

b. Agreement by the proposed transferee to satisfactorily complete the initial training program described in this Agreement, which training may be completed by the transferee either prior to or immediately after assignment of this Agreement;

c. Execution by the transferee of a Franchise Agreement in a form then currently offered by the Franchisor, which shall supersede this Agreement in all respects. If a new Franchise Agreement is signed, the terms thereof may differ from the terms of this Agreement; provided, however, the transferee will not be required to pay any additional initial franchise fee;

d. Provision by the Franchisee of written notice to the Franchisor 30 days' prior to the proposed effective date of the transfer, such notice to contain information reasonably detailed to enable the Franchisor to evaluate the terms and conditions of the proposed transfer;

e. The proposed transferee shall have provided information to the Franchisor sufficient for the Franchisor to assess the proposed transferee's business experience, aptitude and financial qualification, and the Franchisor shall have ascertained that the proposed transferee meets such qualifications;

f. Execution by Franchisee of a general release, in a form satisfactory to the Franchisor, of any and all claims against the Franchisor, its affiliates and their respective officers, directors, employees and agents;

g. Payment by the Franchisee or the proposed transferee of \$7,500; and

h. Agreement by the Franchisee to abide by the post-termination covenant not to compete set forth in Section 21.2 below.

17.3. Franchisor's Approval of Transfer

The Franchisor has 30 days from the date of the written notice of the proposed transfer to approve or disapprove in writing, of the Franchisee's proposed transfer which approval will not be unreasonably withheld. The Franchisee acknowledges that the proposed transferee shall be evaluated for approval by the Franchisor based on the same criteria as is currently being used to assess new franchisees of the Franchisor and that such proposed transferee shall be provided, if appropriate, with such disclosures as may be required by state or federal law. If the Franchisee and the proposed transferee comply with all conditions for assignment set forth herein and the Franchisor has not given the Franchisee notice of its approval or disapproval within the 30-day period, approval is deemed granted. The Franchisor's approval of any transfer shall not constitute approval for any subsequent transfer or a waiver of any of the Franchisor's rights under this Article 17.

17.4. Right of First Refusal

In the event the Franchisee wishes to transfer its rights under this Agreement or any interest in it, or any part or portion of any business entity that owns it, or all or a substantial portion of the assets of the SPICY PICKLE Restaurant, the Franchisee agrees to grant to the Franchisor a 30 day right of first refusal to purchase such rights, interest or assets on the same terms and conditions as are contained in the written offer to purchase submitted to the Franchisee by the proposed purchaser; provided, however, the following additional terms and conditions shall apply:

a. The Franchisee shall notify the Franchisor of such offer by sending a written notice to the Franchisor (which notice may be the same notice as required by Section 17.2.d. above), enclosing a copy of the written offer from the proposed purchaser;

b. The 30 day right of first refusal period will run concurrently with the period in which the Franchisor has to approve or disapprove the proposed transferee;

c. Such right of first refusal is effective for each proposed transfer and any material change in the terms or conditions of the proposed transfer shall be deemed a separate offer on which a new 30 day right of first refusal shall be given to the Franchisor;

d. If the consideration or manner of payment offered by a third party is such that the Franchisor may not reasonably be required to furnish the same, then the Franchisor may purchase the interest which is proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the cash consideration, an independent appraiser shall be designated by the Franchisor, whose determination will be binding upon the parties. All expenses of the appraiser shall be paid for equally between the Franchisor and the Franchisee; and

e. If the Franchisor chooses not to exercise its right of first refusal, the Franchisee shall be free to complete the sale, transfer or assignment, subject to compliance with Sections 17.2 and 17.3 above. Absence of a reply to the Franchisee's notice of a proposed sale within the 30 day period is deemed a waiver of such right of first refusal.

17.5. Specific Types of Transfers

The Franchisee acknowledges that the Franchisor's right to approve or disapprove of a proposed sale or transfer, and all other requirements and rights related to such proposed sale or transfer, as provided for above, shall apply (1) if the Franchisee is a partnership or other business association, to the addition or deletion of a partner or members of the association or the transfer of any partnership or membership among existing partners or members; (2) if the Franchisee is a corporation or limited liability company, to any proposed transfer or assignment of 25% or more of the ownership interests of the Franchisee, whether such transfer occurs in a single transaction or several transactions; and (3) if the Franchisee is an individual, to the transfer from such individual or individuals to a corporation or limited liability company controlled by them, in which case the Franchisor's approval will be conditioned upon: (i) the continuing personal guarantee of the individual (or individuals) for the performance of obligations under this Agreement; (ii) the issuance and/or transfer of ownership interests which would affect a change in ownership of 25% or more of the stock or membership units in the company being conditioned on the Franchisor's prior written approval; (iii) a limitation on the company's business activity to that of operating the SPICY PICKLE Restaurant and related activities; and (iv) other reasonable conditions. With respect to a proposed transfer as described in subsection (1) and (3) of this Section, the Franchisor's right of first refusal to purchase, as set forth above, shall not apply and the Franchisor will waive any transfer fee chargeable to the Franchisee for a transfer under these circumstances.

17.6. Assignment by the Franchisor

This Agreement is fully assignable by the Franchisor and shall inure to the benefit of any assignee or other legal successor in interest, and the Franchisor shall in such event be fully released from the same.

17.7. Franchisee's Death or Disability

Upon the death or permanent disability of the Franchisee (or the individual controlling the Franchisee entity), the executor, administrator, conservator, guardian or other personal representative of such person shall transfer the Franchisee's interest in this Agreement or such interest in the Franchisee entity to an approved third party. Such disposition of this Agreement or such interest (including, without limitation, transfer by bequest or inheritance) shall be completed within a reasonable time, not to exceed 180 days from the date of death or permanent disability, and shall be subject to all terms and conditions applicable to transfers contained in this Article 17. Failure to transfer the interest in this Agreement or such interest in the Franchisee entity within said period of time shall constitute a breach of this Agreement. For the purposes hereof, the term "permanent disability" shall mean a mental or physical disability, impairment or condition that is reasonably expected to prevent or actually does prevent the Franchisee or the owner of a controlling interest in the Franchisee entity from supervising the management and operation of the SPICY PICKLE Restaurant for a period of 120 days from the onset of such disability, impairment or condition.

18. TERM AND EXPIRATION

18.1. Term

The term of this Agreement is for a period of 10 years from the date of this Agreement, unless sooner terminated as provided herein.

18.2. Continuation.

If for any reason, the Franchisee continues to operate the Restaurant beyond the term of this Agreement or any subsequent renewal period, it shall be deemed to be on a month-to-month basis under the terms of this Agreement and subject to termination upon 30 days notice or as required by law. If said hold-over period exceeds 90 days, this Agreement is subject to immediate termination unless applicable law requires a longer period. Upon termination after any hold-over period, the Franchisee and those in active concert with the Franchisee, including family members, officers, directors, partners and managing agents, are subject to the terms of Sections 19.3, 19.4, 21.2 and 21.3 of this Agreement and all other applicable post-termination obligations contained in this Agreement.

18.3. Rights Upon Expiration

At the end of the initial term hereof, the Franchisee shall have the option to renew its franchise rights for an additional term, by acquiring successor franchise rights, if the Franchisor does not exercise its right not to offer a successor franchise in accordance with Section 18.5 below and if the Franchisee:

- a. At least 30 days prior to expiration of the term, executes the form of Franchise Agreement then in use by the Franchisor;
- b. Has complied with all provisions of this Agreement during the current term, including the payment on a timely basis of all Royalties, Advertising Contributions and other fees due hereunder. "Compliance" shall mean, at a minimum, that the Franchisee has not received any written notification from the Franchisor of breach hereunder more than four times during the term hereof;
- c. Upgrades and/or remodels the SPICY PICKLE Restaurant and its operations at the Franchisee's sole expense (the necessity of which shall be in the sole discretion of the Franchisor) to conform with the then current Operations Manual;

d. Executes a general release, in a form satisfactory to the Franchisor, of any and all claims against the Franchisor and its affiliates, and their respective officers, directors, employees and agents arising out of or relating to this Agreement; and

e. Pays a successor franchise fee of 20% of the then current initial franchise fee for a single (first) franchise.

18.4. Exercise of Option for Successor Franchise

The Franchisee may exercise its option for a successor franchise by giving written notice of such exercise to the Franchisor not later than 180 days prior to the scheduled expiration of this Agreement. The Franchisee's successor franchise rights shall become effective by signing the Franchise Agreement then currently being offered to new franchisees of the Franchisor. The terms of the then current franchise agreement shall govern the renewal term except that the Franchisee will not have to pay another initial franchise fee.

18.5. Conditions of Refusal

The Franchisor shall not be obligated to offer the Franchisee a successor franchise upon the expiration of this Agreement if the Franchisee fails to comply with any of the above conditions of renewal. In such event (except for failure to execute the then current Franchise Agreement or pay the successor franchise fee), the Franchisor shall give notice of expiration at least 180 days prior to the expiration of the term, and such notice shall set forth the reasons for such refusal to offer successor franchise rights. Upon the expiration of this Agreement, the Franchisee shall comply with the provisions of Section 19.4 below.

19. DEFAULT AND TERMINATION

19.1. Termination by Franchisor - Effective Upon Notice

The Franchisor shall have the right, at its option, to terminate this Agreement and all rights granted the Franchisee hereunder, without affording the Franchisee any opportunity to cure any default (subject to any state laws to the contrary, where state law shall prevail), effective upon receipt of notice by the Franchisee, addressed as provided in Section 23.12 upon the occurrence of any of the following events:

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

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

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

d. **Criminal Conviction.** If the Franchisee is convicted of a felony, a crime involving moral turpitude, or any crime or offense that is reasonably likely, in the sole opinion of the Franchisor, to materially and unfavorably affect the Licensed Methods, Marks, goodwill or reputation thereof;

e. **Failure to Make Payments.** If the Franchisee fails to pay any Royalties, Advertising Contributions, inventory payments or any other amounts due the Franchisor or its affiliates, including any amounts which may be due as a result of any subleases or lease assignments between the Franchisee and the Franchisor, within 10 days after receiving notice that such fees or amounts are overdue;

f. **Misuse of Marks.** If the Franchisee misuses or fails to follow the Franchisor's directions and guidelines concerning use of the Franchisor's Marks and fails to correct the misuse or failure within 10 days after notification from the Franchisor;

g. **Unauthorized Disclosure.** If the Franchisee intentionally or negligently discloses to any unauthorized person the contents of or any part of the Franchisor's Operations Manual or any other trade secrets or confidential information of the Franchisor;

h. **Repeated Noncompliance.** If the Franchisee has received two previous notices of default from the Franchisor and is again in default of this Agreement within a 12 month period, regardless of whether the previous defaults were cured by the Franchisee; or

i. **Unauthorized Transfer.** If the Franchisee sells, transfers or otherwise assigns the Franchise, an interest in the Franchise or the Franchisee entity, this Agreement, the SPICY PICKLE Restaurant or a substantial portion of the assets of the SPICY PICKLE Restaurant owned by the Franchisee without complying with the provisions of Article 17 above.

19.2. Termination by Franchisor - Thirty Days Notice

The Franchisor shall have the right to terminate this Agreement (subject to any state laws to the contrary, where state law shall prevail), effective upon 30 days written notice to the Franchisee, if the Franchisee breaches any other provision of this Agreement and fails to cure the default during such 30 day period. In that event, this Agreement will terminate without further notice to the Franchisee, effective upon expiration of the 30 day period. Defaults shall include, but not be limited to, the following:

a. **Failure to Maintain Standards.** The Franchisee fails to maintain the then current operating procedures and adhere to the specifications and standards established by the Franchisor as set forth herein or in the Operations Manual or otherwise communicated to the Franchisee;

b. **Deceptive Practices.** The Franchisee engages in any unauthorized business or practice or sells any unauthorized product or service under the Franchisor's Marks or under a name or mark which is confusingly similar to the Franchisor's Marks;

c. **Failure to Obtain Consent.** The Franchisee fails, refuses or neglects to obtain the Franchisor's prior written approval or consent as required by this Agreement;

d. **Failure to Comply with Manual.** The Franchisee fails or refuses to comply with the then-current requirements of the Operations Manual; or

e. **Breach of Related Agreement.** The Franchisee defaults under any term of any sublease or lease assignment for the Franchised Location, any product supply agreement, any security agreement, any other agreement material to the SPICY PICKLE Restaurant or any other Franchise Agreement between the Franchisor and the Franchisee and such default is not cured within the time specified in such sublease, product supply agreement, other agreement or other Franchise Agreement. The Franchisor will provide the Franchisee the same cure rights with respect to defaults under such other agreements with the Franchisor as the Franchisee has under this Agreement.

Notwithstanding the foregoing, if the breach is curable, but is of a nature which cannot be reasonably cured within such 30 day period and the Franchisee has commenced and is continuing to make good faith efforts to cure the breach during such 30 day period, the Franchisee shall be given an additional reasonable period of time, but not more than 90 days, to cure the same, and this Agreement shall not automatically terminate without written notice from the Franchisor.

19.3. **Right to Purchase**

Upon termination or expiration of this Agreement for any reason, the Franchisor shall have the option to purchase the SPICY PICKLE Restaurant or a portion of the assets of the Restaurant, which may include, at the Franchisor's option, all of the Franchisee's interest, if any, in and to the real estate upon which the SPICY PICKLE Restaurant is located, and all buildings and other improvements thereon, including leasehold interests, at fair market value, less any amount apportioned to the goodwill of the SPICY PICKLE Restaurant which is attributable to the Franchisor's Marks and Licensed Methods, and less any amounts owed to the Franchisor by the Franchisee. The following additional terms shall apply to the Franchisor's exercise of this option:

a. The Franchisor's option hereunder shall be exercisable by providing the Franchisee with written notice of its intention to exercise the option given to the Franchisee no later than the effective date of termination, in the case of termination, or at least 90 days prior to the expiration of the term of the franchise, in the case of non-renewal;

b. In the event that the Franchisor and the Franchisee cannot agree on the fair market value of the SPICY PICKLE Restaurant, then the fair market value shall be determined by an independent third party appraisal. The Franchisor and the Franchisee shall each select one independent, qualified appraiser, and the two so selected shall select a third appraiser, all three to determine the fair market value of the SPICY PICKLE Restaurant. The purchase price shall be the median of the fair market values as determined by the three appraisers. The parties shall bear the expenses of their selected appraiser and shall evenly split the expenses of the third appraiser.

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

d. The Franchisor shall set the closing for the purchase of the SPICY PICKLE Restaurant to take place no later than 60 days after the termination or nonrenewal date. At the Franchisor's option, the Franchisee shall continue the Restaurant operations by extension of this Agreement through the closing date. The Franchisor will pay the purchase price in full at the closing, or, at its option, in 12 equal consecutive monthly installments with interest at a rate of 10% per annum. The Franchisee must sign all documents of assignment and transfer as are reasonably necessary for purchase of the SPICY PICKLE Restaurant or its assets by the Franchisor.

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

19.4. Obligations of Franchisee Upon Termination or Expiration

The Franchisee is obligated upon termination or expiration of this Agreement to immediately:

a. Pay to the Franchisor all Royalties, Advertising Contributions, other fees, and any and all amounts or accounts payable then owed the Franchisor or its affiliates pursuant to this Agreement, or pursuant to any other agreement, whether written or oral, including subleases and lease assignments, between the parties;

b. Cease to identify itself as a SPICY PICKLE franchisee or publicly identify itself as a former Franchisee or use any of the Franchisor's trade secrets, signs, symbols, devices, trade names, trademarks or other materials;

c. If the Franchisor does not exercise its option to purchase described in Section 19.3 above, cease to identify the Franchised Location as being, or having been, associated with the Franchisor and, if deemed necessary by the Franchisor, paint or otherwise change the interior and exterior of the Restaurant to distinguish it from a SPICY PICKLE Restaurant and immediately cease using any proprietary mark of the Franchisor or any mark in any way associated with the Marks and Licensed Methods;

d. Deliver to the Franchisor all signs, sign-faces, advertising materials, forms and other materials bearing any of the Marks or otherwise identified with the Franchisor and obtained by and in connection with this Agreement;

e. Immediately deliver to the Franchisor the Operations Manual and all other information, software, documents and copies thereof which are proprietary to the Franchisor, including but not limited to all customer information contained in computer databases or otherwise;

f. Promptly take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to its use of any Marks which are under the exclusive control of the Franchisor or, at the option of the Franchisor, assign the same to the Franchisor;

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

h. If applicable, take such action as may be required to remove from the Internet all sites referring to the Franchisee's former SPICY PICKLE Restaurant or any of the Marks and to cancel or assign to the Franchisor, in the Franchisor's sole discretion, all rights to any domain names for any sites on the Internet that refer to the Franchisee's former SPICY PICKLE Restaurant or any of the Marks; and

i. Abide by all restrictive covenants set forth in Article 21 of this Agreement and, if exercised by the Franchisor, the Franchisor's option to purchase described in Section 19.3 of this Agreement.

19.5. Acknowledgement

In the event this Agreement is terminated by the Franchisor prior to its expiration as set forth in Sections 19.1 and 19.2 above, the Franchisee acknowledges and agrees that, in addition to all other available remedies, the Franchisor shall have the right to recover lost future royalties during any period in which the Franchisee fails to pay such royalties through and including the remainder of the then current term of this Agreement.

19.6. State and Federal Law

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

20. BUSINESS RELATIONSHIP

20.1. Independent Businesspersons

The parties acknowledge that each of them are independent businesspersons, that their only relationship is by virtue of this Agreement and that no fiduciary relationship is created hereunder. Neither party is liable or responsible for the other's debts or obligations, nor shall either party be obligated for any

damages to any person or property directly or indirectly arising out of the operation of the other party's business authorized by or conducted pursuant to this Agreement. Neither the Franchisor nor the Franchisee will hold themselves out to be the agent, employer or partner of the other and neither the Franchisor nor the Franchisee has the authority to bind or incur liability on behalf of the other.

20.2. Payment of Third Party Obligations

The Franchisor shall have no liability for the Franchisee's obligations to pay any third parties, including without limitation, any product vendors, or any sales, use, service, occupation, excise, gross receipts, income, property or other tax levied upon the Franchisee, the Franchisee's property, the SPICY PICKLE Restaurant or upon the Franchisor in connection with the sales made or business conducted by the Franchisee (except any taxes the Franchisor is required by law to collect from the Franchisee with respect to purchases from the Franchisor).

20.3. Indemnification

The Franchisee shall indemnify, defend and hold harmless the Franchisor, its subsidiaries, parents and affiliates, and their respective shareholders, equity owners, partners, directors, officers, managers, members, employees, agents, representatives, successors and assigns (the "**Indemnified Parties**"), against, and to reimburse them for all claims, obligations and damages described in this Section 20.3, any and all third party obligations described in Section 20.2 and any and all claims and liabilities directly or indirectly arising out of the operation of the SPICY PICKLE Restaurant or arising out of the use of the Marks and Licensed Methods in any manner not in accordance with this Agreement. For purposes of this indemnification, claims shall mean and include all obligations, actual and consequential damages and costs reasonably incurred in the defense of any claim against the Indemnified Parties, including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. The Franchisor shall have the right to defend any such claim against it. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

21. RESTRICTIVE COVENANTS

21.1. Non-Competition During Term

The Franchisee acknowledges that, in addition to the training provided pursuant to this Agreement and the license of the Marks hereunder, the Franchisor has also licensed commercially valuable information which comprises and is a part of the Licensed Methods, including without limitation, operations, recipes, vendor lists, marketing, advertising and related information and materials and that the value of this information derives not only from the time, effort and money which went into its compilation, but from the usage of the same by all the franchisees of the Franchisor using the Marks and Licensed Methods. Therefore, other than the SPICY PICKLE Restaurant licensed herein or authorized by separate agreement with the Franchisor, neither the Franchisee nor any of the Franchisee's officers, directors, shareholders, equity owners, members, managers or partners, nor any member of his or their immediate families, shall during the term of this Agreement:

- a. have any direct or indirect controlling interest as a disclosed or beneficial owner in a "Competitive Business" as defined below;
- b. perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business; or

c. divert or attempt to divert any business related to, or any customer or account of the SPICY PICKLE Restaurant, the Franchisor's business or any other SPICY PICKLE franchisee's business, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of the Franchisor or another franchisee licensed by the Franchisor to use the Marks and Licensed Methods, to any Competitive Business by any direct inducement or otherwise.

The term "**Competitive Business**" as used in this Agreement shall mean any business operating, whether retail, wholesale or otherwise, or granting franchises or licenses to others to operate, a food service business featuring submarine, deli or panini or other sandwiches or pizza and deriving more than 10% of its ~~gross~~ sales from the sale of submarine, deli or panini or other sandwiches or pizza. Notwithstanding the foregoing, the Franchisee shall not be prohibited from owning securities in a Competitive Business if such securities are listed on a stock exchange or traded on the over-the-counter market and represent 5% or less of that class of securities issued and outstanding.

21.2. Post-Termination Covenant Not to Compete

Upon termination or expiration of this Agreement for any reason, the Franchisee and its officers, directors, shareholders, members, managers and/or partners agree that, for a period of two years commencing on the effective date of termination or expiration, or the date on which the Franchisee ceases to conduct business, whichever is later, neither Franchisee nor its officers, directors, shareholders, members, managers and/or partners shall have any direct or indirect interest (through a member of any immediate family of the Franchisee or its owners or otherwise) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent or in any other capacity in any Competitive Business, defined in Section 21.1 above, located or operating within a 15 mile radius of the Franchised Location, within 15 miles of the Franchised Location of any other franchised SPICY PICKLE Restaurant or, within 15 miles of the Restaurant premises of any SPICY PICKLE Restaurant owned by the Franchisor or affiliate of the Franchisor. The restrictions of this Section shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 5% or less of the number of shares of that class of securities issued and outstanding. The Franchisee and its officers, directors, shareholders, members, managers and/or partners acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section will not deprive them of their personal goodwill or ability to earn a living.

21.3. Confidentiality of Proprietary Information

The Franchisee and the Franchisor acknowledge that the distinctive business format, plans, methods, data, processes, marketing systems, manuals, formulas, recipes, techniques, designs, layouts, operating procedures, trademarks, proprietary marks and information and know-how of the Franchisor which are developed and utilized in connection with the Licensed Methods are proprietary and confidential ("**Confidential Information**"). Such Confidential Information is unique, exclusive property and a trade secret of the Franchisor and has valuable goodwill associated with it. The Franchisee acknowledges that any unauthorized disclosure or use of the Confidential Information would be wrongful and would cause irreparable injury and harm to the Franchisor. It is understood that Confidential Information is deemed to include, without limitation, customers lists, vendor lists, any and all information contained in the Operations Manual, and any information of whatever nature which gives the Franchisor and its affiliates an opportunity to obtain an advantage over its competitors who do not have access to, know or use such lists, written materials, formulas or information. The Franchisee further acknowledges that the Franchisor has expended a great amount of effort and money in obtaining and developing the Confidential Information, that the Franchisor has taken numerous precautions to guard the secrecy of the

Confidential Information, that it would be very costly for competitors to acquire or duplicate the Confidential Information and that any unauthorized disclosure of such Confidential Information shall cause irreparable harm to the Franchisor. Consequently, the Franchisee shall not at any time, publish, disclose, divulge or in any manner communicate to any person, firm, corporation, association, partnership or any other entity whatsoever or use, directly or indirectly, for its own benefit or for the benefit of any person, firm, corporation or other entity other than for the use of the Franchisor or the Franchisee's SPICY PICKLE Restaurant, any of the Confidential Information of the Franchisor or its affiliates. The Franchisor and the Franchisee agree that the Confidential Information does not include information that is generally available to the public.

21.4. Confidentiality Agreement

The Franchisor reserves the right to require that the Franchisee cause each of its officers, directors, partners, shareholders, equity owners, members, managers, the Principal Manager, and, if the Franchisee is an individual, immediate family members, to execute a Nondisclosure and Noncompetition Agreement containing the above restrictions, in a form approved by the Franchisor.

21.5. Interpretation

All parties to this Agreement acknowledge that this Article has been fully negotiated and has been entered into freely. If any provision of this Article 21 shall be held to be invalid by any tribunal, the terms of said invalid provision shall be modified to the least possible extent so as to make the provision valid. This Article shall not be interpreted against either party as drafter.

22. INSURANCE

22.1. Insurance Coverage

The Franchisee shall procure, maintain and provide evidence of (i) commercial general liability insurance for the Franchised Location and its operations with a limit of not less than \$2,000,000.00 combined single limit or with such greater limits or such other terms and conditions as may be described in the Operations Manual or required as part of any lease agreement for the Franchised Location; (ii) products liability coverage in such amounts as set forth in the Operations Manual; (iii) unemployment and worker's compensation insurance with a broad form all-states endorsement coverage sufficient to meet the requirements of the law; (iv) liquor liability insurance; and (v) all-risk personal property insurance in an amount equal to at least 100% of the replacement costs of the contents and tenant improvements located at the SPICY PICKLE Restaurant. All of the required policies of insurance shall name the Franchisor as an additional insured and shall provide for a 30-day advance written notice to the Franchisor of cancellation. The Franchisor shall have the right upon 60 days prior written notice to the Franchisee to revise the coverage limits and types of required insurance described in this Section 22.1.

22.2. Proof of Insurance Coverage

The Franchisee will provide proof of insurance to the Franchisor prior to commencement of operations at its SPICY PICKLE Restaurant. This proof will show that the insurer has been authorized to inform the Franchisor in the event any policies lapse or are cancelled. Noncompliance with the insurance provisions set forth herein shall be deemed a material breach of this Agreement; in the event of any lapse in insurance coverage, in addition to all other remedies, the Franchisor shall have the right to demand that the Franchisee cease operations of the SPICY PICKLE Restaurant until coverage is reinstated, or, in the alternative, pay any delinquencies in premium payments and charge the same back to the Franchisee.

23. MISCELLANEOUS PROVISIONS

23.1. Modification

The Franchisor and/or the Franchisee may modify this Agreement only upon execution of a written agreement between the two parties. The Franchisee acknowledges that the Franchisor may modify its standards, specifications and operating and marketing procedures set forth in the Operations Manual unilaterally under any conditions and to the extent in which the Franchisor, in its sole discretion, deems necessary to protect, promote or improve the Marks and the quality of the Licensed Methods, but under no circumstances will such modifications be made arbitrarily without such determination.

23.2. Entire Agreement

This Agreement, including all exhibits and addenda, contains the entire agreement between the parties and supersedes any and all prior agreements concerning the subject matter hereof. The Franchisee agrees and understands that the Franchisor shall not be liable or obligated for any oral representations or commitments made prior to the execution hereof or for claims of negligent or fraudulent misrepresentation based on any such oral representations or commitments and that no modifications of this Agreement shall be effective except those in writing and signed by both parties.

23.3. Delegation by the Franchisor

From time to time, the Franchisor shall have the right to delegate the performance of any portion or all of its obligations and duties hereunder to third parties, whether the same are agents of the Franchisor or independent contractors which the Franchisor has contracted with to provide such services. The Franchisee agrees in advance to any such delegation by the Franchisor of any portion or all of its obligations and duties hereunder.

23.4. Governing Law/Consent to Venue and Jurisdiction

Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 *et seq.*) or other federal law, this Agreement shall be interpreted under the laws of the state of Colorado and any dispute between the parties shall be governed by and determined in accordance with the substantive laws of the state of Colorado, which laws shall prevail in the event of any conflict of law. The Franchisee and the Franchisor have negotiated regarding a forum in which to resolve any disputes which may arise between them and have agreed to select a forum in order to promote stability in their relationship. Therefore, if a claim is asserted in any legal proceeding involving the Franchisee, its officers, directors or managers (collectively, "Franchisee Affiliates") and the Franchisor, its officers, directors, managers or sales employees (collectively, "Franchisor Affiliates"), all parties agree that the exclusive venue for disputes between them shall be in the state and federal courts of Colorado, in Denver, Colorado and each waive any objection they may have to the personal jurisdiction of or venue in the state and federal courts of Colorado. The Franchisor, the Franchisor Affiliates, the Franchisee and the Franchisee Affiliates each waive their rights to a trial by jury.

23.5. Injunctive Relief

The Franchisor and the Franchisee shall each have the right in the proper case to obtain injunctive relief from a court of competent jurisdiction. The Franchisee agrees that the Franchisor may obtain such injunctive relief, without posting a bond or bonds totaling more than \$500, but upon due notice, and the Franchisee's sole remedy in the event of the entry of such injunctive relief shall be the dissolution of such

injunctive relief, if warranted, upon hearing duly had; provided, however, that all claims for damages by reason of the wrongful issuance of any such injunction are hereby expressly waived by the Franchisee.

23.6. Effective Date

This Agreement shall not be effective until accepted by the Franchisor as evidenced by dating and signing by an officer or manager of the Franchisor.

23.7. Review of Agreement

The Franchisee acknowledges that it had a copy of this Agreement in its possession for a period of time not less than 10 full business days, during which time the Franchisee has had the opportunity to submit same for professional review and advice of the Franchisee's choosing prior to freely executing this Agreement.

23.8. Attorneys' Fees

In the event of any default on the part of either party to this Agreement, in addition to all other remedies, the party in default will pay the aggrieved party all amounts due and all damages, costs and expenses, including reasonable attorneys' fees, incurred by the aggrieved party in any legal action, arbitration or other proceeding as a result of such default, plus interest at the highest rate allowable by law, accruing from the date of such default.

23.9. No Waiver

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

23.10. No Right to Set Off

The Franchisee shall not be allowed to set off amounts owed to the Franchisor for Royalties, Advertising Contributions, fees or other amounts due hereunder, against any monies owed to the Franchisee, nor shall the Franchisee in any event withhold such amounts due to any alleged nonperformance by the Franchisor hereunder, which right of set off is hereby expressly waived by the Franchisee.

23.11. Invalidity

If any provision of this Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason, by any court of competent jurisdiction, government authority, arbitrator or other arbiter of any dispute arising hereunder, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect. If the restrictions concerning the time duration, geography, affected individuals or entities, or breadth of activity contained in Article 21 are held to be unenforceable under any applicable law, the arbiter of any dispute regarding this Agreement is hereby authorized to and shall make only such limited changes as are necessary to make the restrictions enforceable.

23.12. Notices

All notices required to be given under this Agreement shall be given in writing, by certified mail, return receipt requested, or by an overnight delivery service providing documentation of receipt, at the address set forth in the first Section of this Agreement or at such other addresses as the Franchisor or the Franchisee may designate from time to time, and shall be effectively given when deposited in the United States mail, postage prepaid, or when received via overnight delivery, as may be applicable.

23.13. Survival of Provisions

Any provisions that by their terms extend beyond termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding the termination or expiration of this Agreement,

23.14. Payment of Taxes.

The Franchisee shall reimburse the Franchisor, or its affiliates and designees, promptly and when due, the amount of all sales taxes, use taxes, personal property taxes and similar taxes imposed upon, required to be collected or paid by the Franchisor, or its affiliates or designees, on account of services or goods furnished by the Franchisor, its affiliates or designees, to the Franchisee through sale, lease or otherwise (except for any taxes the Franchisor or its affiliates are required by law to collect from the Franchisee with respect to products purchased from the Franchisor and its affiliates), or on account of collection by the Franchisor of the initial franchise fee, Royalties, Advertising Contribution or any other payments made by the Franchisee to the Franchisor required under the terms of this Agreement.

23.15. Cumulative Rights

The rights and remedies of the Franchisor and the Franchisee hereunder are cumulative and no exercise or enforcement by the Franchisor or the Franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by the Franchisor or the Franchisee of any other right or remedy hereunder which the Franchisor or the Franchisee is entitled by law to enforce.

23.16. Acknowledgement

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

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

(B) NO ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN GIVEN AS TO THE POTENTIAL SUCCESS OF SUCH BUSINESS VENTURE OR THE EARNINGS LIKELY TO BE ACHIEVED, EXCEPT AS MAY BE STATED IN THIS AGREEMENT OR ANY DISCLOSURE DOCUMENT PROVIDED TO THE FRANCHISEE BY THE FRANCHISOR, AND

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above set forth.

SPICY PICKLE FRANCHISING, INC.,
a Colorado corporation

By: _____

Name: _____

Title: _____

FRANCHISEE

(Print Name)

Individually

Address: _____

City: _____

State: _____ Zip: _____

OR:

(if a corporation or partnership)

Company Name

By: _____

Name: _____

Title: _____

Address: _____

City: _____

State: _____ Zip: _____

(9/06)

(3/07)

**EXHIBIT I TO
FRANCHISE AGREEMENT**

**ADDENDUM TO
SPICY PICKLE FRANCHISING, INC.
FRANCHISE AGREEMENT**

1. **Franchised Location.** The "Franchised Location," set forth in Section 3.1 of the Agreement shall be: _____;

OR

Designated Area. The Franchisor and the Franchisee acknowledge that the Franchised Location cannot be designated in Section 1 above as a specific address because the location has not been selected and approved; therefore, within 90 days following the date of the Agreement, the Franchisee shall choose and acquire an approved location for its SPICY PICKLE Restaurant within the following geographic area ("Designated Area"): _____

2. **Protected Territory.** The "Protected Territory" referred to in Section 3.2 of the Agreement shall be described as: _____

3. **Initial Franchise Fee.** The Franchisee shall pay to the Franchisor an initial franchise fee of \$ _____, due and payable in the manner set forth in Section 4.1 of the Agreement.

4. **Acknowledgement.** By executing this Exhibit and/or the Rider hereto, the Franchisee acknowledges that the Franchisor's approval of a site does not constitute a representation or warranty of any kind, express or implied, as to the suitability of the site for a SPICY PICKLE Restaurant or for any other purpose and that the Franchisee's acceptance of a franchise for the operation of a SPICY PICKLE Restaurant at the site is based on its own independent investigation of the suitability of the site.

Fully executed this ___ day of _____, 20__.

SPICY PICKLE FRANCHISING, INC.

By: _____
Title: _____

FRANCHISEE

By: _____
Title: _____

**EXHIBIT I-1
TO FRANCHISE AGREEMENT**

RIDER TO ADDENDUM - LOCATION APPROVAL

1. **Franchised Location.** The Franchised Location, set forth in Section 3.1 of the Agreement shall be: _____
and the "Protected Territory," referred to in Section 3.2 of the Agreement, shall be described as: _____

2. **Legal Address.** The business address for any notices mailed pursuant to Section 25.1023.12 of the Agreement shall be changed to read as follows: _____

Fully executed this ____ day of _____, 20__.

SPICY PICKLE FRANCHISING, INC.

By: _____
Title: _____

FRANCHISEE

By: _____
Title: _____

**EXHIBIT II
TO FRANCHISE AGREEMENT**

GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the above Franchise Agreement (the "**Agreement**") by Spicy Pickle Franchising, Inc. (the "**Franchisor**"), each of the undersigned hereby personally and unconditionally:

Guarantees to the Franchisor and its successors and assigns, for the term of the Agreement, including renewals thereof, that the franchisee as that term is defined in the Agreement (the "**Franchisee**") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and

Agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement.

Each of the undersigned waives the following:

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

Each of the undersigned consents and agrees that:

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

5. His or her obligation and liability hereunder shall not be affected by any amendment or modification of the Agreement and he or she has no right to approve or consent to any such amendment or modification; and
6. The governing law, consent to venue and jurisdiction and related provisions contained in Section 23.4 and the costs and attorneys' fees provision contained in Section 23.8 of the Agreement shall govern this Guaranty and such provisions are incorporated into this Guaranty by this reference.

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

WITNESS

GUARANTOR(S)

**EXHIBIT III
TO FRANCHISE AGREEMENT**

STATEMENT OF OWNERSHIP

Franchisee: _____

Trade Name (if different from above): _____

Form of Ownership
(Check One)

_____ Individual _____ Partnership _____ Corporation _____ Limited
Liability
Company

If a Partnership, provide name and address of each partner showing percentage owned, whether active in management, and indicate the state in which the partnership was formed.

If a Limited Liability Company, provide name and address of each member and each manager showing percentage owned and indicate the state and date of organization.

If a Corporation, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.

Franchisee acknowledges that this Statement of Ownership applies to the SPICY PICKLE Restaurant authorized under the Franchise Agreement.

Use additional sheets if necessary. Any and all changes to the above information must be reported to the Franchisor in writing.

Date

Name

**EXHIBIT IV
TO FRANCHISE AGREEMENT**

**AUTHORIZATION FOR DIRECT PAYMENT
AUTOMATIC BILL PAYMENT**

Company Name: **Spicy Pickle Franchising, Inc.** (the "Company")

I (We) _____ (Name of Franchisee) authorize the Company to initiate variable entries to my (our) account described below for amounts owed by Depositor/Franchisee to the Company for the weekly Royalty as defined in Section 12 of the Franchise Agreement; the Advertising Contribution as defined in Section 13.2 of the Franchise Agreement; funds received by the Depositor/Franchisee on account of any sale of gift, eCard, eFrequency or other promotional cards the funds for which will be paid to the Spicy Pickle franchisee in whose store the gift, eCard, eFrequency or other promotional card was redeemed to the extent of such redemption; and Invoices from the Company for supplies, merchandise, services and other items purchased from or through the Company by Depositor/Franchisee, all of which arise from or are related to the Franchise Agreement between Depositor/Franchisee and Company dated _____:

Checking Account No.: _____

Savings Account No.: _____

Financial Institution's Name: _____

Financial Institutions Address: _____

Attach a voided check or savings deposit slip on the blank piece of paper and provide:
The financial institution's routing number (a/k/a as the Bank Transit or ABA Number)

_____ (Seven Digit Number)

This authority is to remain in full force and effect until the Company has received written notification from me (or either one of us) of its termination in such time and manner as to afford the Company a reasonable opportunity to act on it.

Date: _____ Name of Franchisee: _____

Franchise # _____

Location: _____ By: _____

Its: _____

Franchisee Address: _____

Telephone: _____ Facsimile: _____

Please return this form and the blank page with your voided check to: Spicy Pickle Franchising, Inc., 90 Madison St., Suite 700, Denver, Colorado 80206, Attn: Marc Geman.

TAPE VOIDED CHECK BELOW

**EXHIBIT V
TO FRANCHISE AGREEMENT**

**DELIVERY AND CATERING SERVICES
ADDENDUM TO FRANCHISE AGREEMENT**

THIS ADDENDUM ("Addendum") to the Franchise Agreement dated _____, 20__ is made effective as of the same date, by and between **Spicy Pickle Franchising, Inc. ("Franchisor")** and _____ ("Franchisee"), to supplement and amend certain terms of the Agreement. To the extent not defined herein, all initial-capitalized references in this Agreement shall have the same meaning as defined in the Agreement.

1. **Delivery and Catering Services.** In accordance with the requirements of Section 2.2 of the Agreement, the Franchisee is hereby granted approval to provide delivery and catering services as a part of the authorized services which are a part of the Licensed Methods. The delivery and catering services shall only originate from the Franchised Location. The Franchisee shall at all times provide "**Adequate Delivery and Catering Service**" which shall be defined as: delivery and catering service provided in accordance with the Franchisor's standards for delivery and catering as may be described in the Agreement and the Operations Manual, which standards may address, without limitation, customer satisfaction as to timeliness, ability to deliver hot food, potential and actual sales volumes achieved through delivery and catering, and the physical, geographic or demographic characteristics of the area in which delivery and catering services are being provided.

2. **Delivery and Catering Area.** Upon 30 days written notice to the Franchisee, the Franchisor, in its sole discretion, reserves the right to limit the delivery and catering services of the Restaurant's approved food and beverage products to a defined area surrounding the Restaurant or otherwise limit the customers and locations to which the Franchisee is entitled to provide the delivery and catering services.

3. **Delivery and Catering Vehicles and Drivers.** The Franchisee shall ensure that its employees' vehicles used in the delivery of and for the catering with SPICY PICKLE products and beverages shall comply with all applicable motor vehicle laws, including but not limited to, speed limits and safety regulations. The Franchisor reserves the right to establish a toll free number, internet site or other centralized means of taking customer orders and the Franchisee shall provide Adequate Delivery and Catering Services for any orders received and referred to the Franchisee through such centralized means. The Franchisee shall designate specific employees of Franchisee who shall be authorized to act as a delivery and catering driver ("**Driver**"). Designation of any Driver must comply with Franchisor's criteria for delivery and catering drivers as set forth in the Operations Manual or otherwise, including without limitation:

(a) That the Franchisee inspect the Driver's motor vehicle report prior to designating that employee as a Driver and not less than once every three months thereafter;

(b) That the Franchisee maintain copies of the Driver's valid driver's license, proof of insurance, current motor vehicle record, written designation of that employee's status as a Driver, and such other forms as may be prescribed by the Franchisor from time-to-time, and shall have such records available for the Franchisor's inspection upon request;

(c) That the Driver has never been convicted of driving under the influence of alcohol or drugs or driving while intoxicated and has not been convicted of more than two moving violations within the past 18 months;

(d) That the Driver provide proof of insurance to the Franchisee that complies with the Franchisor's coverage requirements;

(e) That the Driver successfully complete any driver's education course as may be required by the Franchisor, in its sole discretion; and

(f) That the Franchisee ensure that the Driver at all times complies with all applicable laws, regulations, and rules of the road pertaining to operation of a motor vehicle and otherwise uses due care and caution when operating the delivery and catering vehicle.

If at any time an employee designated as a Driver fails to comply with the Franchisor's criteria for drivers or is convicted of a moving violation while on the job, that employee shall immediately lose his or her designation as a Driver. Any employee who is not designated as a Driver shall be prohibited from delivering products and notice to that effect in a form acceptable to the Franchisor shall be given to each non-designated employee and a copy of such notice maintained at the Franchised Location and made available to the Franchisor upon request. If the Franchisee fails to comply with the requirements of this Section, the Franchisor may suspend the Franchisee's right to deliver and cater immediately upon written notice, and the Franchisee shall thereafter suspend all delivery and catering service until such failure is cured and the Franchisor ends such suspension by written notice.

4. **Insurance.** The following language shall be inserted into Section 22.1 of the Agreement, in the 9th line, after "...improvements located at the SPICY PICKLE Restaurant..." (deleting the period after "Restaurant"):

"...and (vi) automobile liability insurance covering all employees of the SPICY PICKLE Restaurant with authority to operate a motor vehicle in an amount not less than \$1,000,000 or, with the prior written consent of the Franchisor, such lesser amount as may be available at a commercially reasonable rate, but in no event less than any statutorily imposed minimum coverage."

5. **Non-Owned Automobile Coverage.** The following language shall be added as a new Section 22.3 of the Agreement:

22.3 Non-Owned Automobile Coverage. The Franchisee shall be responsible for assuring that each Driver who delivers and provides catering of SPICY PICKLE foods and other products offered by the SPICY PICKLE Restaurant in his or her own vehicle for the Franchisee also maintains liability insurance meeting the minimum statutory requirements under the laws of the state in which the SPICY PICKLE Restaurant is located. Language reflecting this requirement shall be contained in the Franchisee's insurance policies. The maintenance of insurance by the Franchisee's Drivers is a strict requirement which the Franchisee shall rigorously enforce."

Fully executed this ___ day of _____, 20__.

FRANCHISOR:
SPICY PICKLE FRANCHISING, INC.

By: _____
Title: _____

FRANCHISEE:

By: _____
Title: _____

**EXHIBIT VI
TO FRANCHISE AGREEMENT**

**ADDENDUM TO FRANCHISE AGREEMENT --
BUILD-OUT PROGRAM**

THIS ADDENDUM ("Addendum") to the Franchise Agreement dated _____, 20____ is made effective as of the same date, by and between **SPICY PICKLE FRANCHISING, INC.** ("Franchisor") and _____ ("Franchisee"), to supplement and amend certain terms of the Agreement. To the extent not defined herein, all initial-capitalized references in this Agreement shall have the same meaning as defined in the Agreement.

PURPOSE

A. The Agreement grants the Franchisee a franchise for the establishment and operation of a SPICY PICKLE Restaurant ("**Restaurant**").

B. The Franchisor provides or makes available development, construction and build-out services ("**Build-Out Services**") specified in the "Build-Out Program" of the Franchisor to assist franchisees in constructing, developing and equipping a Restaurant.

C. The Franchisee desires to obtain the Build-Out Services and the Franchisor desires to provide or make available the Build-Out Services to the Franchisee under the terms and conditions which are contained in this Addendum and in accordance with the specifications of the Build-Out Program.

The Franchisor and the Franchisee therefore agree as follows:

1. **Build-Out Services.** The Franchisor shall provide assistance to the Franchisee or make available, itself or through arrangements made on behalf of the Franchisee with independent contractors, the following Build-Out Services to assist the Franchisee in fulfilling its obligations, for the development, construction and equipping of the Restaurant:

a. The procurement of suitable plans and specifications conforming to the Franchisor's requirements for dimensions, exterior design, materials, interior design, layout, signs, counters, equipment and decorating for the Restaurant, in compliance with applicable ordinances, building codes, permit requirements and lease requirements and restrictions.

b. Obtaining of required construction-related permits and licenses.

c. Procurement of fixtures, equipment, furniture and other such materials required for the construction of the Restaurant (does not include any opening inventory and supplies as may be necessary to commence operation of the Restaurant).

d. Securing of all contractors and/or subcontractors to construct ~~improvements~~improvements and install equipment and fixtures in the Restaurant.

e. Completion of the construction of required improvements to and installation of certain equipment in the Restaurant premises and decorate the premises in compliance with the

plans and specifications, and delivery of the completed Restaurant together with a Certificate of Occupancy or similar authority therefor.

f. Procure and install signs and menu board and POS System for the Restaurant.

2. **Commencement of Build-Out Services.** The Franchisor shall not be obligated to commence the Build-Out Services until the Franchisee, with the assistance of the Franchisor, obtains and submits to the Franchisor an executed lease or other authority ("**Lease**") to occupy the location for the Restaurant, which Lease has been previously approved by the Franchisor; and ~~pays to or~~ has funds available to pay ~~the Franchisor or its designees, suppliers and contractors~~ 100% of the costs for build-out, as estimated and set forth in the "**Build-Out Cost Schedule,**" which will be attached to this Addendum as Exhibit VI-I prior to commencing the Build-Out Services ("Start Date").

3. **Completion of Build-Out Obligations.** Conditional upon the timely payment of the costs for build-out, estimates of which have been acknowledged and agreed to by the parties and set forth in the Build-Out Cost Schedule ("**Build-Out Costs**") and submission of an executed Lease for the location of the Restaurant, the Franchisor agrees to use commercially reasonable efforts to assist the Franchisee to complete development of and have the Restaurant ready to open within a reasonable time after the ~~Franchisor~~Franchisee obtains possession of the premises and all required construction permits have been obtained enabling the commencement of construction of the Restaurant.

4. **Out-of-Pocket Costs.** The Franchisee shall pay to the Franchisor, within 30 days of the date of invoice, all out-of-pocket costs incurred by the Franchisor in connection with providing the Build-Out Services including, without limitation, employee travel, meals and lodging expenses, telephone charges and other identifiable out-of-pocket expenses.

5. **Employee Salary Allocation.** ~~The Franchisee shall pay to the Franchisor, within 30 days of the date of invoice, a fee based upon a percentage allocation of salary and the time spent by each employee of the Franchisor and its affiliates to provide the Build-Out Services.~~ 6. **Build-Out Costs and Additional Expenses.** The Build-Out Costs shall be calculated in the Build-Out Cost Schedule and executed by the Franchisor and the Franchisee no later than the Start Date. The Build-Out Cost Schedule will be updated as construction progresses. The Franchisee acknowledges that the Build-Out Costs do not include other charges, costs and expenses for which the Franchisee is responsible and liable, such as construction extras, landlord chargebacks and additional costs and expenses as may be incurred due to the Franchisee's failure to tender the Build-Out Costs to suppliers, as required by this Agreement. In addition:

a. ~~Concurrently with submission of an executed lease for the Restaurant location, the Franchisee shall submit to the Franchisor \$10,000 towards the Build-Out Costs, which payment will be used to set up a construction account and pay initial costs such as architectural fees. The Build-Out Costs shall be paid by the Franchisee to suppliers and contractors as incurred during the Build-Out project.~~ Prior to the commencement of the Build-Out Services, the Franchisee shall, in the determination of the Franchisor, in its sole discretion, have available funds to pay the Build-Out Costs in full. The parties shall execute a payment schedule as part of the Build-Out Schedule. The Franchisee acknowledges and understands that assistance by the Franchisor in overseeing the construction of the Restaurant by the Franchisor will not begin until arrangements, acceptable to the Franchisor, have been made to pay the Franchisor and its suppliers and contractors in full for the Build-Out Costs.

b. The Franchisee is solely and exclusively responsible and liable for and shall pay when due all sales, use, property or other taxes (including any penalties and interest) owed due to

the construction of the Restaurant, the improvement of the premises where the Restaurant is located and the purchase of all materials, equipment, fixtures, furniture, labor, or other items utilized in the development and construction of the Restaurant.

c. To the extent not covered by the Build-Out Costs, the Franchisee shall be responsible for and shall pay when due all other costs and expenses incurred in the development of the Restaurant.

~~d. The Franchisee grants to the Franchisor a security interest in all equipment, supplies, furniture, fixtures, signs and inventory located at the Restaurant until such time as full payment is received by Franchisor and all third parties for such equipment, supplies, furniture and inventory and for the Build-Out Services provided. The Franchisee authorizes the Franchisor to file financing statements as may be necessary from time to time to perfect its security interest.~~

d. The Franchisee acknowledges and agrees that the actual cost of the build-out shall be computed upon completion of the Build-Out Services, and the Build-Out Costs estimated in the Build-Out Cost Schedule shall be adjusted to reflect the actual cost of the build-out of the Restaurant.

7.6. Control of Build-Out. The Franchisee acknowledges that although it is primarily responsible for the development of the Restaurant, as more fully described in the Agreement, it has delegated control of the Build-Out Services to the Franchisor, and all design changes, modifications to the Restaurant design, all construction issues, trade fixture and equipment changes, and all other matters related to the development of the Restaurant and the construction thereof, shall be within the sole discretion of the Franchisor. The Franchisee shall be responsible and liable for obtaining all business licenses, permits and the like not related to construction, required by state or local authorities for the operation of the Restaurant.

8. Construction, Conversion and Design, Signs, Equipment, Point of Sale System, and Permits and Licenses. Sections 5.3, 5.4, 5.5, 5.6 and 5.7 of the Agreement are amended by adding the following to the end of each section:

~~———— To the extent provided as part of the Build-Out Services, the Franchisor acknowledges that the construction, conversion and design of the location meets the Franchisor's plans and specifications; the signs meet the standards and specifications of the Franchisor and comply with applicable mall regulations, local ordinances, building codes and zoning regulations; the equipment and POS System meet the Franchisor's standards and specifications; and the necessary permits and licenses relating to the construction of the Restaurant have been obtained. To the extent applicable, however, all of the Franchisee's covenants set forth in this Section apply to the Franchisee's operation of the Restaurant.~~

~~———— 9. Improvements and Warranties. Within 30 days after completion of the Restaurant, the Franchisor shall provide the Franchisee a schedule listing all leasehold improvements, equipment, furniture and fixtures installed in the Restaurant, and any and all equipment warranties provided by third parties.~~

10.7. Excuse of Performance. Notwithstanding anything in this Addendum to the contrary, the obligations of the Franchisor to ~~provide~~assist with the Build-Out Services shall be excused from such delay of performance as may be caused by any legal directive; intervention of any governmental order, regulation, direction, request or contingency; acts of God; or any cause beyond the reasonable control of the Franchisor; provided, however, that such excuse of performance shall be limited to the period of delay directly related to such cause.

11.8. Conflict. In the event of a conflict between the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall control.

12.9. Effective Date. This Addendum shall not become effective until accepted by the Franchisor as evidenced by the signing and dating of this Addendum by an officer of the Franchisor.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the date first set forth above.

SPICY PICKLE FRANCHISING, INC.

By: _____
Its: _____

FRANCHISEE:

By: _____
Its: _____