

Franchisee fails, for a period of ten (10) days after notification of non-compliance, to comply with any federal, state, or local law, rule, or regulation applicable to the operation of the franchise.

C. Franchisee shall have twenty-four (24) hours to cure any deficit upon Franchisor's or any Federal, State, County or City health agency's reasonable determination that continued operation of the Restaurant by Franchisee will result in an imminent danger to public health or safety.

D. Termination by Franchisee

~~Franchisee may not terminate this Agreement prior to the expiration of its Term, except through arbitration as set forth herein, based upon a material breach of this Agreement by Franchisor, provided that in the event that Franchisee shall claim that Franchisor has failed to meet any obligation under this Agreement, Franchisee shall provide Franchisor with written notice of such claim, within one (1) year of its occurrence, unless specified by state law, specifically enumerating all alleged deficiencies and providing Franchisor with an opportunity to cure, which shall in no event be less than sixty (60) days from the date of receipt of such notice by Franchisor from Franchisee. Failure by Franchisee to give such notice shall constitute a waiver by Franchisee of any such alleged default.~~

## XX. REMEDIES ON TERMINATION

A. Discontinuance after Termination

In the event of termination of this Agreement or the Franchise for any reason, Franchisee forfeits any and all fees paid and will no longer use Franchisor's Proprietary Marks or any other property connected with the franchise. Franchisee must immediately cease use of all trade names, formulas, recipes, service marks, trademarks, training manuals, and all other proprietary property of Franchisor. Franchisee shall immediately return all Confidential Manuals, training films, videos, training materials, confidential recipes, and other property of Franchisor and shall not operate or do business under any name or in any manner that might tend to give the general public the impression that the former Franchisee is dispensing, selling, or servicing any of Franchisor's products or that the former Franchisee is operating a restaurant similar to Restaurants established by Franchisor. The foregoing restrictions shall also apply when this Agreement expires.

Franchisee shall, at the election of Franchisor, within ~~ten~~thirty (30) days of termination or expiration of this Agreement, either change all telephone numbers and other public information listings which designate the Restaurant as a **ROTELLI PIZZA & PASTA** restaurant, including any fictitious or assumed name registrations, or shall execute all documents necessary to transfer to Franchisor, or Franchisor's nominee, the right to use and control all telephone numbers for the Restaurant. In the event that Franchisee shall fail or refuse to execute such documents within the time period, Franchisor is hereby irrevocably appointed as Franchisee's attorney-in-fact to do so. If Franchisee remains in possession of the Franchise Location, Franchisee, at Franchisor's request, will be required to remodel the Restaurant to prevent the public from believing the Restaurant remains in the System. On any termination of Franchisee due to a default, Franchisor has the option but not the obligation, to purchase the equipment and tangible assets of the Restaurant for an amount equal to the lesser of their then-fair market value or book value. The default by a Franchisee under this Agreement may result in a loss by Franchisee of additional **ROTELLI PIZZA & PASTA** franchises held by Franchisee.

**B. Return of Confidential Manuals upon Termination**

Immediately upon the termination or expiration of this Agreement, for whatever reason, Franchisee agrees to cease and forever abstain from using the Confidential Information or any part thereof or any trade secrets contained therein, to return to Franchisor all copies of the Confidential Manual and all other documents, instructions, recipes, display items, advertising material, training tools, and other tangible property connected with the franchise, and to remove all signs and other items tending to identify the Restaurant as being connected with Franchisor or the System.

**C. Option to Purchase Paper Goods, Etc.**

Franchisee hereby grants to Franchisor the option to purchase all paper goods, containers, and all other items containing the Proprietary Marks, at the lower of their cost or fair market value, at the time of termination or expiration.

**D. Obligations upon Termination**

In the event of termination or expiration, all obligations of Franchisor to Franchisee and all rights of Franchisee under this Agreement shall automatically terminate; however, any obligations of Franchisee to take, or abstain from taking, any action upon termination (or expiration) pursuant to this Agreement, shall not be affected by such termination (or expiration), including the payment to Franchisor of all sums due from Franchisee at the time of termination or expiration.

**XXI. NOTICES**

**A. Writing**

All notices, requests, demands, payments, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when sent by registered or certified United States mail, postage prepaid, or other form of delivery which provides for a receipt, addressed as follows:

**FRANCHISOR: ROTELLI PIZZA & PASTA, INC.  
4611 Johnson Road  
Suite 1  
Coconut Creek, FL 33073**

**Siegel, Lipman, Dunay & Shepard, LLP  
Attn: Jonathon Shepard  
The Plaza-Suite 801  
5355 Town Center Road  
Boca Raton, Florida 33486**

**FRANCHISEE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. Address Change**

Either party may change such party's address by giving notice of such change of address to the other party.

**C. Notice by Telegram, Facsimile or Electronic Mail**

In the case of any notice required to be given by Franchisor to Franchisee, telegraphic notice,

facsimile transmission, or Electronic Mail with delivery verified, shall be sufficient notice hereunder.

**D. Mailed Notice**

Mailed notices shall be deemed communicated within three (3) days from the time of mailing, if mailed as provided in this paragraph, regardless if delivery shall be refused by addressee.

**XXII. MISCELLANEOUS**

**A. Injunction**

Franchisee recognizes the unique value and secondary meaning attached to the System, its Proprietary Marks, standards of operation, trade secrets and Confidential Information (for this purpose collectively, the "Proprietary Property") and Franchisee agrees that any non-compliance with the terms of this Agreement or any unauthorized or improper use of the Proprietary Property will cause irreparable damage to Franchisor and its franchisees. Franchisee therefore agrees, that if it should engage in any such unauthorized or improper use of the Proprietary Property, during or after the period of this franchise, Franchisor shall be entitled to both permanent and temporary injunctive relief from any court of competent jurisdiction, in addition to any other remedies prescribed by law. Franchisee hereby waives any bond requirements associated with the entry of such injunctive relief.

**B. Additional Actions**

The parties agree to execute such other documents and perform such further acts, as may be necessary or desirable to carry out the purposes of this Agreement.

**C. Heirs, Successors, and Assigns**

This Agreement shall be binding and inure to the benefit of the parties, their heirs, successors, and assigns.

**D. Entire Agreement**

THE UNDERSIGNED ACKNOWLEDGES THAT THEY, AND EACH OF THEM, HAVE READ THIS AGREEMENT IN FULL; HAVE BEEN SUPPLIED WITH AN OFFERING CIRCULAR IN ACCORDANCE WITH FEDERAL AND STATE LAW; ARE COGNIZANT OF EACH AND EVERY ONE OF THE TERMS AND PROVISIONS HEREOF AND ARE AGREEABLE THERETO; THAT NO REPRESENTATIONS OR AGREEMENTS, WHETHER ORAL OR WRITTEN, EXCEPT AS HEREIN SET FORTH, HAVE BEEN MADE OR RELIED UPON; THAT ANY AND ALL PRIOR AGREEMENTS OR UNDERSTANDINGS BETWEEN THE PARTIES, WHETHER ORAL OR WRITTEN ARE AUTOMATICALLY CANCELED BY THE EXECUTION OF THIS AGREEMENT AND THE UNDERSIGNED HEREBY RELEASES FRANCHISOR AND ITS AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS, DEMANDS, AGREEMENTS AND LIABILITIES OF EVERY DESCRIPTION WHATSOEVER, WHICH THE UNDERSIGNED EVER HAD, NOW HAS OR HEREAFTER MAY HAVE, AGAINST FRANCHISOR AND ITS AGENTS AND EMPLOYEES BY REASON OF ANY MATTER, CAUSE OR THING OCCURRING PRIOR TO THE DATE OF THIS AGREEMENT; THAT THE SIGNATURES AFFIXED HERETO WERE AFFIXED AS THE WHOLLY VOLUNTARY ACT OF THE PERSONS WHO SIGNED THIS AGREEMENT; AND THAT THE TERMS AND PROVISIONS OF THIS FRANCHISE AGREEMENT CANNOT BE CHANGED OR MODIFIED UNLESS IN WRITING SIGNED

BY AN AUTHORIZED CORPORATE OFFICER OF FRANCHISOR; THAT THE UNDERSIGNED REALIZES THAT THERE CAN BE NO GUARANTY OF SUCCESS, SINCE FRANCHISEE'S BUSINESS ABILITY, APTITUDE, AND INDUSTRIOUS DISPOSITION ARE PRIMARY IN FRANCHISEE'S SUCCESS.

E. Waiver of Rights

Failure by either party to enforce any rights under this Agreement shall not be construed as the waiver of such rights. Any waiver, including waiver of default, in any one instance, shall not constitute a continuing waiver or a waiver in any other instance. Any acceptance of money or other performance by Franchisor from Franchisee shall not constitute a waiver of any default, except as to the payment of the particular payment or performance so received.

F. Validity of Parts

The invalidity of any portion of this Agreement shall not affect the validity of the remaining portion, and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in effect.

G. Headings

The headings used herein are for purposes of convenience only and shall not be used in interpreting the provisions hereof. As used herein, the male gender shall include the female and neuter genders; the neuter gender shall include the male and female genders; the singular shall include the plural, the plural, the singular and termination shall include expiration.

H. Execution by Franchisor

This Agreement shall not be binding on Franchisor unless and until it shall have been accepted and signed by an authorized officer of Franchisor.

I. Third Parties

The parties intend to confer no benefit or right on, any person or entity not a party to this Agreement, and no third party shall have the right to claim the benefit of any provision hereof as a third-party beneficiary of any such provision.

J. Attorneys' Fees

If Franchisor becomes a party to any litigation concerning this Agreement, the Franchise Location, the franchise business or the Restaurant by reason of any act or omission of Franchisee or Franchisee's representatives and not by any act or omission of Franchisor or any act or omission of its authorized representatives, Franchisee shall be liable to Franchisor for reasonable attorneys' fees and court costs incurred by Franchisor in such litigation, at all trial and appellate levels.

If either party commences an action (whether by way of arbitration or litigation) against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs (and in the event of litigation, at both the trial and appellate levels).

## K. Dispute Resolution

1) Any dispute or controversy between the parties arising out of or relating to this Agreement, including, without limitation, a dispute or controversy relating to the construction of any provision or the validity or enforceability of any term or condition (including this provision) or of the entire Agreement, or any claim that all or any part of this Agreement (including this provision) is void or voidable, shall be submitted to arbitration before a panel of three (3) arbitrators in accordance with the Commercial Rules of Arbitration of the American Arbitration Association then in effect or through the facilities and according to the procedures of Franchise Arbitration and Mediation, Inc., or Endispute, Inc., same to be conducted where the principal office of Franchisor is located. The party filing for arbitration shall make the choice. All matters relating to such arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. Sec. 1 et seq.). Any arbitration will be conducted and resolved on an individual basis only and not a class-wide, multiple plaintiff or similar basis. Any such arbitration proceeding will not be consolidated with any other arbitration proceeding involving any other person, except for disputes involving affiliates of the parties to such arbitration. Franchisor and Franchisee agree that, in connection with any such arbitration proceeding, each must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim, which is not submitted or filed in such proceeding, will be barred. There shall be a limit of two (2) depositions per party. The arbitrators will have the right to award any relief that they deem proper in the circumstances, including, for example, money damages (with interest on unpaid amounts from their due date(s)), specific performance, and temporary and/or permanent injunctive relief. The arbitrators will not have the authority to award exemplary or punitive damages. The prevailing party shall be entitled to recover its attorneys' fees and costs in any such proceeding. To the fullest extent permitted by law, Franchisee irrevocably submits to the jurisdiction of such forum and waives any objection to either the jurisdiction or venue of such forum. This arbitration provision shall be deemed self-executing, and if either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party, notwithstanding such failure to appear.

2) The provisions of this Article shall be construed as independent of any other covenant or provision of this Agreement; provided that if a court of competent jurisdiction determines that any such provisions are unlawful in any way, such court shall modify or interpret such provisions to the minimum extent necessary to have them comply with the law.

3) Judgment upon an arbitration award may be entered in any court having competent jurisdiction and shall be binding, final, and non-appealable.

4) Prior to any arbitration proceeding taking place, Franchisor or Franchisee may, at their respective option, elect to submit the controversy or claim to non-binding mediation before a mutually agreeable mediator, in which event both parties shall execute a suitable confidentiality agreement.

5) The obligation herein to arbitrate or mediate shall not be binding upon either party with respect to claims relating to Franchisor's trademarks, service marks, patents, or copyrights; non-compete clauses, claims related to any lease or sublease of real property between the parties or their affiliated entities; requests by either party for temporary restraining order, preliminary injunctions or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute between the parties.

6) This provision continues in full force, effect subsequent to, and notwithstanding the expiration or termination of this Agreement for any reason.

#### L. Governing Law

This Agreement shall be governed by and construed in accordance with the internal laws of the state of Florida; however, if this Agreement concerns a Restaurant located in a state other than Florida and the laws of that state require terms other than those or in addition to those contained herein, then this Agreement shall be deemed modified so as to comply with the appropriate laws of such state, but only to the extent necessary to prevent the invalidity of this Agreement or any provision hereof, the imposition of fines or penalties, or the creation of civil or criminal liability on account thereof. Any provision of this Agreement that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability, without invalidating the remaining provisions of this Agreement. Any prohibition against or unenforceability of any provision of this Agreement in any jurisdiction, including the state whose law governs this Agreement, shall not invalidate the provision or render it unenforceable in any other jurisdiction. To the extent permitted by applicable law, Franchisee waives any provision of law that renders any provision of this Agreement prohibited or unenforceable in any respect.

#### M. Jurisdiction and Venue

Each of the parties irrevocably and unconditionally with respect to any matter that is not subject to arbitration:

- (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement shall only be brought in the court(s) of record for the State and County or the United States District Court, whose jurisdiction encompasses the location of the principal office of the Franchisor;
- (b) consents to the jurisdiction of each such court in any suit, action or proceeding;
- (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and
- (d) agrees that service of any court paper may be effected on such party by mail, as

provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules of the State of Florida.

**N. Jury Trial Waiver**

Franchisor and Franchisee irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them that are not subject to arbitration.

**O. Limitation of Actions**

Any and all claims and actions arising out of or relating to this Agreement, the relationship of Franchisee and the Franchisor or the Franchisee's operation of the Franchise, brought by any party hereto against the other, shall be commenced either by arbitration or litigation within twelve (12) months from the occurrence of the facts giving rise to any such claim or action, or such claims or action shall be barred.

**P. Waiver of Punitive Damages**

The Franchisor and Franchisee (and its owners and guarantors, if applicable), hereby waive to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other and agree that in the event of any dispute between them, each shall be limited to the recovery of any actual damages sustained by it, either in arbitration or litigation.

**XXIII. NO PROJECTIONS OR REPRESENTATIONS**

Franchisee acknowledges and represents that no projections or representations regarding the costs, amount of income, sales, or profits Franchisee can expect to expend or earn or receive from the franchise granted hereby has been received by Franchisee from Franchisor or its agents. Franchisee acknowledges that no representations or warranties inconsistent with this Agreement were made to induce Franchisee to execute this Agreement.

Franchisee acknowledges that neither Franchisor nor any other person can guarantee the success of the business of Franchisee.

The undersigned Franchisee, by signing this Agreement, acknowledges that it has read same and that it has been requested to state in writing hereafter any terms, claims, covenants, promises, or representations, including representations as to any income, sales, or profit projections, that were made to Franchisee by Franchisor or its representatives, including the persons making same, the location, and date thereof. If no such representations were made, the undersigned is to write the word: "NONE" \_\_\_\_\_ and Initials (A blank shall be the same as if "NONE" is written.)

**Additional Terms or Promises:**

#### **XXIV. ACKNOWLEDGMENTS.**

Franchisee hereby acknowledges the following:

- (a) FRANCHISEE HAS CONDUCTED AN INDEPENDENT INVESTIGATION AND ITS OWN DUE DILIGENCE OF THE BUSINESS CONTEMPLATED BY THIS AGREEMENT AND UNDERSTANDS AND ACKNOWLEDGES THAT THE BUSINESS CONTEMPLATED BY THIS AGREEMENT INVOLVES BUSINESS RISKS MAKING THE SUCCESS OF THE VENTURE LARGELY DEPENDENT UPON THE BUSINESS ABILITIES AND PARTICIPATION OF FRANCHISEE AND ITS EFFORTS AS AN INDEPENDENT BUSINESS OPERATOR.
- (b) FRANCHISEE HAS NO KNOWLEDGE OF ANY REPRESENTATIONS BY FRANCHISOR OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS OR SERVANTS, ABOUT THE BUSINESS CONTEMPLATED BY THIS AGREEMENT THAT ARE CONTRARY TO THE TERMS OF THIS AGREEMENT OR THE DOCUMENTS INCORPORATED HEREIN. FRANCHISEE REPRESENTS, AS AN INDUCEMENT TO FRANCHISOR'S ENTRY INTO THIS AGREEMENT, THAT IT HAS MADE NO MISREPRESENTATIONS IN OBTAINING THIS AGREEMENT.
- (c) FRANCHISEE ACKNOWLEDGES THAT FRANCHISOR OR ITS AGENT HAS PROVIDED FRANCHISEE WITH A FRANCHISE OFFERING CIRCULAR NOT LATER THAN THE EARLIER OF THE FIRST PERSONAL MEETING HELD TO DISCUSS THE SALE OF THE FRANCHISE, TEN (10) BUSINESS DAYS BEFORE THE EXECUTION OF THIS AGREEMENT, OR TEN (10) BUSINESS DAYS BEFORE ANY PAYMENT OF ANY CONSIDERATION. FRANCHISEE FURTHER ACKNOWLEDGES THAT FRANCHISEE HAS READ SUCH FRANCHISE OFFERING CIRCULAR AND UNDERSTANDS ITS CONTENTS.
- (d) FRANCHISEE ACKNOWLEDGES THAT FRANCHISOR HAS PROVIDED FRANCHISEE WITH A COPY OF THIS AGREEMENT AND ALL RELATED DOCUMENTS, FULLY COMPLETED, FOR AT LEAST FIVE (5) BUSINESS DAYS PRIOR TO FRANCHISEE'S EXECUTION HEREOF.
- (e) FRANCHISEE ACKNOWLEDGES THAT IT HAS HAD AMPLE OPPORTUNITY TO CONSULT WITH ITS OWN ATTORNEYS, ACCOUNTANTS AND OTHER ADVISORS AND THAT THE ATTORNEYS, ACCOUNTANTS AND OTHER ADVISORS FOR THE FRANCHISOR HAVE NOT ADVISED OR REPRESENTED FRANCHISEE WITH RESPECT TO THIS AGREEMENT OR THE RELATIONSHIP THEREBY CREATED.
- (f) FRANCHISEE, TOGETHER WITH ITS ADVISERS, HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO MAKE AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE FRANCHISE.
- (g) FRANCHISEE IS AWARE OF THE FACT THAT OTHER PRESENT OR FUTURE FRANCHISEES OF FRANCHISOR MAY OPERATE UNDER DIFFERENT FORMS OF



AGREEMENT (S); AND CONSEQUENTLY THAT FRANCHISOR'S OBLIGATIONS AND RIGHTS WITH RESPECT TO ITS VARIOUS FRANCHISEES MAY DIFFER MATERIALLY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**FRANCHISOR:**

**FRANCHISEE:**

**ROTELLI PIZZA & PASTA INC.**

BY: \_\_\_\_\_  
Jeffery R. Smith, C.O.O.

\_\_\_\_\_  
Print Name

BY: \_\_\_\_\_  
Signature

**EXHIBIT "A"**  
**TO THE ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT**  
**LOCATION DESIGNATION**

1. The Franchise Location is:

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**FRANCHISOR:**

**ROTELLI PIZZA & PASTA, INC.**

By: \_\_\_\_\_  
Jeffery R. Smith, C.O.O.

Date: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
Print

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

Date: \_\_\_\_\_

**EXHIBIT "A-1"**

**TO THE ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT**

**FRANCHISE AGREEMENT - LOCATION ACCEPTANCE FORM**

**ROTELLI PIZZA & PASTA, INC.** ("Franchisor") and \_\_\_\_\_ ("Franchisee") pursuant to the Franchise Agreement ("Agreement") dated \_\_\_\_\_, 200\_ agree as follows:

1. The Franchise Location as referenced in the Agreement shall be as follows:

\_\_\_\_\_  
\_\_\_\_\_

2. By execution hereof, Franchisor hereby accepts the above stated Franchise Location. The Franchisee acknowledges and warrants that Franchisor's acceptance of the Franchise Location does not 1) provide for any protected or other territorial rights associated with the location and nor 2) constitute a guarantee, recommendation, or endorsement of the Franchise Location and the success of the Franchisee's **ROTELLI PIZZA & PASTA** Restaurant to be operated at such Franchise Location is dependent upon the Franchisee's abilities as an independent businessperson.

**FRANCHISOR:**

**ROTELLI PIZZA & PASTA, INC.**

By: \_\_\_\_\_  
Jeffery R. Smith, C.O.O.

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

Date: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
Print

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

Date: \_\_\_\_\_

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EXHIBIT "B"

TO THE ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT  
AGREEMENT WITH LANDLORD

THIS AGREEMENT dated \_\_\_\_\_, 2006~~5~~ by and among **ROTELLI PIZZA & PASTA, INC.** (the "Franchisor"); \_\_\_\_\_ (the "Landlord") and \_\_\_\_\_, ("Tenant/Franchisee").

WHEREAS, the Landlord and the Tenant/Franchisee are parties to that certain Lease Agreement dated the \_\_\_\_\_, 200\_ (the "Lease") relating to the premises described in Exhibit "A" attached hereto (the "Premises");

WHEREAS, the Tenant/Franchisee is a Franchisee of the Franchisor under that certain **ROTELLI PIZZA & PASTA** Franchise Agreement between the Franchisor and the Tenant/Franchisee dated \_\_\_\_\_, 200\_ relating to the operation of a **ROTELLI PIZZA & PASTA** Franchise at the Premises (the "Franchise Agreement"); and

WHEREAS, in order to assure that a **ROTELLI PIZZA & PASTA** Franchise continues to operate at the Premises, the Landlord hereby grants certain rights to the Franchisor under the Lease to protect the Franchisor's interest under the Franchise Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth the parties agree as follows:

1. Notices of Default. The Landlord shall mail, upon transmission or within three (3) days of receipt, by first class mail, postage prepaid, to the Franchisor at the address below, copies of all written notices sent to or received from the Tenant/Franchisee, including without limitation, all notices of default.

2. Right to Cure. In the event the Tenant/Franchisee shall be in default under the Lease, the Franchisor may (but shall be under no obligation to), within thirty (30) days after receipt of written notice from the Landlord, cure such default [or such longer period of time if such default is not capable of being cured within thirty (30) days and the Franchisor is diligently proceeding to cure the default] and take immediate occupancy of the Premises without the Landlord's consent. The Franchisor may at any time after taking occupancy, relet the Premises to another **ROTELLI PIZZA & PASTA** franchisee with the Landlord's written approval of the new tenant/franchisee, which consent shall not be unreasonably withheld or delayed.

3. Right to Assign. The Tenant/Franchisee shall be permitted to assign its interest under the Lease and all rights and obligations thereunder at any time to the Franchisor without the consent of the Landlord. The Franchisor shall be permitted to assign the Lease and all rights and obligations thereunder to another **ROTELLI PIZZA & PASTA** tenant/franchisee upon the Landlord's written approval of the new tenant/franchisee, which approval shall not be unreasonably withheld or delayed.

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4. Vacate on Assignment. The Tenant/Franchisee agrees that at the time the Franchisor exercises its option to become the lessee under the Lease, the Tenant/Franchisee will immediately vacate the Premises, without removing any equipment, parts or supplies, except as authorized under the Franchise Agreement and will permit the Franchisor to enter upon and take possession of the Premises.

5. Landlord's Reliance. The Lessor is authorized to rely solely upon written notice by the Franchisor of its option to become the lessee under the Lease, and is relieved of all liability to the Franchisor and/or the Tenant/Franchisee for any action it takes in so relying that is undertaken in good faith and in the absence of gross negligence or intentional misconduct. The Franchisor and the Tenant/Franchisee, jointly and severally, agree that they will defend, indemnify and hold the Lessor harmless from claims, demands, losses, costs, expenses (including attorneys' fees and court costs), that may arise in any dispute between the Franchisor and the Tenant/Franchisee with respect to their rights and obligations under this Agreement, including attorneys' fees and costs incurred by the Lessor in the prosecution of or participation in any suit for declaratory decree, construction or interpretation of the Lease and/or this Agreement.

6. Acknowledgment of Rights. The Landlord acknowledges the Franchisor's rights under the Franchise Agreement, upon reasonable notice to the Landlord, to enter the Premises to take such steps as may be necessary to protect its interest under the Franchise Agreement including the removal of any signs and other uses of the trademarks, service marks, logos, or the like of the Franchisor (without damage to the Premises).

7. Modification of Lease. The Landlord and the Tenant /Franchisee will not make any material modifications to the Lease without the Franchisor's prior written consent, which consent shall not be unreasonably withheld or delayed.

8. Conflict. In the event of any inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall supersede and control.

9. Binding Effect. This Agreement shall be binding upon the personal representatives, heirs, successors, and assigns of the parties hereto.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida, unless the laws of the state where the Premises are located require the application of the laws of such state.

IN WITNESS WHEREOF, this Agreement has been executed the date and year first above written.

**FRANCHISOR:**

**ROTELLI PIZZA & PASTA, INC.**

By: \_\_\_\_\_  
Jeffery R. Smith, C.O.O.

**LANDLORD:**

\_\_\_\_\_  
Print Name

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

Date: \_\_\_\_\_

**TENANT/FRANCHISEE:**

\_\_\_\_\_  
Print Name

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

Date: \_\_\_\_\_

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EXHIBIT "C"

TO THE ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT

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BOOKKEEPING SERVICES AND DIRECT DEBIT AUTHORIZATION

~~THIS EXHIBIT to the Franchise Agreement by and between Rotelli Pizza and Pasta, Inc. ("Franchisor") and the undersigned ("Franchisee") is made as of the Effective Date to supplement certain terms and conditions of the Franchise Agreement. In the event of any conflict between the terms of the Franchise Agreement and the terms of this Exhibit, the terms of this Exhibit shall control. All Capitalized terms not otherwise defined in this Exhibit shall have their respective meaning as set forth in the Franchise Agreement. Franchisor and Franchisee agree as follows:~~

~~1. Bookkeeping Services. The following shall be added to supplement Section XIV.C of the Agreement:~~

~~4.1 Services. Franchisee shall use Franchisor or Franchisor's designated vendor (the "Service Provider") to provide certain accounting and bookkeeping services (collectively "Bookkeeping Services") to the Restaurant and for payroll services. Franchisee agrees to comply with all requirements Franchisor prescribes with regard to such services. The bookkeeping Services do not include cash management of Payroll Services. Franchisor reserves the right to designate different Service Providers to provide various portions of the Bookkeeping Services.~~

~~Franchisor or the Service Provider will provide the following Bookkeeping Services on a monthly basis for the Restaurant:~~

~~Period End~~

~~Financial Statements: \_\_\_\_\_ Balance Sheet  
Profit and Loss Statement~~

~~\_\_\_\_\_ Detailed General Ledger \_\_\_\_\_ Unpaid Invoice Register  
\_\_\_\_\_ Bank Reconciliation  
\_\_\_\_\_ Check Register~~

~~Printed Period Accounts Payable Checks~~

~~Prepare necessary sales tax reports~~

~~Prepare necessary personal property tax reports~~

~~Prepare necessary use tax reports~~

~~Franchisor or the Service Provider will review all period end financial information before their issuance. A complete Franchise Bookkeeping Department Procedures Manual will be provided to Franchisee by Franchisor or the Service Provider. This manual will outline in detail all procedures and checklists followed by Franchisor or the Service Provider.~~

#### ~~FA C1~~

~~1.2 Submission of Restaurant Related Items. In order for the Franchisor or a Service Provider to provide the most timely and useful information to the Restaurant, it is essential that Franchisor or the Service Provider, as applicable, receive information from Franchisee as soon as possible after the applicable accounting period closes. Franchisor or the Service Provider will provide the Bookkeeping Services to Franchisee, within Ten (10) business days upon receiving the last information for the relevant accounting period.~~

~~Each week, in accordance with the Franchisor's procedures, Franchisee agrees to submit to Franchisor or the Service Provider: (a) Completed Weekly Daily Sales and Cash Report in computer form; (b) payroll changes and current hours worked; (c) bank statements; (d) manual check stubs with invoice copies; (e) invoices to be paid; (f) any other documents required to properly record all transactions affecting the Restaurant's financial activity.~~

~~1.3 Fee for Bookkeeping Services. In consideration for the services Franchisor and the Service Provider provide to the Restaurant pursuant to this Exhibit, Franchisee shall pay to Franchisor the sum of One Hundred Dollars (\$100) per week, due and payable at the same time and in the same manner as Royalties. If Bookkeeping Services are provided by a Service Provider, Franchisee agrees to pay Service Provider in the same manner as outlined by the Franchisor. Franchisor may increase the fee 12 months following the date the restaurant commences operations, and thereafter annually, to an amount equal to the market rate for similar services as determined by Franchisor.~~

#### ~~1.4 Termination:~~

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

~~(b) By Franchisee At any time after twelve (12) months have elapsed following the date the Restaurant Commences operations, Franchisee may cease using Franchisor or Service Provider for Bookkeeping Services as of the 90<sup>th</sup> day following completion of all of the following: (1) Franchisee provides Franchisor with written notice of its intention to discontinue the~~



~~Bookkeeping Services by Franchisor or Service Provider; and (2) Franchisee retains a full-time professional accountant (approved in writing by Franchisor) to provide Bookkeeping Services (at Franchisee's sole expense); and (3) Franchisee's full-time professional accountant agrees in writing (on a form acceptable to Franchisor) to provide timely financial statements as required by Section XIV.C of the Agreement. If Franchisee or its full-time professional accountant fails to provide such financial statements more than two (2) times in any twelve (12) month period, in addition to any other remedies, Franchisor may require Franchisee to use Franchisor or a Service Provider to provide Bookkeeping Services at the then-current fee.~~

~~FA-C2~~

~~2. Direct Debits. If required by Franchisor, Franchisee shall complete such documents to authorize Franchisor to initiate debit entries and/or credit correction entries to Franchisee's checking or savings account for the payment of Royalties, Marketing and Promotion Fees, Bookkeeping Service Fees, or other payment owed by Franchisee to Franchisor or its affiliates under the terms of the Agreement or otherwise.~~

~~IN WITNESS WHEREOF, the parties have caused this Bookkeeping Services Exhibit to be executed as of the Effective Date.~~

**FRANCHISOR:**

**ROTELLI PIZZA & PASTA, INC.**

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

Jeffery R. Smith, C.O.O.

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

Date: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
Print

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

Signature

Date: \_\_\_\_\_

## EXHIBIT "D"

### TO ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT

#### SECURITY AGREEMENT

**ROTELLI PIZZA & PASTA, INC.**, a Florida corporation ("Secured Party"), and \_\_\_\_\_ ("Debtor") agree as follows:

1. Background.

Secured party, as Franchisor, and Debtor, as Franchisee, are parties to a franchise agreement of even date (the "Franchise Agreement") pursuant to which, among other things, Debtor is obligated to pay, from time to time, certain sums to Secured Party. In order to induce Secured Party to enter into the Franchise Agreement, Debtor, among other things, is entering into this Security Agreement pursuant to which Debtor's payment and performance of all obligations under the Franchise Agreement are secured on the terms and conditions hereinafter provided for. Capitalized terms, which are defined in the Franchise Agreement, shall have the same meaning herein as therein.

2. Security Interest.

To secure the payment and performance by Debtor of all obligations and liabilities under the Franchise Agreement (such payment and performance of such obligations and liabilities being hereinafter collectively referred to as the "Obligations"), Debtor shall and hereby does grant, convey, assign and transfer to Secured Party, a security interest in and to the Franchise Agreement and all signs and other appurtenances and other property, real and personal, bearing any of the Proprietary Marks used at, located on or affixed to the **ROTELLI PIZZA & PASTA** restaurant ("Restaurant"), and all equipment, fixtures, furnishings and improvements located at the Restaurant, now owned or hereafter acquired by Debtor (the "Collateral").

3. Default.

3.1 Definitions. The term "Event of Default," as used, herein, shall mean the occurrence and continuation of any one or more of the following events:

(a) any failure of Debtor promptly and faithfully to pay, observe and perform, when due, any of the Obligations; or

(b) if Debtor becomes insolvent, commits an act of bankruptcy, files a voluntary petition in bankruptcy, or an involuntary petition in bankruptcy is filed, or a permanent or temporary receiver or trustee for the Restaurant, or all or substantially all of the Debtor's property, is appointed by any court and such appointment is not actively opposed through legal action, or Debtor makes an assignment or arrangement for the benefit of creditors, or calls a meeting of creditors, or Debtor makes a written statement to the effect that he or it is unable to pay his or its debts as they become due, or a levy of execution is made upon Debtor, or an attachment or lien outstanding with respect to the Restaurant for thirty (30) days, unless the attachment or lien is being duly contested in good faith by Debtor, and Secured Party is so advised in writing;

FA-D1

(c) if Debtor loses possession or the right of possession of all or a significant part of the Restaurant through condemnation or casualty and the Restaurant is not relocated or reopened as required by the Franchise Agreement;

(d) if Debtor is a corporation, partnership, joint venture, or other legal entity, any action is taken which purports to merge, consolidate, dissolve, or liquidate Debtor without the prior written consent of Secured Party.

3.2 Remedies. Upon the occurrence of an Event of Default, all amounts payable to Secured Party shall become immediately due and payable and Secured Party shall have all the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the state or states in which the Collateral may be located, including the right to enter upon the Restaurant peaceably and remove all Collateral. Secured Party shall give Debtor reasonable notice of the time and place of any public or private sale or other intended disposition of all or any particular Collateral, as the case may be. Debtor agrees that the requirement of reasonable notice shall be met if notice is mailed to Debtor at its address first above written not less than five (5) business days prior to the sale or other disposition. Expenses of retaking, holding, preparing for sale, selling or the like, shall include, without limitation, Secured Party's reasonable attorneys' fees and other legal expenses. Secured Party's rights and remedies, whether pursuant hereto or pursuant to the Florida Uniform Commercial Code or any other statute or rule of law conferring rights similar to those conferred by the Florida Uniform Commercial Code, shall be cumulative and not alternative.

#### 4. Notices.

Any notice, request or other communication to either party by the other as provided for herein shall be given in writing and shall be deemed given on the date the same is (i) actually received or (ii) mailed by certified or registered mail, return receipt requested, postage prepaid and addressed to the addresses first set forth at the head of this Agreement. The person and the place to which notices or copies of notices are to be mailed to either party may be changed from time to time by such party by written notice to the other party.

#### 5. Applicable Law.

This Agreement shall be governed by and interpreted under the laws of the State of Florida, without regard to the principles of conflict of laws thereof.

#### 6. Miscellaneous.

6.1 This Security Agreement shall inure to the benefit of, and shall be binding upon the respective successors, assigns, and legal representatives of the parties hereto.

6.2 The captions used herein are inserted for reference purposes only and shall not affect the interpretation or meaning of this Security Agreement.

6.3 Debtor hereby authorizes Secured Party, from time to time, to file financing statements in such form as may be necessary to perfect the security interest in the Collateral in any or all pertinent jurisdictions and in this regard, to execute said financing statements for itself (as secured party) and for Debtor (as debtor), as Debtor's agent. Upon Secured Party's request, Debtor shall execute any such financing statement as debtor.

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SECURED PARTY:

**ROTELLI PIZZA & PASTA, INC.**

By: \_\_\_\_\_  
Jeffery R. Smith, C.O.O.

**DEBTOR:**

\_\_\_\_\_  
Print

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

Date: \_\_\_\_\_

FA-D3

**EXHIBIT "E"**

**TO THE ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT**

**ASSIGNMENT OF FRANCHISE AGREEMENT**

This Agreement made this \_\_\_\_th day of \_\_\_\_\_, 200\_, by and among \_\_\_\_\_ ("Assignor"), \_\_\_\_\_, ("Assignee"), and **ROTELLI PIZZA & PASTA, INC.**, a Florida corporation (the "Franchisor").

Witnesseth:

WHEREAS, Franchisor and Assignor did enter into an agreement dated \_\_\_\_\_, 200\_ (the "Franchise Agreement") wherein and whereby Assignor became entitled to certain rights and privileges and subject to certain duties and obligations, all as more particularly described in the Franchise Agreement; and

WHEREAS, Assignor is desiring of transferring all of Assignor's right, title and interest in and to such Franchise Agreement to the Assignee, and the Assignee is desirous of accepting such transfer; and

WHEREAS, such transfer shall be ineffective and of no force or effect without the consent thereto by the Franchisor.

NOW, THEREFORE, in consideration of the sum of \$10.00, and other good and valuable consideration exchanged among the parties hereto, the receipt and sufficiency of which are hereby acknowledged, it is AGREED:

1. The Assignor by these presents does sell, grant, assign and convey unto the Assignee all of the Assignor's right, title and interest in and to the Franchise Agreement, and Assignor fully authorizes and empowers Assignee to exercise all rights as Assignor under the terms of said Franchise Agreement, and in the same manner as Assignor might or could do thereunder.

2. The Assignee hereby expressly assumes all of the terms, covenants and conditions under the terms of the Franchise Agreement, and expressly agrees to be bound thereby and assumes full performance thereunder.

3. The assignment of the Franchise Agreement by Assignor shall not constitute novation as between the Franchisor and Assignor, and Franchisor's consent to such assignment shall not in any manner relieve or release Assignor from his responsibility, financial or otherwise, under and pursuant to the Franchise Agreement, and Assignor does hereby unconditionally guaranty the performance by Assignee of all of the terms, covenants and conditions of the Franchise Agreement, and does expressly guaranty payment of Assignee of any and all sums due and payable, now or hereafter incurred, by Assignee to Franchisor pursuant to the Franchise Agreement or any renewal, extension or modification thereof, and pursuant to any contract(s) or arrangement(s) entered into in connection therewith.

FA-E1

In connection with Assignor's unconditional guaranty, Assignor consents and agrees that:

- (1) his or her liability shall be joint and several;
- (2) he or she shall render any payment or performance required under the Franchise Agreement upon demand if Assignee fails or refuses punctually to do so;
- (3) such liability shall not be contingent or conditioned upon pursuit by the Franchisor of any remedies against Assignee or any other person; and
- (4) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which the Franchisor may from time to time grant to Assignee or any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend Assignor's guaranty, which shall be continuing and irrevocable during the term of the Franchise Agreement.

4. The parties hereto do hereby expressly ratify and reaffirm the Franchise Agreement, and the terms, covenants, and conditions therein contained.

5. Nothing herein contained shall in any way operate to modify or abrogate any requirement(s) in the Franchise Agreement respecting any further or future assignment of the Franchise Agreement, or the rights or obligations thereunder, in whole or in part.

6. In addition to the foregoing, Franchisor's consent to the assignment is conditioned on the following:

- (a) Assignee must conduct no business other than the business franchised under the Franchise Agreement.
- (b) Assignor must actively manage the Assignee and own, control and direct its operations either through binding written agreements, governing documents or voting power.
- (c) Assignor must provide Franchisor with copies of all governing documents (articles of incorporation or organization, bylaws, agreements among owners, etc.).
- (d) The governing documents of Assignee must recite that the issuance and assignment of any ownership interest (i.e., corporate stock, or partnership or membership interests) are restricted by the terms of the Franchise Agreement.
- (e) All issued and outstanding ownership interests must bear a legend reciting or referring to the restrictions of the Franchise Agreement on the issuance and transfer of ownership interests in the Assignee.
- (f) Assignor must promptly notify Franchisor of any proposed changes in the principal owners and the governing documents of the Assignee.

FA-E2

7. Expressly subject to the terms herein contained, Franchisor does hereby consent to the within Assignment.

In Witness Whereof, the parties hereto have set their respective hand and seal the day and year first above written.

**Assignor/Franchisee:**

\_\_\_\_\_  
Print

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

Date: \_\_\_\_\_

**Assignee:**

\_\_\_\_\_  
Print

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

Date: \_\_\_\_\_

**Franchisor:**

**ROTELLI PIZZA & PASTA, INC.**

By: \_\_\_\_\_  
Jeffery R. Smith, C.O.O.

EXHIBIT "F"

TO THE ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT

BUSINESS ENTITY INFORMATION

This form must be completed if Franchisee has multiple owners or if Franchisee or Franchisee's franchised business is owned by a business organization (a corporation, partnership, Limited Liability Company or similar entity). Franchisor is relying on the truth and accuracy of the information set forth in awarding the franchise to Franchisee:

1. Form of Owner. Franchisee is a (check one):

- (a) General Partnership
- (b) Corporation
- (c) Limited Partnership
- (d) Limited Liability Company
- (e) Other

Specify: \_\_\_\_\_

2. Business Entity. Franchisee was incorporated or formed on \_\_\_\_\_, 200\_\_, under the laws of the State of \_\_\_\_\_. Franchisee has not conducted business under any name other than Franchisee's business entity name. The following is a list of all persons who have management rights and powers (e.g., officers, managers, partners, etc.) and their positions are listed below:

<u>Name of Person</u>	<u>Position(s) Held</u>
_____	_____
_____	_____
_____	_____
_____	_____

3. Owners. The following list includes the full name and mailing address of each person who is one of Franchisee's owners and fully describes the nature of each owner's interest. (Attach additional sheets if necessary.)



Owner's Name and Address

Description of Interest

_____	_____ % owner
_____	_____ % owner
_____	_____ % owner
_____	_____ % owner

4. Governing Documents. Attached are copies of the documents and contracts governing the ownership, management and other significant aspects of the business organization such as, articles of incorporation or organization, partnership or shareholder agreements.

This Exhibit "F" is current and complete this \_\_\_\_th day of \_\_\_\_\_, 200\_\_.

OWNER INDIVIDUALS:

- |                         |                         |
|-------------------------|-------------------------|
| 1) _____<br>[Signature] | 2) _____<br>[Signature] |
| _____<br>[Print Name]   | _____<br>[Print Name]   |
| 3) _____<br>[Signature] | 4) _____<br>[Signature] |
| _____<br>[Print Name]   | _____<br>[Print Name]   |

CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR OTHER BUSINESS ENTITY:

\_\_\_\_\_  
[Print Business Name]

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

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

**EXHIBIT "G"**

**TO THE ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT**

**PERSONAL GUARANTY**

THIS GUARANTY (this "Guaranty") is given this \_\_\_\_TH day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_

In consideration, of and as an inducement to, either the execution or acceptance of the assignment of a certain Franchise Agreement of even date herewith (the "Agreement") by **ROTELLI PIZZA & PASTA, INC.** (the "Franchisor"), each of the undersigned hereby personally and unconditionally (a) guarantees to the Franchisor, and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that \_\_\_\_\_ ("Franchisee") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including without limitation all provisions of all Sections.

Each of the undersigned consents and agrees that: (1) his or her liability under this Guaranty shall be joint and several; (2) he or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) such liability shall not be contingent or conditioned upon pursuit by the Franchisor of any remedies against Franchisee or any other person; and (4) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which the Franchisor may from time to time grant to Franchisee or any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of the Agreement.

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

GUARANTOR (S)

PERCENTAGE OF OWNERSHIP

\_\_\_\_\_  
Signature-

00.0%

\_\_\_\_\_  
Print Name-

FA-G1

## EXHIBIT "H"

### TO THE ROTELLI PIZZA & PASTA FRANCHISE AGREEMENT

#### CONFIDENTIALITY, NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

Agreement dated this \_\_\_\_TH day of \_\_\_\_\_, 200\_\_ by and between **ROTELLI PIZZA & PASTA, INC.** ("Franchisor") and \_\_\_\_\_ ("Franchisee")

Franchisee and **ROTELLI PIZZA & PASTA, INC.**, a Florida corporation ("Franchisor"), have entered into that certain Franchise Agreement dated \_\_\_\_\_, 200\_\_ (the "Franchise Agreement") with regard to the operation of a **ROTELLI PIZZA & PASTA** restaurant, under the **ROTELLI PIZZA & PASTA** System. The individual identified above, in consideration of the receipt and/or use of information proprietary to the Franchisor and employment by Franchisee, if employed, agrees with Franchisee as follows:

#### SECTION 1. DEFINITION OF CONFIDENTIAL INFORMATION

As used in this Agreement, the term "Confidential Information" means:

- 1) proprietary information of the **ROTELLI PIZZA & PASTA** System;
- 2) information marked or designated by Franchisor as confidential;
- 3) information, whether or not in written form and whether or not designated as confidential, which is known to me as being treated by Franchisor as confidential; and
- (4) information provided to Franchisee by Franchisor which Franchisee is obligated to keep confidential. Confidential Information includes, but is not limited to: ideas; designs; specifications; techniques; recipes; data; programs; documentation; processes; know-how; guest lists; marketing plans; and financial and technical information.

#### SECTION 2. OWNERSHIP

I acknowledge that all Confidential Information is and shall continue to be the exclusive property of Franchisor, whether or not disclosed or entrusted to me in connection with my services for Franchisee.

#### SECTION 3. ACKNOWLEDGMENT OF RECEIPT OF CONFIDENTIAL INFORMATION

I acknowledge that by virtue of my relationship with Franchisee, I will have access to Confidential Information, and I agree, in addition to the specific covenants contained in this Agreement, to comply with all policies and procedures for the protection of Confidential Information.

#### SECTION 4. ACKNOWLEDGMENT OF IRREPARABLE HARM

I acknowledge that any unauthorized disclosure of Confidential Information will cause irreparable harm to Franchisor. I agree not to disclose Confidential Information directly or indirectly, under any circumstances or by any means, to any third person, without the express written consent of Franchisee and/or Franchisor.

FA-H1

## SECTION 5. COVENANT OF NON-USE

I agree that I will not copy, transmit, reproduce, summarize, quote, or make any commercial or other use whatsoever of Confidential Information, except as may be necessary to perform my duties for Franchisee.

## SECTION 6. SAFEGUARDING OF CONFIDENTIAL INFORMATION

I agree to exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure, and agree generally to take all steps necessary to ensure the maintenance of the confidentiality.

## SECTION 7. EXCLUSIONS

This Agreement shall not apply to any information now or hereafter voluntarily disseminated by Franchisor to the public, or which otherwise becomes part of the public domain through lawful means.

## SECTION 8. RETURN OF CONFIDENTIAL INFORMATION

Upon termination of my relationship with Franchisee, I will deliver promptly to Franchisee as requested, all Confidential Information, in whatever form that same may be in my possession or under my control.

## SECTION 9. DURATION

The obligations set forth above in this Agreement will continue beyond the term of my service to Franchisee and for so long as I possess, in any manner or form, Confidential Information.

## SECTION 10. NON-COMPETITION

I agree that during the course of my relationship with Franchisor and for a period of two (2) years thereafter, I shall not, either directly or indirectly, engage in any business or Italian Restaurant that competes directly or indirectly with the ROTELLI PIZZA & PASTA System or would general confuse the public, either as a proprietor, partner, investor, officer, director, shareholder, employee, agent, lender, broker, franchisee, consultant, or otherwise within ~~ten~~ six (106) miles of the Franchise Location and of any other business franchised by Franchisor or owned or operated by Franchisor, a related entity, or otherwise established.

It is the intention of this provision to preclude not only direct competition, but also all forms of indirect competition, for competitive businesses, service as an independent contractor for such competitive business, or any assistance or transmission of information of any kind or nature whatsoever which would be of any material assistance to a competitor.

For purposes of the foregoing:

(i) "Competitive Business:" means any business operating or awarding franchises or licenses to others to operate, or the operation of any restaurant, including an Italian restaurant, or any other business that provides the same or similar services customarily offered under the ROTELLI PIZZA & PASTA System.

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(ii) "Directly or indirectly:" includes, but is not limited to, all persons (natural or otherwise) under my control, and that person's spouse, child, parent, brother, sister, any other relative, friend, trustee, agent or associate.

Nothing herein shall prevent me from owning for investment purposes, up to an aggregate of two (2%) percent of the capital stock of any such competitive business, provided that such business 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), provided that I do not control any such company.

**SECTION 11. NO DEFENSE**

The existence of any claim or cause of action I may have against the Franchisor and/or Franchisee predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Franchisor and/or Franchisee of this Agreement. Any failure to object to any conduct I may take in violation of this Agreement shall not be deemed a waiver. Franchisor and/or Franchisee may, specifically waive any part or all of this Agreement to the extent that such waiver is set forth in writing.

**SECTION 12. INVALIDITY**

If all or any portion of the foregoing covenant not to compete set forth in Section 11, is held unreasonable, void, vague, or illegal by any court or agency having valid jurisdiction in any unappealed final decision to which Franchisee and/or Franchisor is a party, the court or agency shall be empowered to revise and/or construe said covenant so as to cause same to fall within permissible legal limits and shall not invalidate the entire covenant. I expressly agree to be bound by any lesser covenant subsumed within the terms of this Agreement, as if the resulting covenant were separately stated in and made a part hereof.

**SECTION 13. NO HARDSHIP**

I acknowledge and confirm that the length of the term and geographical restrictions contained in Section 11 are fair and reasonable and not the result of overreaching, duress or coercion of any kind. I further acknowledge and confirm my full, uninhibited and faithful observance of each of the covenants contained in this Agreement will not cause any undue hardship, financial or otherwise, and that the enforcement of each of the covenants contained in this Agreement will not impair my ability to obtain employment or otherwise to obtain income required for my comfortable support and that of my family, and the satisfaction of the needs of my creditors. I acknowledge and confirm that my special knowledge of the business under the **ROTELLI PIZZA & PASTA** System is such as would cause the Franchisor and Franchisee serious injury and loss if I (or anyone acquiring such knowledge through me) were to use such ability and knowledge to the benefit of a competitor or were to compete with the Franchisor and Franchisee.

**SECTION 14. TOLLING**

In the event of any legal action or other proceeding for the enforcement of this Agreement, the time for calculating the term of the restrictions therein shall not include the period of time commencing with the filing of legal action or other proceeding to enforce the terms of this Agreement hereof through the date of final judgment or final resolution, including all appeals, if any, of such legal action or other proceeding.

**SECTION 15. BENEFIT**

I agree and acknowledge that Franchisor shall be a third party beneficiary of my obligations hereunder and Franchisor shall be entitled to all rights and remedies conferred upon the Franchisee hereunder, which Franchisor may enforce directly against me with or without the consent or joinder of Franchisee.

**SECTION 16. BINDING EFFECT**

All of the terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by me, Franchisee and Franchisor and their respective legal representatives, heirs, successors and assigns.

**SECTION 17. GOVERNING LAW, JURISDICTION, AND VENUE**

This Agreement shall be governed by the laws of the State of Florida without regard to principles of conflicts of laws. Without limiting the jurisdiction or venue of any other federal or state courts, I irrevocably and unconditionally: (a) agree that any legal proceeding relating to this Agreement may be brought in the state courts in Dade County or the District Court of the United States, Southern District of Florida; (b) consent to the jurisdiction of each such court; (c) waive any objection to the laying of venue of any proceeding in any of such courts; and (d) agree that service of any court paper may be effected on me by mail, or in such other manner as may be provided under applicable laws in Florida.

**SECTION 18. REMEDIES**

If I fail to abide by this Agreement, Franchisor and/or Franchisee will be entitled to specific performance, including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, to judgment for damages caused by my breach, to any other remedies provided by applicable law and to payment of all of its costs and expenses in pursuing such remedies, including its attorneys' fees, at all trial and appellate levels.

I represent that I have read and understand the terms of this Agreement and agree to be bound hereby.

This \_\_\_TH day of \_\_\_\_\_ 200\_\_

**FRANCHISEE:**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature