as required by any lease for the Franchise Location.

#### D. Upkeep of Restaurant

Maintenance and repair of the Restaurant is the sole responsibility of Franchisee. Franchisee shall maintain the signs, equipment, decor, furnishings, fixtures, and all other tangible property in the Restaurant in excellent condition, and shall repair and/or replace any of the equipment and fixtures, which become obsolete or mechanically impaired. Replacement equipment and fixtures shall be of the same type and quality as are being used in the current or then current **ROTELLI PIZZA & PASTA** Restaurants at the time replacement is required and shall comply with Franchisor's requirements and specifications. Remodeling of the Restaurant (including signage), to conform to the current **ROTELLI PIZZA & PASTA** format and style, may be required at the time of renewal of this Agreement, at such time(s) as is required under the terms of any lease for the Franchise Location, or otherwise, at Franchisor's discretion.

In addition to the foregoing, in order to introduce new products or services through all **ROTELLI PIZZA & PASTA** Restaurants, Franchisee may be required to spend additional amounts on new, different or modified equipment or fixtures necessary for Franchisee to offer such new products and/or services.

In the event the Franchise Location is, at any time, to be altered or remodeled, or additional decorations, fixtures, furniture, or equipment are to be installed or substituted, or signs are to be erected or altered, all of such work shall be subject to the prior written consent of Franchisor, and, when completed, shall conform to plans and specifications as previously approved by Franchisor. Franchisor may inspect, but shall not be obligated to inspect, such work at any time to determine that the work is done in accordance and compliance with Franchisor's accepted plans and specifications.

#### E. Holidays and Hours of Operation

Franchisee shall continuously operate the Restaurant for the hours and days of the week as specified in the Confidential Manuals, unless different hours have been approved in writing by Franchisor, based upon the circumstances existing for the Franchise Location.

#### F. Restaurant Supervision

Franchisee, if an individual, or a designated partner if Franchisee is a partnership, or a designated managing officer if Franchisee is a corporation, or designated manager if Franchisee is a limited liability company, shall devote full time (a minimum of 40 hours per week) and attendance, as well as such person's best efforts, to the performance of supervisory and day-to-day Restaurant operational duties. Only a person(s) who is trained to the satisfaction of the Franchisor in the methods and procedures of the System, who shall be physically at the Restaurant during operating hours, shall manage the Restaurant.

#### G. Franchisee's Sales Efforts

Franchisee shall exert Franchisee's best efforts and abilities to establish, maintain, and increase sales of approved food products under the Proprietary Marks and shall at all times maintain a supply of such food products sufficient to meet public demand.

#### H. Restaurant Personnel

If requested by Franchisee, Franchisor will provide Franchisee with advice, assistance regarding the recruiting, and selection of an initial staff for the Restaurant. All personnel employed by Franchisee at the Restaurant shall maintain such standards of sanitation, cleanliness, and demeanor, as Franchisor shall establish. All personnel performing managerial or supervisory functions, all personnel receiving special training and instruction, and all persons employed by Franchisee having access to any of Franchisor's Confidential Information (as herein defined), shall execute Franchisor's form Employment-Non-competition Agreement (~~Exhibit "C," hereto~~). Franchisee shall enforce, at its sole expense, such Agreement, when and if so directed by Franchisor.

#### I. Point of Sale System

Franchisee shall be required to purchase and install at Franchisee's expense at the Franchise Location, such computer hardware, required dedicated telephone and power lines, DSL or Cable modem(s), printer(s) and other computer-related accessory and peripheral equipment as meets Franchisor's standards and specifications as specified in the Confidential Manual or otherwise in writing. In such event, Franchisee will be required to provide such assistance and purchase such equipment required by Franchisor to bring such computer system and the Restaurant "on-line" with Franchisor's computer system. Franchisee acknowledges and agrees that Franchisor will have the free and unfettered right to retrieve such data and information directly from Franchisee's computer, as Franchisor shall deem necessary, desirable, or appropriate. Franchisee agrees to purchase and install any new or upgraded software programs, manuals and computer-related materials and equipment whenever Franchisor determines to adopt such new or upgraded programs, manuals and computer-related materials and equipment for all **ROTELLI PIZZA & PASTA** franchisees. Franchisee understands and agrees that computer designs and functions change periodically and that Franchisee may be required to make and install substantial modifications to the computer system, and make additions, changes and modifications during the term of this Agreement to ensure full operational efficiency and communications capability.

#### J. Sale of Franchisor's Products

Franchisee shall not sell, dispense, give away, or otherwise provide products or services bearing the Proprietary Marks, except by means of retail sales in or from the Restaurant. Unless prior written agreement is received from the Franchisor, all wholesale sales are reserved to Franchisor.

#### K. Franchisor's Employees

Franchisee shall not interfere with the employees and agents of Franchisor in the performance of such employees and agents duties, and Franchisee further agrees that Franchisee will not employ or seek to employ any of Franchisor's employees or agents, or any employees or agents of Franchisor's parent or affiliate(s) or any employees or agents of other franchisee's of Franchisor, for a period of at least two (2) years following the separation of any such employee from employment by Franchisor or its parent or affiliate(s), or other franchisee or the termination of any agency relationship with Franchisor, its parent, or affiliate(s), or other franchisee without the prior written consent of the Franchisor, its parent, affiliate, or such other franchisee.

#### L. Franchisee's Cooperation

Franchisee shall cooperate with Franchisor in taking any action, or refraining from taking any action that, in the sole judgment of Franchisor, is necessary or desirable to promote and enhance the quality of the products of the Restaurant, the service provided by the Restaurant, or the image of the Restaurant in the local community. Franchisee shall attend all **ROTELLI PIZZA & PASTA** franchise meetings as Franchisor deems mandatory from time to time and as Franchisor deems in the best interest of the System as a whole. The cost of attending said meetings shall be that of Franchisee, including the cost of transportation, subsistence, lodging, and a tuition or attendance fee, if deemed warranted by Franchisor.

#### M. Menu Format

No changes, additions, or deletions in or to the menu format to be used at the Restaurant shall be undertaken or implemented by Franchisee, unless granted permission in writing by Franchisor. Franchisee agrees to indemnify and hold Franchisor, its affiliates shareholders, directors, officers, employees, and agents harmless from and against any and all loss, damage, cost, or expense, including attorneys' fees at all trial and appellate levels, resulting from any change Franchisee makes in the standard menu or from any deviation of Franchisee's products from the descriptions contained in Franchisor's approved menu. At Franchisor's direction, the standard menu format may contain advertising references to other **ROTELLI PIZZA & PASTA** restaurants. Notwithstanding the foregoing, prices that will appear on the menus shall be established exclusively by Franchisee, although Franchisor may suggest prices. Franchisor may change the standard menu format at any time and from time to time. Franchisor's right to approve the menu format shall not apply to approval of the prices at which any products are sold. Menus shall disclose that sales tax, where applicable, shall be charged on all menu items subject to such tax.

#### N. Restaurant Compliance with Laws and Procedures

Franchisee shall operate the Restaurant in strict compliance with all applicable laws, rules, and regulations of duly constituted governmental authorities, including, without limitation, obtaining and maintaining all required permits and licenses and payment of all taxes, and in strict compliance with the standard procedures established by Franchisor from time to time including, without limitation, accounting records and information, on such forms as Franchisor may require; payment procedures; hours of operation; design and color of uniforms; size of servings; standards of sanitation, maintenance, and repair; cleaning and fire prevention service; and all matters that, in Franchisor's judgment, require standardization and uniformity in all **ROTELLI PIZZA & PASTA** Restaurants. All costs that may be incurred in order to maintain and implement such standard procedures shall be borne by Franchisee, at its sole expense.

#### O. Uniforms and Attire

Franchisor shall be entitled to prescribe standard uniforms and attire for all Restaurant personnel. Franchisee shall be entitled to obtain such uniforms and attire from any approved manufacturer or distributor, so long as the uniforms are of a reasonable quality and are in strict accordance with Franchisor's specifications.

P. Vending Machines

No vending machines, amusement devices, video machines, or other devices of any nature, except as approved by Franchisor, whether or not coin operated, shall be installed or used at the Restaurant, without the prior written consent of Franchisor.

Q. Good Business Practices

Franchisee shall secure and maintain in force in its name or its business entity all required licenses, permits, and certificates relating to the operation of the Restaurant and shall transmit copies of all such licenses, certificates, and permits to Franchisor within ten (10) days of their receipt by Franchisee.

All marketing and promotion by Franchisee shall be subject to Franchisor's prior consent. Franchisee shall adhere to the highest standards of honesty, integrity, fair dealing, and ethical conduct in all dealings with its guests, suppliers, Franchisor, and the public. Franchisee agrees to refrain from any business or advertising practice, which, in the subjective opinion of Franchisor, may be injurious to the business of Franchisor, and the goodwill associated with the Proprietary Marks and other **ROTELLI PIZZA & PASTA** Restaurants.

R. Receipt of Notice

Within seven (7) days of the receipt by Franchisee of any failing report from any health department or other comparable agency, Franchisee shall mail a complete copy of such report to Franchisor. Franchisee shall also mail to Franchisor, within five (5) days of receipt, a complete copy of all compliance reports associated with the foregoing. Within seven (7) days of the receipt by Franchisee of any claim or demand for payment which could have a material effect upon the operations of the Restaurant by any third party based upon an alleged injury suffered at the Restaurant or upon other grounds, whether such claim is in writing and whether such claimant is a customer, Franchisee shall notify Franchisor in writing and, if such claim is in writing, shall deliver a complete copy of such claim to Franchisor. Franchisee shall notify Franchisor in writing within five (5) days of the commencement of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operations or financial condition of Franchisee or the Restaurant or of any notice of violation of any law, ordinance, or regulation relating to health or sanitation.

S. Destruction or Damage

If a cause other than a voluntary act of Franchisee destroys or damages the Restaurant, so that the Restaurant cannot continue to operate, Franchisee shall repair and restore the Restaurant to Franchisor's then most current specifications, subject to the applicable provisions of any lease for the Restaurant. The Restaurant, or if necessary, a restaurant at a site granted permission by the Franchisor shall be open and operating no later than six (6) months from the date of the destruction or damage. In the event of any other cessation of operations, Franchisee shall restart operations no later than fourteen (14) days from the date thereof.

**VII. RESTAURANT INSPECTION**

Franchisor may inspect the Restaurant from time to time to determine compliance with uniformity

and quality control. Franchisor's personnel or designated agent(s) shall have the right to enter the Restaurant at any reasonable time and from time to time for the purpose of examining, conferring with Franchisee or Franchisee's employees, inspecting the Restaurant and testing the products and items sold in the Restaurant, auditing, and all other purposes in connection with the determination that the Restaurant is being operated in accordance with the terms of this Agreement, the Confidential Manuals, and other applicable rules. Franchisee specifically authorizes Franchisor's personnel or representatives who are on the Restaurant premises, to monitor the operation of the cash registers in the Restaurant, for such periods as Franchisor may determine to be necessary. Franchisee agrees to remedy any defects, deficiencies, or unsatisfactory conditions discovered at the Restaurant by Franchisor's personnel, no later than forty-eight (48) hours after being advised of same in writing.

## **VIII. SUPPLIERS**

### **A. Products and Supplies**

Franchisee shall cause the Restaurant to conform to Franchisor's specifications and quality standards as specified in the Confidential Manuals, and shall purchase only from distributors and suppliers approved by Franchisor (which may include Franchisor), all food products, beverages, ingredients, flavorings, garnishes, cartons, bags, boxes, napkins, other containers, paper and plastic goods, packaging supplies, and other materials. In selecting such distributors and suppliers, for the Restaurant, Franchisor may consider such factors as quality of delivery service, inventory capability, financial condition, price and the reliability of the distributor or supplier. Franchisor may arrange for the concentration of purchases with one or more distributors or suppliers to obtain competitive prices and/or the best advertising support and/or services for any group of restaurants franchised or operated by Franchisor or an affiliate. The selection of a distributor or supplier may be conditioned on requirements relating to the frequency of delivery, standards of service, and concentration of purchases, may be temporary, pending a further evaluation of the distributor or supplier by Franchisor, and may be changed from time to time. Franchisor reserves the right at its sole discretion to develop proprietary items, and to designate itself as an approved supplier and to make a profit from the sale of such items to Franchisee. If Franchisor arranges for, or establishes, a cooperative buying program, Franchisee will be encouraged, but not obligated to participate, so as to maintain the highest quality for the products associated with the System.

Franchisor may from time to time require Franchisee to discontinue the use or sale of any product or item, or disapprove a previously approved distributor or supplier which or who in Franchisor's opinion does not meet the standards of quality established by Franchisor.

### **B. New Suppliers**

If Franchisee, during the term of this Agreement, desires to purchase any equipment or products for use in the Restaurant from a supplier who has not been previously been granted permission to supply products or services by Franchisor, Franchisee may request in writing permission by Franchisor of such supplier. Franchisor shall consent to such proposed supplier if in Franchisor's sole judgment and discretion, Franchisor is satisfied that the supplier can meet and maintain Franchisor's specifications, standards, and requirements. Franchisee, in making such request, shall furnish Franchisor, at Franchisee's cost, with adequate samples of the items for which approval is being requested, or if that is not feasible, then with copies of descriptions, specifications and pictures of such items. Franchisee shall not sell, dispense, or use any such items until such consent has been granted



and notice thereof given to Franchisee in writing. Nothing contained herein shall be construed to require Franchisor to grant permission to an unreasonable number of suppliers for any particular item or service, which could interfere with the effective and economical supervision of suppliers, by Franchisor. Franchisor reserves the right, as a condition precedent to granting permission or rejecting any request for a new or additional supplier of any item or service, to charge such proposed supplier the reasonable cost and expenses incurred by Franchisor in evaluating, investigating and determining any such request. Nothing contained in this Agreement shall be construed as an attempt by Franchisor to limit the sources from which Franchisee may procure equipment, supplies, products, or other items.

Franchisor may require Franchisee to discontinue the use or sale of any product or item obtained from a supplier recommended initially by Franchisee which, in Franchisor's opinion, does not continue to conform to the image or quality standards of Franchisor and its products.

C. Trade Accounts

Franchisee agrees to maintain its trade accounts in a current status and to seek to resolve any disputes with trade suppliers promptly.

**IX. INSURANCE**

Throughout the term of this Agreement, Franchisee shall maintain in effect at all times, a policy or policies of insurance, with a Bests "A" rated insurance carrier, naming Franchisor as an additional insured on the face of each policy at Franchisee's sole cost and expense, as follows:

A. Bodily Injury and Property Damage

Public liability in no less than \$24,000,000 combined single limits for bodily injury and property damage, which amounts may be changed from time to time upon receipt of written demand of Franchisor;

B. Workers' Compensation

Workers' compensation insurance as required by state law;

C. Auto Insurance

\$24,000,000 combined single limits for bodily injury and property damage, which amounts may be changed on written demand of Franchisor from time to time, only if Franchisee desires to offer delivery service. Franchisee must first obtain Franchisor's written consent and obtain such additional insurance as is usual and customary for such activity and provide Franchisor with a copy of the policy evidencing such additional coverage; and

D. Risk Replacement Coverage's

Fire, vandalism, theft, malicious mischief, sprinkler damage and the perils described in extended coverage insurance with primary and excess limits of at least the full replacement value of the supplies, furniture, fixtures, machinery, and inventory used in the Restaurant.

E. Lease Controls

In the event of a conflict between the insurance coverage required hereunder and those required

under a lease for the Franchise Location, Franchisee shall provide the most comprehensive of the coverage.

Franchisee shall promptly notify Franchisor of any and all claims against Franchisee and/or Franchisor under said policies of insurance and shall deliver to Franchisor certificates evidencing that such insurance is in full force and effect within thirty (30) days after signing this Agreement and each year thereafter. Such insurance certificate(s) shall contain a statement that the policies shall not be canceled without thirty (30) day's prior written notice to Franchisee and to Franchisor. In the event that Franchisee does not have coverage Franchisor shall have the right upon written notification to purchase insurance on behalf of the Franchisee and charge the current rate plus 10%.

## **X. INDEMNIFICATION**

Franchisee agrees to defend at its own cost and to indemnify and hold harmless Franchisor, its shareholders, directors, officers, employees and agents, from and against any and all claims, losses, costs, expenses (including attorneys' fees at all levels), damages, and liabilities, resulting directly or indirectly from, or pertaining to the use, condition, construction, equipping, decorating, maintenance, or operation of the Restaurant, including the preparation and sale of any product made in or sold from the Restaurant. Such losses, claims, costs, expenses, damages, and liabilities shall include without limitation, those arising from latent or other defects in the Restaurant, whether or not discoverable by Franchisee, and those arising from the death or injury to any person, or arising from damage to the property of Franchisee or Franchisor, their agents or employees, or any third person, firm, or corporation.

## **XI. COOPERATIVES**

A. Franchisor shall have the right at any time, and from time to time, to create Co-op Advertising Regions ("Co-op"). If and when Franchisor creates a Cooperative for the geographic region in which the Restaurant is located, Franchisee shall become a member thereof, and participate therein. The size and content of such regions, when and if established by the Franchisor, shall be binding upon Franchisee and all other franchisees similarly situated. At all meetings of such Cooperative, each participating franchisee shall be entitled to one (1) vote for each **ROTELLI PIZZA & PASTA** restaurant located within such Cooperative. At any time, upon reasonable notice, twenty percent (20%) of the eligible member votes, or the directors of the Cooperative, may call a meeting of all members of a Cooperative. Except as provided in paragraph B below, all matters concerning operation of a Cooperative shall be decided by majority vote, provided that a quorum is present, and such vote shall bind all members of said Cooperative. For purposes hereof, a quorum shall consist of members entitled to cast at least 50% of the total number of votes in such Cooperative.

B. Each Cooperative shall be organized and governed in a form and manner, and shall commence operations on a date, granted permission in advance by Franchisor, in writing, as follows:

- 1) Each Cooperative shall be organized for the exclusive purposes of administering regional advertising programs and developing, subject to Franchisor's approval, standardized promotional materials for use by the members in local advertising.
- 2) No advertising or promotional plans or materials may be used by a Cooperative or furnished to its members without the prior written consent of Franchisor.

C. Based on the decision of a majority of the votes represented by all of the members of the Cooperative, each member can be required to contribute to the Cooperative, up to, but not greater than, two percent (2%), of the Gross Sales of such member's restaurant. Such amount shall be in addition to the amount required to be contributed to the Marketing Fund pursuant to paragraph XII.B.1. In the event of authorization of such Cooperative advertising contributions as previously mentioned, each franchisee, including Franchisor, shall submit its required contribution to the Cooperative as required, together with such statements as may be required by the Cooperative.

D. Franchisee's payment of any Cooperative obligation, in accordance with paragraph XI, shall be credited against Franchisee's local advertising requirement described in paragraph XII.C.

## **XII. FEES**

In addition to all other payments provided for in this Agreement, Franchisee shall pay the following:

### **A. Royalty Fee**

Franchisee shall pay weekly, to Franchisor, as a royalty (the "Royalty"), an amount equal to the greatest of six percent (6%) of Franchisee's Gross Sales at the Franchise Location, or Two Hundred Forty Dollars (\$240) (the "Minimum Royalty"), for each week or partial week during the term of this Agreement. For the purposes of this Agreement, a week shall be Monday through Sunday. During the term hereof, Franchisee shall deliver to Franchisor a report of the Gross Sales of the Restaurant for the prior week, no later than 5 pm Eastern Standard Time Monday of the following week and make payment via electronic draft (ACH) of the Royalty on each Wednesday for the prior week. The report shall be on a form specified by Franchisor, which shall fully disclose all information requested. In addition, Franchisee shall supply, upon Franchisor's written request, documentation supporting the information disclosed on the reports.

### **B. Advertising, Marketing, and Promotion**

- 1) Recognizing the value of marketing to the goodwill and public image of **ROTELLI PIZZA & PASTA** restaurants, Franchisor may establish and administer a marketing fund (the "Marketing Fund") for such marketing (including advertising, promotion, public relations and other marketing programs) as Franchisor may deem necessary or appropriate, in its sole discretion. Franchisor shall notify the Franchisee in writing that it has elected to commence operation of the Marketing Fund and Franchisee shall contribute to the Marketing Fund, beginning sixty (60) days after such notice, an amount equal to the greater of a maximum of three percent (3%) of the Gross Sales of the Restaurant, or One Hundred Twenty Dollars (\$120) (the "Minimum Contribution"). Franchisee shall contribute to the Marketing Fund at the time it makes payment of the Royalty due under this Agreement and in the same manner of payment. Restaurants owned by Franchisor and its affiliates may, but shall not be obligated to, contribute to the Marketing Fund on the same basis as Franchisee.
- 2) Except as otherwise provided below in section 3, Franchisor shall direct all marketing programs financed by the Marketing Fund. Franchisor shall have sole discretion over the creative concepts, materials, and endorsements used therein,

and the geographic market and media placement and allocation thereof. Franchisee agrees that the Marketing Fund may be used to pay the costs of conducting marketing surveys and research; employing public relations firms; salaries, preparing and producing video, audio, and printed marketing materials; administering multi-regional marketing programs, including, without limitation, purchasing television, radio, magazine, billboard, newspaper, and other media advertising, and employing advertising agencies to assist therewith; providing marketing materials to franchisees; and holding conventions and regional meetings for franchisees. The Marketing Fund shall furnish Franchisee with standard marketing materials on the same terms and conditions as Franchisor furnishes such materials to Franchisor's other franchisees.

- 3) The Marketing Fund shall be accounted for separately from the other funds of Franchisor and shall not be used to defray any of Franchisor's general operating expenses, except for salaries, administrative costs, and overhead that Franchisor may incur in activities related to the administration of the Marketing Fund and marketing programs financed through the Marketing Fund (including, without limitation, collecting and accounting for contributions to the Marketing Fund).
- 4) Franchisor may spend in any fiscal year an amount greater or less than the aggregate contributions of restaurants to the Marketing Fund in that year and the Marketing Fund may borrow from Franchisor or others to cover temporary deficits in the Marketing Funds or cause the Marketing Fund to invest any surplus for future use by the Marketing Fund. Franchisee authorizes Franchisor to collect any advertising monies or credits due from any distributor or other supplier to Franchisee and any advertising or other rebates or any discounts from distributors and other suppliers based upon purchases or volume purchases by Franchisor and its franchisees (including purchases by Franchisee). Franchisor shall have the right to negotiate with suppliers from time to time to obtain on Franchisor's and/or Franchisee's behalf price reductions, discounts, or rebates based on volume purchases. Unless such suppliers designate such payments as being for advertising and promotion (in which event, Franchisor shall contribute same to the Marketing Fund), Franchisor may retain such payments for its own purposes. Any contributions from vendors or suppliers shall be in addition to all other amounts due or contributed under this Agreement. All interest earned on monies contributed to the Marketing Fund will be used to pay marketing costs of the Marketing Fund before other assets of the Marketing Fund are expended. A statement of monies collected and expenditures made by the Marketing Fund shall be prepared annually by Franchisor and shall be provided to Franchisee upon written request. Franchisor may terminate or suspend the Marketing Fund at any time upon reasonable written notice. In such event, all funds remaining in the Marketing Fund may only be used for advertising and promotional purposes until fully expended.
- 5) Franchisee understands and acknowledges that the Marketing Fund is intended to be used to develop general public recognition of the trademark, service marks, trade names, and logos and increase patronage of **ROTELLI PIZZA & PASTA**

restaurants in general. Franchisor undertakes no obligation to ensure that expenditures by the Marketing Fund in, or affecting any geographic area, are proportionate or equivalent to contributions to the Marketing Fund by restaurants operating in any geographic area or that any restaurant will benefit directly or in proportion to its contribution to the Marketing Fund, from the conduct of marketing programs or the placement of advertising. Franchisor assumes no direct or indirect liability or obligation to Franchisee with respect to the maintenance, direction, or administration of the Marketing Fund.

- 6) Franchisor shall have the right, but not the obligation, to establish a Marketing Fund Advisory Committee consisting of franchisees of Franchisor, to advise and consult with Franchisor in connection with establishment, modification, continuance, or other decisions or considerations affecting marketing programs. The organizational structure and manner of operation of such Committee shall be determined by Franchisor in Franchisor's sole discretion, exercised in good faith. Franchisor shall consult with such Committee and consider such Committee's input and advice concerning the use of the Marketing Fund. However, as described in sections 1 and 2, Franchisor shall retain sole discretion over all aspects, including but not limited to administration and use, of the Marketing Fund.

#### C. Local Advertising Requirements

In addition to the Marketing Fund fee required to be paid by Franchisee pursuant to paragraph XII.B above, Franchisee shall be required to spend two percent (2%) of Gross Sales monthly on local advertising. Local advertising must be in effect within thirty (30) days after the opening of the Restaurant, and Franchisee is to substantiate local advertising expenditures to Franchisor, by supplying such information as Franchisor may require from time to time, including but not limited to, tear sheets, paid advertising invoices, and like documentation.

Prior to their use by Franchisee, samples of all marketing materials and descriptions of local promotion programs that Franchisee proposes to use, not prepared or previously permitted by Franchisor, shall be submitted to Franchisor for authorization. If written rejection is not received by Franchisee within fifteen (15) days from the date of receipt by Franchisor of such materials or descriptions, Franchisor shall be deemed to have given the required consent. Franchisee shall not use any marketing materials that Franchisor has disapproved.

Franchisee shall also be responsible for any lease obligations which require contributions(s) to a marketing fund, advertising fund, or any fund of a similar nature or other forms of advertising expense and any such contributions or expenditures made by Franchisee to satisfy such lease obligations shall be credited against Franchisee's obligation to engage in local advertising.

#### D. Grand Opening Marketing Fund

At the time the Franchisee executes the Franchise Agreement he shall pay to the Franchisor a Grand Opening Marketing Fee of Ten Thousand Dollars (\$10,000). Franchisor shall hold said Grand Opening Marketing Fee for Franchisee's benefit to fund Franchisee's grand opening marketing program. If the Franchise Agreement is terminated prior to the Restaurant opening, pursuant to Section III, hereof, any unexpended portion of Franchisee's Grand Opening Marketing Fee, if any, shall be refunded.

E. Consumer Price Index

Commencing on January 1st following the execution of this Agreement and on every January 1st thereafter, the weekly Minimum Royalty and Minimum Contribution for the prior year, shall be increased in direct proportion to the percentage increase in the Consumer Price Index (CPI) for the prior year. Within ten (10) days prior to the commencement of any annual CPI increase, Franchisor shall notify the Franchisee in writing of the amount of the increase in the weekly Minimum Royalty and Minimum Contribution for the following year, if any, and if Franchisor fails to so notify the Franchisee, the previous applicable weekly Minimum Royalty and Minimum Contribution shall apply until such time as Franchisee is notified in writing of the appropriate increase. Within thirty (30) days thereafter, Franchisee shall pay Franchisor any deficiency in the weekly Royalty or Marketing Fund Contributions occurring from date of notice.

**XIII. GROSS SALES, PAYMENTS, AND FALSE STATEMENTS**

A. Definition

The term "Gross Sales" is defined to include the total revenues derived by Franchisee in and from the Restaurant from all sales (both retail and wholesale, if permitted) of foods, beverages, goods, wares, merchandise, and all services made in, upon, or from the Restaurant, whether for cash, check, credit, or otherwise, without reserve or deduction for inability or failure to collect same, including, without limitation, such sales and services where the orders therefore originated at and are accepted by Franchisee in the Restaurant, or are prepared at the Restaurant, but delivery or performance thereof is made from or at any other place. Gross Sales do not include discounts, refunds to customers or the amount of any sales taxes or other similar taxes that Franchisee might be required to and does collect from customers to be paid to any federal, state, or local taxing authority.

B. Payment

Franchisee must participate in Franchisor's electronic funds transfer program, which authorizes Franchisor to utilize a pre-authorized bank draft system. Franchisee must sign and deliver to Franchisor an unconditional, irrevocable authorization to enable Franchisor's financial institution to debit bank accounts at Franchisee's bank in order to pay Franchisor any Royalties, Marketing Fund contributions, and other amounts that Franchisee may owe Franchisor under this Agreement or any other agreement between Franchisee and Franchisor. All Royalties, Marketing Fund contributions, and other amounts due Franchisor must be received by Franchisor or credited to Franchisor's account by pre-authorized bank debit before 5:00 p.m. on the day each such payment is due.

C. Late Payment

If Franchisee shall be delinquent in the payment of any obligation to Franchisor hereunder, or under any other agreement with Franchisor, Franchisor shall have the absolute right to apply any payments received from Franchisee to any obligation owed, whether under this Agreement or otherwise, notwithstanding any contrary designation by Franchisee as to application. To encourage prompt payment and to cover the costs and expenses involved in handling and processing late payments, Franchisee shall pay a late payment charge of the greater of ~~Thirty~~ Twenty Five Dollars (\$~~3~~25.00) or five percent (5%) of any amount due from Franchisee to Franchisor hereunder. In addition, Franchisee shall pay, at the rate of eighteen percent (18%) per annum, interest on all payments due to

Franchisor hereunder during the period for which such payments are overdue, but in the event the rate charged is more than the highest rate permitted by law, then the rate charged shall be reduced to the maximum rate permitted by law.

Any payment not actually received by Franchisor on or before the date due pursuant to this Agreement shall be deemed overdue, unless, in the opinion of Franchisor, the delay was beyond the reasonable control of Franchisee. Notwithstanding the foregoing, each failure to pay the Royalty, the Marketing Fund contribution and other payments owed to Franchisor when due, will constitute a breach of this Agreement, entitling Franchisor to pursue all remedies available to it under this Agreement and all other remedies available at law and in equity.

#### D. Security Agreement

In order to secure the prompt performance by Franchisee of the obligations of this Agreement, Franchisee grants Franchisor a security interest in the franchise granted hereby and the equipment, fixtures and improvements at the Restaurant. Franchisee shall execute Franchisor's standard Security Agreement attached hereto as Exhibit "D." In order to perfect this security interest, Franchisee shall also execute a standard UCC-1 Financing Statement. Franchisee authorizes Franchisor:

- 1) To file a copy of the Security Agreement, the UCC-1 Financing Statement and any other documents that may be necessary to perfect the security interest granted herein; and
- 2) To sign on behalf of Franchisee and to file in any jurisdiction, with or without signature of Franchisee, financing statements with respect to this security interest and Security Agreement.

#### E. False Statements

Any intentionally false statements in any reports provided to Franchisor shall be grounds for Franchisor to terminate this Agreement.

### **XIV. REPORTING, RECORD KEEPING AND ACCOUNTING**

#### A. Reports

Franchisee shall record all sales and receipts of revenue and report same to Franchisor. Franchisor's standardized reporting forms must be used by Franchisee. This uniform system may be amended or supplemented from time to time by Franchisor and includes, without limitation, Royalty statements. Franchisee shall be solely responsible for performing all record keeping duties, and the cost for same shall be borne solely by Franchisee.

#### B. Records and Audits

Franchisee shall maintain and preserve accurate books, records (including corporate minute book), and tax returns, including related supporting material, such as cash register tapes for the Restaurant, for at least three (3) years, following the end of the calendar year to which they relate. Such books, records, tax returns, and supporting material shall be available for inspection, examination, or audit, including an audit by a certified public accountant, at any time, at Franchisor's sole discretion. Such examination or audit shall be at Franchisor's expense, unless it is disclosed that any statement of

Gross Sales submitted by Franchisee is in error to the extent of two percent (2%) or more, in which case, such expense shall be borne by Franchisee. Franchisee shall also immediately pay Franchisor any deficiency in Royalty or Marketing Fund Contributions as disclosed by such audit or examination, together with interest at the maximum rate specified by law, or in the absence of a maximum rate specified by law, eighteen percent (18%).

### C. Financial Statements and Tax Returns

Franchisee shall execute ~~Exhibit "C"~~ and shall use the bookkeeping services described in ~~Exhibit "C"~~ for the first twelve (12) months that Franchisee's first Restaurant is operating. 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 the Franchisee's sole expense~~, and that accountant agrees in writing (on a form acceptable to Franchisor) to provide timely financial statements required by 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 if Franchisee fails to provide any of the financial reports as required below. Franchisee also shall provide to Franchisor financial and accounting reports in the manner and form Franchisor requires, including:

1. Weekly summary reports, submitted by no later than the Due Date each week (Monday at 5pm) and containing information relative to the previous weekly reporting period of operations;
2. 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);
3. Within ~~twentyfive~~ (2015) 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 principals ("GAAP") consistently applied, in Franchisor's recommended format;
4. By July 15 and January 15 of each and every 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; and
5. 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 Franchisee to have its prepared financial statements reviewed on an annual basis.



6. Franchisee shall submit to Franchisor copies of Franchisee's federal, state, and city, if any, income tax and sales tax returns, within ten (10) days after their respective filing, during the initial term and any renewal.

## **XV. TRANSFER**

### **A. Assignment by Franchisor**

Franchisor shall have the right to assign this Agreement, and all of its rights and privileges hereunder to any other person, firm or corporation without Franchisee's prior consent; provided that, in respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, the assignee shall expressly assume and agree to perform such obligations.

### **B. Assignment by Franchisee**

- 1) This Agreement has been entered into by Franchisor in reliance upon and in consideration of the singular personal skill, qualifications and trust and confidence reposed in Franchisee. Therefore, neither Franchisee's interest in this Agreement nor any of Franchisee's rights or privileges nor any interest in the Restaurant shall be assigned, transferred, shared or divided, voluntarily or involuntarily, by operation of law or otherwise, directly or indirectly, in any manner, without the prior written consent of Franchisor and subject to Franchisor's right of first refusal as provided for in section D. of this Article XV. Notwithstanding anything herein to the contrary, in the event of the death or legal incapacity of Franchisee or, in the case of a franchisee that is a business organization, as defined in Section XV.E, an owner of twenty percent (20%) or more of the ownership interest, the transfer of Franchisee's interest in this Agreement or such owner's interest, to his or her heirs, personal representatives or conservators, as applicable, shall require Franchisor's written consent, but shall not give rise to Franchisor's right of first refusal hereunder (as set forth in Section D., hereafter), although such right of first refusal shall apply as to any proposed transfer or assignment by such heirs, personal representatives or conservators.
- 2) Should Franchisor not elect to exercise its right of first refusal, or should such right of first refusal be inapplicable, as herein provided, Franchisor may impose any reasonable condition(s) to the granting of its consent. Without limiting the generality of the foregoing, the imposition of any or all of the following conditions to Franchisor's consent to any such assignment shall be deemed reasonable:
  - a) that the assignee (or the principal officers, shareholders, directors, partners, members or managers of the assignee in the case of a corporate, partnership, or limited liability company assignee) demonstrate that he has the skills, qualifications and economic resources necessary, in Franchisor's judgment, reasonably exercised, to own and operate the Restaurant;
  - b) that Franchisee submit current, accurate financial statements, including a balance sheet and income statement (where relevant under the circumstances), relating to the financial condition of the proposed assignee,

- prepared in accordance with generally acceptable accounting, principals (and by a Certified Public Accountant if certified financial statements are available), federal and state tax returns for the two (2) immediately preceding years, together with any other documents that are required to enable Franchisor to determine the character, credit worthiness, business experience, professional credentials, ethical background, fitness and suitability of the proposed assignee;
- c) that the proposed assignee must meet Franchisor's standards for prospective franchisees;
  - d) that Franchisee must furnish Franchisor with copies of all proposed sale and/or transfer documents before such documents are executed, and Franchisor determines that the price and terms of payment will not adversely affect the proposed assignee's ability to operate the franchised business;
  - e) that if assignee finances any part of the sale price of the transferred interest, Franchisee must agree that all of the assignee's obligations under any promissory notes, agreements or security interests, that Franchisee has reserved in the franchise, are subordinate to the assignee's obligation to pay all financial obligations to Franchisor as set forth in the franchise agreement to be executed by assignee;
  - f) that Franchisee sign a general release in a form satisfactory to Franchisor, of any and all claims against Franchisor and Franchisor's shareholders, officers, directors, employees, and agents;
  - g) that the assignee shall have completed at assignee's cost and expense, Franchisor's training program to Franchisor's satisfaction, exercised in good faith;
  - h) that as of the date of any such assignment, the Franchisee shall have complied with all material obligations to Franchisor, whether under this Agreement or any other agreement, arrangement or understanding with Franchisor;
  - i) that unless Franchisor agrees otherwise in writing, the assignee shall execute Franchisor's franchise agreement then being offered to prospective franchisees (except that the assignee shall not be obligated to pay the Franchise Fee and the term thereof shall expire on the stated expiration date of this Agreement);
  - j) that Franchisee shall have expressly agreed in writing to comply with the non-competition covenants set forth in Article XVII hereof and with all other post-termination obligations contained herein; and
  - k) a transfer fee in the amount of Five Thousand Dollars (\$5,000.00), which is intended to cover Franchisor's costs and expenses associated with the

transfer.

- 3) If Franchisee is a business organization, the death or legal incapacity of any owner owning twenty percent (20%) or more of the ownership interests of Franchisee, the issuance of any securities by Franchisee, the transfer of twenty percent (20%) or more in the aggregate of the ownership interests in Franchisee, by operation of law or otherwise, or any merger, share redemption, consolidation, reorganization or recapitalization involving Franchisee, shall be deemed to be an assignment of this Agreement within the meaning of this Article XV. If Franchisee is a partnership, the legal incapacity, death, or withdrawal of any general partner, admission of any additional general partner, or the transfer of any general partner's interest in the property, management or profits and/or losses of the partnership shall be deemed to be an assignment hereunder.

#### C. Financial and Other Information

Franchisor shall have the right, but not the obligation, to furnish any prospective assignee with copies of all financial statements which have been furnished by Franchisee to Franchisor in accordance with this Agreement during the one (1) year period prior to the date the consent of the proposed assignment, transfer or sale is sought. Franchisor shall also have the right to advise any prospective assignee of any uncured breaches or defaults by Franchisee under this Agreement, or any other agreement proposed to be assigned, transferred, or sold. Franchisor's consent of such proposed transaction shall not, however, be deemed a representation or guarantee by Franchisor that the terms and conditions of the proposed transaction are economically sound or that, if the transaction is consummated, the assignee will be capable of successfully operating the Restaurant and no inference to such effect shall be made from such approval.

#### D. Right of First Refusal

Except as expressly provided in paragraph XV.B.1, to the contrary, any assignment of this Agreement, or any interest herein, shall be subject to Franchisor's right of first refusal with respect thereto. Franchisor's said right of first refusal shall be exercised in the following manner:

- 1) Franchisee shall serve upon Franchisor a written notice clearly and unambiguously setting forth all of the terms and conditions of the proposed assignment and all available information concerning the proposed assignee, including but not limited to, information concerning the employment history, financial condition, credit history, skill and qualifications of the proposed assignee and, in the case of a partnership, corporate, or limited liability company, assignee, of its partners, shareholders and members, as applicable.
- 2) Within thirty (30) days after Franchisor's receipt of such notice (or if Franchisor shall request additional information, within thirty (30) days after receipt of such additional information), Franchisor may either consent or withhold its consent to such assignment, in accordance with paragraph XV.B.1, or at its option, accept the assignment to itself or to its nominee upon the terms and conditions specified in the notice. Franchisor may substitute an equivalent sum of cash for any consideration other than cash specified in said notice. If Franchisor fails to exercise any of its rights or options, then consent to the proposed assignment

shall be deemed withheld.

- 3) If Franchisor shall elect not to exercise its said right of first refusal and shall consent to such assignment, Franchisee shall, subject to the provisions of paragraph XV.B.1, of this Article XV, consummate the transaction with the proposed assignee on the terms and conditions specified in said notice. If, however, Franchisor elects not to exercise its right of first refusal and the terms shall be materially changed, or if more than ninety (90) days shall pass without the transaction being consummated, such changed terms or lapse of time shall be deemed a new proposal and Franchisor shall again have such right of first refusal with respect thereto.

#### E. Business Organization

- 1) Franchisee shall not become a business organization without the prior written consent of Franchisor, which consent shall not be unreasonably withheld. If Franchisee (at any time) is or becomes a business organization (a corporation, limited liability company, partnership or similar entity), Franchisee and the business organization (which shall become the Franchisee), shall execute Franchisor's form Assignment of Franchise Agreement and Guaranty (Exhibit "É" hereto) and agree and represent that:
  - a) Franchisee has the authority to execute, deliver and perform Franchisee's obligations under this Agreement and is duly organized or formed and validly existing in good standing under the laws of the state of Franchisee's incorporation or formation;
  - b) Franchisee's organizational or governing documents do/will recite that the issuance and transfer of any ownership interests are restricted by the terms of this Agreement, and all certificates and other documents representing ownership interests will bear a legend referring to the restrictions of this Agreement;
  - c) all owners and their interests in the Franchise entity shall complete exhibit "F," to this Agreement.
  - d) Franchisee and Franchisee's owners shall revise Exhibit "F," as may be necessary to reflect any ownership changes and to furnish such other information about Franchisee's organization or formation as Franchisor may request;
  - e) each of Franchisee's owners and their spouses, if any, at any time during the term of this Agreement, will sign and deliver to Franchisor, Franchisor's form Guaranty and Assumption of Obligations (Exhibit "G"), undertaking to be bound jointly and severally by all provisions of this Agreement and any other agreements between Franchisor and Franchisee; and
  - f) at Franchisor's request, Franchisee will furnish true and correct copies of all documents and contracts governing the rights, obligations, and powers

of Franchisee's owners and agents (such as articles of incorporation or organization and partnership, operating or shareholder agreements or similar documents).

- 2) The legal name of the business organization shall not contain, consist of, or include any of the Proprietary Marks.
- 3) Subject to the provisions of paragraph XV.B.1, if Franchisee becomes a business organization, any merger thereof or sale or transfer of stock of any class in a corporate Franchisee, or ownership interests in a limited liability company Franchisee, whether by operation of law or otherwise, or the sale or transfer of any general partner's interest or the sale or series of sales or transfers of limited partnership interests (including transfers of shares in corporate partners) in a partnership Franchisee whether by operation of law or otherwise, or the disposition in any manner of the ownership interests in any other business organization Franchisee, whether by operation of law or otherwise, or a transfer of substantially all of the assets of the Restaurant, shall be deemed an attempted assignment of this Agreement, requiring the prior written consent of Franchisor.

In addition, future transfers of ownership interests in such business organizations will be subject to all the provisions of this Article XV.

#### F. No Representation or Guarantee

Franchisor's consent to a transfer of this Agreement, the Restaurant, or any ownership interest in any corporation or limited liability company controlled by Franchisee, does not constitute a representation as to the fairness of the terms of any contract between Franchisee and any assignee, nor does Franchisor's consent constitute a guarantee of the successful operation of the Restaurant by the assignee or a waiver of any claims Franchisor has against Franchisee.

#### G. Offerings by the Franchisee

Securities or partnership interests (hereinafter "securities") in the Franchisee may be offered to the public, by public or private offering or otherwise, only with the prior written consent of Franchisor, which consent shall not be unreasonably withheld. All materials required for such offering by federal or state law shall be submitted to Franchisor for review prior to their being filed with any government agency, or if they are to be used in any exempt offering, shall be submitted to Franchisor for review prior to their use. No offering by Franchisee shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of the Franchisee's securities. The Franchisee must fully indemnify Franchisor in connection with the offering and must require other participants in the offering to also indemnify fully Franchisor. For each proposed offering, the Franchisee shall pay to Franchisor a non-refundable minimum fee of Five Thousand Dollars (\$5,000) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering, including, without limitation, legal and accounting fees. The Franchisee shall give Franchisor at least sixty (60) days written notice prior to the effective date of any offering or other transaction covered herein.

#### H. Death or Permanent Disability

If Franchisee is an individual, upon Franchisee's death or permanent disability or, if Franchisee is a Business Organization, upon the death or permanent disability of an individual owning twenty percent (20%) or more of the ownership interest, the executor, administrator, conservator or other personal representative shall transfer the interest in this Agreement or the ownership interest within a reasonable time, not to exceed 9 months from the date of death or permanent disability, to a third party approved by Franchisor. An assignment under this Section, including, without limitation, transfer by devise or inheritance, will be subject to all of the terms and conditions contained in Article XV of this Agreement, and unless transferred by gift, devise or inheritance, subject to Franchisor's right of first refusal. Failure to dispose of such interest within the specified period of time will constitute a breach of this Agreement. For purposes of this Agreement, the term "permanent disability" will mean a mental or physical disability, impairment or condition that is reasonably expected to prevent or actually does prevent Franchisee or an owner of twenty percent (20%) or more of the ownership interest in a Business Organization from supervising the operation of the Franchised Business for a period of 6 months from the onset of such disability, impairment or condition.

I. No Encumbrance

Franchisee shall not in any event have the right to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement in any manner whatsoever.

**XVI. PROPRIETARY RIGHTS AND CONFIDENTIALITY**

A. Proprietary Rights and Confidentiality

Nothing contained in this Agreement shall be construed to require Franchisor to divulge to Franchisee any confidential or proprietary information, except for the material contained in the Confidential Manual and training materials. Franchisee acknowledges that knowledge of Franchisor's marketing methods, product analysis and selection, service methods, skills relating to the development and operation of **ROTELLI PIZZA & PASTA** restaurants, know-how, techniques, recipes, information, trade practices and other proprietary data is derived entirely from information disclosed to Franchisee by Franchisor and that such information is proprietary, confidential, and trade secrets of Franchisor (the "Confidential Information"). Franchisee agrees to adhere fully and strictly to all confidentiality attached to such information and to exercise the highest degree of diligence in safeguarding Confidential Information during and after the term of this Agreement. Franchisee shall divulge such material only to employees and only to the extent necessary to permit the effective operation of the Restaurant. It is expressly agreed that the ownership of all of the Confidential Information is and shall remain vested solely in Franchisor.

Franchisee further agrees that Franchisee:

- 1) will not use the Confidential Information in any other business or capacity;
- 2) will maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement;
- 3) will not make unauthorized copies of any portion of the Confidential Information disclosed in any form including, but not limited to: electronic media, written form, or other tangible forms; and

- 4) will adopt and implement all reasonable procedures prescribed by Franchisor, from time to time, to prevent unauthorized use and/or disclosure of the Confidential Information, including restrictions on disclosure to the employees and the use of nondisclosure and non-competition agreements that the Franchisor may prescribe for persons having access to Confidential Information.

However, disclosure of the Confidential Information may be made in judicial or administrative proceedings, but when and only to the extent Franchisee is legally compelled to disclose same, provided that Franchisee first gives Franchisor the opportunity to obtain an appropriate protective order or other assurance that the confidential nature of the material to be disclosed will be maintained.

Franchisee further agrees that if, in the course of the operation of the Restaurant, Franchisee and Franchisee's employees and/or associates develop ideas, concepts, methods, techniques and/or improvements ("improvements"), Franchisee agrees to disclose such improvements to Franchisor. The Franchisor will be deemed to own the improvements and may use them and authorize other franchisees to use them in the operation of their businesses. Improvements will also constitute Confidential Information.

## **XVII. NON-COMPETITION**

### **A. Operating Outside of Franchise Location**

During the term of this Agreement, Franchisee shall not directly or indirectly, sell, dispense, give away, or otherwise provide its menu items for sale outside the physical confines of the Franchise Location (except for delivery transactions), without Franchisor's prior written consent. If Franchisor gives such consent, all such sales shall be included in Gross Sales for all purposes as set forth in this Agreement.

### **B. Restrictive Covenant**

#### **1) In-Term and Post-Term**

Franchisee agrees that during the Term of this Agreement and for a period of two (2) years immediately following its expiration, non-renewal or termination for any reason, Franchisee will not, either directly or indirectly, as a proprietor, partner, investor, lender, shareholder, director, officer, member, manager, employee, principal, agent, representative, advisor, Franchisor, franchisee, consultant or otherwise engage in any other business which competes directly or indirectly with the Restaurant, including a business engaged in the sale of or in any type form of Italian Food, if such other business is located within 10 miles of the Franchise Location or any other **ROTELLI PIZZA & PASTA** restaurant. Nothing in this Agreement shall prevent Franchisee or its shareholders, directors, officers (if a corporation), partner (if a partnership), members and managers (if a limited liability company), or employees from owning for investment purposes only, up to an aggregate of two (2%) of the capital stock of any competitive business that is a publicly held corporation whose stock is listed and traded on a national or regional stock exchange, or through the National Association of Securities Dealers Automated Quotation System (NASDAQ).

The foregoing prohibition shall also preclude Franchisee, directly or indirectly from:

- a) recruiting or hiring any employee of Franchisor or Franchisor's affiliates or franchisees without prior written consent; and/or
- b) knowingly engaging in any activity to solicit, encourage, or induce any customer doing business with any other franchisee (wherever located) to commence doing business with Franchisee, except with Franchisor's prior written consent; and/or
- c) directly or indirectly, on behalf of Franchisee or any other person or entity, or as an employee, proprietor, owner, consultant, agent, contractor, employer, affiliate, partner, officer, director, manager or associate, stockholder or member of any other person or entity, or in any other capacity, solicit, divert, take away, or interfere with any of the business, guests, clients, contractors, trade or patronage of Franchisor, or Franchisor's affiliates, as same may exist during the term of this Agreement, except with prior written consent.

For purposes of the foregoing:

- i) "Competitive Business:" means the operation of an Italian restaurant, or any other business, that provides the same or similar products and services customarily featured under the Proprietary Marks or that could be confused by the general public as like or similar to the Proprietary Marks.
- ii) "Directly or indirectly:" includes, but is not limited to, all persons (natural or otherwise) under Franchisee's control, and a person's spouse, child, parent, brother, sister, any other relative, friends, trustees, agents or associates.

## 2) Independent Covenants

The parties agree that each of the forgoing covenants shall be construed as independent of any other covenant or provision of this Agreement. The parties further agree that the foregoing restrictions limit Franchisee's right to compete only to the extent necessary to protect Franchisor from unfair competition. Should any part of one or more of these restrictions be found to be unenforceable by virtue of its scope in terms of area, business activity prohibited or length of time, and should such part be capable of being made enforceable by reduction of any or all thereof, Franchisee and Franchisor agree that the same shall be enforced to the fullest extent permissible under the law. In addition, Franchisor may, unilaterally, at any time, in its sole discretion, revise any of the covenants in paragraph B, so as to reduce the obligations of Franchisee hereunder. The running of any period of time specified in paragraph B shall be tolled and suspended for any period of time in which a court of competent jurisdiction or an arbitrator finds Franchisee to have been in violation of any restrictive covenants. Franchisee further expressly agrees that the existence of any claim it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Paragraph.

## 3) Enforcement of Covenants Not to Compete



Franchisee acknowledges that a violation of the terms of the covenants not to compete in this Agreement would result in immediate or irreparable injury to Franchisor for which no adequate remedy at law may be available. Accordingly, Franchisee hereby consents to the entry of a permanent injunction prohibiting any conduct by Franchisee in violation of the terms of the covenants not to compete set forth in this Paragraph XVII. Franchisee further agrees to waive any bond requirements associated with the entry to the injunction and pay all costs and expenses (including reasonable attorney's fees at all levels) incurred by Franchisor in connection with the enforcement of the covenants not to compete set forth in this Paragraph.

#### 4) Separate Agreement

If applicable to Franchisee's form of organization, all partners, shareholders, members, officers, directors, managers and key management personnel (regardless of title, the "Covenantors"), except for the individual Franchisee and spouse signing this Agreement, shall execute Franchisor's standard form Confidentiality, Non-Disclosure and Non-Competition Agreement (Exhibit "F").

#### C. Non-Disclosure

At no time during or after the term of this Agreement, shall the Covenantors disclose any Confidential Information of Franchisor, including, without limitation, the contents of the Confidential Manuals, other manuals, or training materials, except as provided herein.

### **XVIII. RELATIONSHIP OF THE PARTIES**

In all matters pertaining to the operation of the Restaurant, Franchisee is and shall be an independent contractor. Franchisee shall conspicuously identify Franchisee in all dealings with guests, suppliers, public officials, and others as the owner of the Restaurant, and shall place such other notices of independent ownership on such forms, business cards, stationery, menus, advertising, and other materials as Franchisor may require from time to time. No employee of Franchisee shall be deemed to be an employee of Franchisor. Nothing herein contained shall be construed to create a partnership, joint venture, or agency between Franchisee and Franchisor and Franchisee acknowledges that no fiduciary relationship is created by virtue of this Agreement. Neither party here shall be liable for the debts or obligations of the other, unless same are expressly assumed in writing.

### **XIX. DEFAULT AND TERMINATION**

The occurrences of any of the following events shall constitute a default by Franchisee under this Agreement:

#### A. Acts of Immediate Termination

If during any period in which the franchise is in effect, there occurs any of the following events, immediate notice of termination, without an opportunity to cure, shall be deemed reasonable:

##### 1) Bankruptcy and Insolvency

If Franchisee becomes insolvent or commits an act of bankruptcy, or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate Franchisee's property or assets, or becomes involuntarily a bankrupt, or voluntarily files a petition in bankruptcy or reorganization, or effects a plan or other arrangement with creditors, or files an answer to the creditors'

petitions filed against Franchisee (admitting the material allegations thereof) for an adjudication or for reorganization, or effects a plan or other arrangement with creditors, or applies for or suffers the appointment of a receiver or trustee of any of Franchisee's assets or property, or such receiver or trustee is appointed for any of Franchisee's property or assets.

2) Failure to Operate - Abandonment

Franchisee abandons the franchise by failing to operate the franchise business for five (5) consecutive days during which Franchisee is required to operate the franchise business under the terms of this Agreement, or any shorter period, after which it is not unreasonable under the facts and circumstances for Franchisor to conclude that Franchisee does not intend to continue to operate the franchise, unless such failure to operate is due to fire, flood, earthquake, or other similar cause beyond Franchisee's control.

3) Misrepresentation

Franchisee makes any material misrepresentations relating to the acquisition of the franchise business, or Franchisee engages in conduct that reflects materially and unfavorably upon the operation and reputation of the franchise business or the **ROTELLI PIZZA & PASTA** System or Franchisor.

4) Foreclosure

The franchise business or Franchise Location is seized, taken over, or foreclosed by a government official in the exercise of his duties, or seized, taken over, or foreclosed by a creditor, lien holder, or Lessor; or a final judgment against Franchisee remains unsatisfied for thirty (30) days (unless a supersedeas or other appeal bond has been filed); or a levy or execution has been made upon the license granted by this Agreement or upon any property used in the franchise business, and same is not discharged within five (5) days of such levy or execution.

5) Criminal Misconduct

Franchisee, or a controlling shareholder or officer, if Franchisee is a corporation, or a partner, if Franchisee is a partnership, is convicted of a felony or any other criminal misconduct.

6) Repeated Failures to Comply

If Franchisee, on three (3) occasions during any twelve (12) month period, commits the same or similar defaults or violations of this Agreement, whether or not corrected after notice from Franchisor to Franchisee.

B. Acts Requiring Period to Cure before Termination

In the event Franchisee is in default in the performance of any of the terms of this Agreement (other than those calling for immediate termination set forth above), including, but not limited to, the acts set forth hereinafter, Franchisor, in addition to all remedies that Franchisor has available to it at law or in equity, may declare this Agreement automatically terminated, unless such default is cured within thirty (30) days (or a lesser stated period) after written notice thereof from the Franchisor to the Franchisee, unless the default is of such a nature that more than thirty (30) days are reasonably

required to effect a cure. In such event, Franchisee shall commence to cure the default within said thirty (30) day period and shall proceed with due diligence within the period, if any, designated by Franchisor as the allowable additional time within which the cure must be accomplished. Subject to the previously mentioned right to cure, Franchisor may terminate this Agreement under the following circumstances and conditions:

1) Other Agreements

Default under any other agreement between Franchisee and Franchisor or under the lease for the Franchise Location, which default is not cured within the period required in said agreement(s).

2) Transfer without Prior Consent

Any attempted assignment, transfer, or sublicense of this franchise, or any right under this Agreement, without the prior written consent of Franchisor.

3) Loss of Franchise Location

If during the term of this Agreement, or any extension or renewal thereof, the right to occupy the Franchise Location is lost and a new location, satisfactory to Franchisor and Franchisee, is not leased within one hundred eighty (180) days of the termination of the right to occupy the Franchise Location.

4) Failure to Operate

Failure to operate the Restaurant during such days and hours as may be specified in accordance with this Agreement.

5) Failure to Pay Obligations to Third Parties

Failure of Franchisee to make timely payments upon any obligation of Franchisee to persons other than Franchisor.

6) Failure to Comply

Failure to comply with other terms, covenants, obligations, or conditions, of this Agreement, whether or not such other terms specifically provide for termination for non-compliance.

7) Failure to Open

Failure to secure a site for the Restaurant within one hundred eighty (180) days after the execution of this Agreement or failure to open the Restaurant for business within one hundred eighty (180) days after the execution of this Agreement.

8) Failure to Pay Obligations to Franchisor

Franchisee fails to pay any amounts due to Franchisor or an affiliate of Franchisor within five (5) days after receiving written notice that such fees are overdue.

9) Failure to Comply with Governmental Regulation