

**EXHIBIT B**  
**to Offering Circular**

**VILLA PIZZA**  
**FRANCHISE AGREEMENT**

VILLA PIZZA  
FRANCHISE AGREEMENT

\_\_\_\_\_  
FRANCHISEE

\_\_\_\_\_  
RESTAURANT LOCATION

\_\_\_\_\_  
DATE OF AGREEMENT

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EXHIBITS

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## FRANCHISE AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between VILLA PIZZA, LLC, a Delaware limited liability company, whose principal place of business is 25 Washington Street, Morristown, New Jersey 07960, (hereinafter referred to as "Franchisor" or "Villa Pizza, LLC" or "Villa") and \_\_\_\_\_, a \_\_\_\_\_ whose principal place of business is \_\_\_\_\_, and whose home address is \_\_\_\_\_ (hereinafter referred to as "Franchisee" or "You").

### WITNESSETH:

WHEREAS, Franchisor and its affiliates, as the result of the expenditure of time, skill, effort and money, have developed and own a distinctive format relating to the establishment and operation of Villa Pizza restaurants and Cozzoli's restaurants (collectively, "Villa Restaurant(s)") featuring, among other things, pizza, pasta and various Italian specialties; and

WHEREAS, Franchisor and its affiliates have developed a comprehensive system for the establishment and operation of Villa Restaurants, including distinctive exterior and interior design, decor, color scheme and furnishings; uniform standards, specifications and procedures for operations; quality and uniformity of products and services offered; procedures for management and inventory control; training and assistance and advertising and promotional programs (collectively, "the System"), all of which may be changed, improved and further developed by Franchisor from time to time; and

WHEREAS, Franchisor's affiliate is the sole and exclusive owner of the entire right, title and interest, together with all the good will connected therewith, in and to the service marks "Villa Pizza," "The Villa Co.," "Café Villa," "Villázzo," "Villa Pizza Cucina," "Villa Pizza Cucina Italiana" and "Cozzoli's Pizza" and all other trademarks, service marks, trade dress, logos and slogans now or in the future used in conjunction with the operation of Villa Restaurants (collectively, "Villa Marks") as well as all other intellectual property rights used in connection with Villa Restaurants;

WHEREAS, Franchisee acknowledges having read this Agreement and Villa's franchise offering circular. Franchisee understands the terms of this Agreement and accepts them as being reasonably necessary to maintain the uniformity of Villa's high quality standards at all Villa Restaurants in order to protect the goodwill of the Villa Marks and the integrity of the System. Franchisee has conducted an independent investigation of the business contemplated by this Agreement and recognizes that the restaurant industry is highly competitive, with constantly changing market conditions. Franchisee recognizes that the nature of Villa Restaurants may change over time, that an investment in a Villa Restaurant involves business risks and that the success of the venture is largely dependent on Franchisee's own business abilities, efforts and financial resources. Franchisee has not received or relied on any guaranty or assurance, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement; and

WHEREAS, Franchisee desires to obtain a franchise to operate a Villa Pizza restaurant or a Cozzoli's restaurant (as set forth in Exhibit A) at the location hereinafter described, and Franchisor is willing to grant such franchise to Franchisee on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto, intending to be legally bound, in consideration of the mutual agreements, covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy whereof is hereby acknowledged, do hereby agree as follows:

1. APPOINTMENT

Subject to the provisions of this Agreement, Villa hereby grants to Franchisee the right, and Franchisee hereby assumes the obligation, to operate one (1) restaurant using the System and the Villa Marks set forth in Exhibit A and all associated marks authorized by Villa from time to time (such Villa Marks shall be referred to herein as the "Licensed Marks") at the location selected pursuant to paragraph 3(a) hereof ("the Restaurant"). The franchise granted hereby is for a specific location only. Franchisee has no territorial or exclusive rights whatsoever, and Villa has the unfettered right to own, operate and license others to own and operate Villa Restaurants anywhere, including in the vicinity and market area of the Restaurant.

Franchisor reserves the right, in its sole discretion, to modify its System, including the adoption and use of new or modified logos, trade names, trademarks, service marks or copy-righted materials, new food items, new products, new techniques or new equipment. Franchisee recognizes Franchisor's right to make any such modifications or changes and agrees to accept, implement, use and display such changes and modifications at Franchisee's expense as if they were part of this Franchise Agreement at the time of the execution hereof. Franchisee, within a reasonable time, will make such expenditures as such changes or modification may require.

Except as otherwise expressly provided in this Agreement, Franchisor and its affiliates retain all rights and discretion with respect to the Villa Marks, the System and Villa Restaurants anywhere in the world and the right to engage in any other business whatsoever, including the right to: (a) operate, and grant to others the right to operate, Villa Restaurants at such locations and on such terms and conditions as Franchisor deems appropriate; (b) sell any products or services under the Villa Marks or under any other trademarks, service marks or trade dress, through other channels of distribution; and (c) operate, and grant to others the right to operate, restaurants identified by trademarks, service marks or trade dress, other than the Licensed Marks, pursuant to such terms and conditions as are deemed appropriate.

2. TERM AND RENEWAL

The term of this Agreement shall begin on the date of execution of this Agreement by both parties and end on the sooner to occur of: (a) the tenth (10th) anniversary of the opening date of the Restaurant; or (b) the termination or expiration of the Lease (the "Term").

Franchisee shall have the right to renew the franchise for one (1) term, provided:

(a) Franchisee gives Franchisor written notice of exercise at least nine (9) months, but not more than twelve (12) months prior to expiration;

(b) Franchisee and its affiliates are not in default under this Agreement or any other agreements with Franchisor or any of its affiliates;

(c) Franchisee (and its owners) execute Franchisor's then-current form of Franchise Agreement, and all other agreements, legal instruments (including a general release and personal guarantees by Franchisee's owners) and other documents customarily used by the Franchisor in the granting of franchises for Villa Restaurants, which may vary materially from those presently in use. The Franchisee shall pay a renewal fee of fifty (50%) percent of the then current initial franchise fee in lieu of the initial franchise fee.

(d) As a condition of renewal, the Franchisee is required to maintain possession of the Premises. Franchisor requires that the equipment, fixtures, design and decor of the Restaurant be upgraded to meet the then existing specifications and standards of the Franchisor.

### 3. RESTAURANT LOCATION

This Agreement shall be subject to the availability of the location specified below and, at Franchisor's option: (a) execution by Franchisor or one of its affiliates and the owner of the Premises of a mutually satisfactory lease and the execution by Franchisee of a sublease on substantially the same terms; or (b) execution by Franchisee of a lease with the owner of the Premises that is acceptable to both Villa and Franchisee, coupled with a conditional assignment of lease in favor of Franchisor or one of its affiliates. The current form of Conditional Assignment of Lease is attached hereto as Exhibit B.

(a) The Restaurant shall be located at \_\_\_\_\_ (hereinafter "the Premises").

Franchisee acknowledges that Franchisee selected the Premises subject to Villa's approval. Neither Villa's site selection guidelines and requirements, Villa's approval of the Premises, nor any information Villa may impart to Franchisee about the Premises, constitutes a warranty or representation of any kind, express or implied, that the Restaurant will be profitable or successful. Villa's approval of the Premises merely signifies that Villa authorizes Franchisee to operate a Villa Restaurant at that site. Franchisee is solely responsible for the selection of an appropriate site for the Restaurant. If Villa or one of its affiliates negotiates a lease for the Premises on Franchisee's behalf, which lease, in Villa's reasonable judgment, would be acceptable for the operation of a Villa Restaurant, Franchisee must pay Villa a reasonable lease negotiation fee, which may include both legal costs (including time spent by any in-house counsel) and brokerage fees.

(b) If the appropriate lease documentation, as above described, is not signed within nine (9) months after the execution of this Agreement, at the option of either the Franchisee or Villa, this Agreement, and related agreements, if any, may be terminated. In such event, the Initial Franchise Fee specified in Paragraph 19 herein shall be refunded to the Franchisee, less the costs and expenses incurred by Villa, including its expenses in connection with the search for a site, travel and living expenses and legal and other related expenses. Such refund will be made by Villa within seven (7) business days (unless a shorter period is prescribed by applicable law) after receipt of written notice from the Franchisee of the exercise of its option to terminate this Agreement (and related agreements), along with a general release satisfactory to Villa duly executed by Franchisee and its owners, or immediately by Villa, if it exercises its option to terminate. Unless required to do so by any applicable law, such refund will be without interest.

(c) If, for any reason, Franchisee has not opened the Restaurant within six (6) months after the date possession of the site has been made available to it, or such different date if specified in the lease, Villa may terminate this Agreement at any time thereafter and prior to the opening of the Restaurant, by giving written notice of termination to Franchisee. If this Agreement is terminated pursuant to these provisions, Franchisee shall reimburse Villa for its costs and expenses in connection with this franchise including, but not limited to, expenses incurred in connection with the search for a site, advertising and negotiating the lease for the Restaurant, construction expenses, if any, incurred by Villa and expenses incurred in training the Franchisee and its employees including travel and living expenses, compensation of employees of Villa and legal fees and expenses incurred. Villa will refund the Initial Franchise Fee after deducting such sums from the Initial Franchise Fee, provided Franchisee and its owners shall have executed and delivered a general release satisfactory to Villa.

(d) Any lease entered into by Franchisee shall be exclusively for the operation of a Villa Restaurant, and shall provide that upon termination or expiration of the franchise, for any reason, Villa or one of its affiliates shall have the right, but not the obligation, to be assigned and to assume the lease, and replace Franchisee as tenant. Franchisee shall, upon the exercise of that right by Villa, be fully indemnified by Villa from all liability for future rent and all other future obligations under the lease (though not from any liability for unpaid rent or any then existing liabilities or obligations under the lease). Franchisee agrees to execute any documents required to assign such lease to Villa or to a designee of Villa.

(e) The Franchisee may operate the Restaurant only at the Premises. The Franchisee may sell to anyone, at retail only, prepared food of the character, and meeting the quality standards contemplated in this Agreement, provided that all sales are from the Premises. Franchisee may not open or operate from another location, and may not engage in any other type of business at or from the Premises.

#### 4. SPECIFICATIONS OF EQUIPMENT

Franchisee shall conform to Villa's specifications with respect to the equipment, furniture, fixtures and exterior and interior signs required for the Restaurant. Specifications may include minimum standards for delivery, performance, designs and appearance and local zoning, sign and other restrictions. Franchisee may purchase or lease original and replacement equipment, furniture, fixtures and signs meeting such specifications from sources previously approved by Villa. Franchisee will notify Villa, prior to dealing with any sources which have not been previously approved by Villa, and Villa may require submission of sufficient specifications, photographs, drawings and/or information and samples to determine whether such items of equipment, furniture, fixtures or signs meet its specifications. Villa shall advise Franchisee, within a reasonable time, whether such items of equipment, furniture, fixtures or signs meet its specifications. Villa, at its sole and exclusive option, may provide Franchisee with specifications and minimum standards for all or portions of the Restaurant's construction, design and layout, which Franchisee agrees to follow.

#### 5. RESTAURANT DEVELOPMENT

You are responsible for the construction and development of the franchised Restaurant. Within a reasonable amount of time after You execute this Agreement and upon Franchisee's written request,



Villa will provide to You the most current specifications for the design and general layout of Your franchised Restaurant. Prior to commencing construction, You must comply, to Villa's sole satisfaction, with the following:

(a) You must engage an approved architect and engineer to prepare a site layout and working drawings for construction of Your franchised Restaurant, and submit to Villa a statement identifying the architect and engineer, describing the qualifications of each.

(b) You must submit to Villa for its approval, a site layout and working drawings adopting Villa's then-current plans and specifications for constructing, equipping, fixturing and furnishing the franchised Restaurant at the approved site in compliance with all applicable laws, regulations and ordinances (the "Plans"). The Plans must not be materially changed or modified without Villa's prior written consent: a change is material if it (1) affects the structural integrity of the Restaurant, (2) changes the appearance, location, size or quality of the franchised Restaurant, (3) affects the appearance, furnishings or fixturing of the franchised Restaurant or (4) causes the franchised Restaurant to deviate from the standards then established for the System. Villa's approval of the Plans constitutes only a representation that the Plans comply with Villa's then-current plans and specifications for construction; such approval does not equate or constitute Villa's representation of compliance with Franchisee's landlord's construction criteria, if applicable, or state or local building requirements, for which Franchisee is solely responsible.

(c) Franchisee must employ an approved general contractor to construct the franchised Restaurant and complete all improvements and submit to Villa a statement identifying the general contractor and describing the general contractor's qualifications and financial responsibility.

(d) Franchisee must obtain all permits, certificates and licenses required for construction and completing improvements to the franchised Restaurant, including without limitation, those required by applicable zoning, access, utility, sign, building, health, safety, environmental laws, ordinances, rules and regulations.

(e) Should Franchisee fail to comply with any of the requirements set forth hereinabove in paragraphs (a) and (b), Villa, in its sole discretion, may agree to review the site layout and working drawings and require Franchisee to pay a Two Thousand Dollar (\$2,000) Plan Compliance Fee within ten (10) days of notice from Villa.

## 6. RESTAURANT REFURBISHING

Franchisee agrees to effect such remodeling, updating and/or refurbishing of the Restaurant, in addition to regular maintenance and repair, from time to time, as is required by Villa in order to maintain or improve the appearance and efficient operation of the Restaurant and/or increase its business potential.

## 7. TRAINING

(a) Prior to commencement of the initial training, the following events must occur:

(i) All applicants for training must be approved by Villa, which will not withhold its approval without good cause;

(ii) This Agreement, and any related agreements, must be executed by Franchisee and Villa;

(iii) Franchisee and the lessor of the Premises (or Villa or one of its affiliates) must have executed the lease (or sublease) for the Premises, and Franchisee shall have provided a copy thereof to Villa;

(iv) All outstanding amounts of money due and owing to Villa, or others, in connection with the franchise, must be paid.

(b) Training shall commence approximately five (5) weeks prior to the scheduled opening date of the Restaurant, and shall last for a period of approximately three to five (3-5) weeks.

(c) Training is mandatory for Franchisee (or its principal owner) and Franchisee's full-time restaurant manager ("Restaurant Manager"), and must be completed to Villa's satisfaction before the Restaurant may be opened.

(d) All trainees, including Franchisee (or its principal owner) shall, at Franchisee's cost and expense, attend Villa's training program at such times, and at such places as specified by Villa. During the training program Franchisee (or its principal owner), and its Restaurant Manager, shall receive instruction, training and education in the operation of the Restaurant. Villa shall train up to four (4) persons without charge, but reserves the right to impose reasonable charges for additional persons to attend initial training. Franchisee shall bear all personal expenses during the training program including, but not limited to, compensation, travel, food and lodging costs.

(e) Franchisee shall implement a training program for employees of the Restaurant, in accordance with training standards and procedures prescribed by Villa, from time to time. Franchisee shall maintain, at all times during the Term of this Agreement, a staff of trained employees sufficient to operate the Restaurant in accordance with this Agreement. Franchisee agrees not to employ any person who is required to complete a training program, but who fails or refuses to do so.

(f) Franchisee is responsible for hiring all employees of the Restaurant and is exclusively responsible for the terms of their employment, including their compensation and training. Franchisee is solely responsible for all employment decisions for the Restaurant, including those related to hiring, firing, remuneration, personnel policies, benefits, record keeping, supervision and discipline, and regardless of whether advice was received from Villa on these subjects.

(g) Franchisee (or its principal owner), or its Restaurant Manager, and any replacement Restaurant Managers shall attend additional training programs, sales meetings, operations meetings and conventions, as Villa may, from time to time, direct. Villa reserves the right to impose reasonable fees for such additional training. All expenses of Franchisee incurred in connection with attendance at training programs, sales meetings, operations meetings and conventions shall be borne solely by Franchisee.

8. OPERATION AND MANAGEMENT OF THE RESTAURANT

(a) In order to maintain the high quality and uniform standards associated with the System, and to promote and protect Villa's good will and reputation, Franchisee agrees:

(i) To operate the Restaurant exclusively as a Villa Restaurant under the Licensed Marks, in strict conformity with the Confidential Operations Manual referred to in Paragraph 13, and not to engage in any other type of business at the franchised location;

(ii) To sell all food, menu items and other products required by Villa, and not to sell any other food, menu items or products at the Premises;

(iii) To equip, maintain, staff and operate the Restaurant strictly in accordance with the methods, procedures and techniques as are, from time to time, established by Villa in its Confidential Operations Manual or otherwise;

(iv) To vigorously and aggressively promote the business, by making use of the advertising, sales promotion and merchandise materials and programs developed and prescribed, from time to time, by Villa.

(v) To keep the Restaurant open for business the minimum number of days per week, and hours per day, prescribed by Villa, from time to time, or as required by the lease, if different from those prescribed by Villa;

(vi) To keep and maintain the Restaurant, and its appearance, in a clean and orderly manner, consistent with the operation of a quality Villa Restaurant, and in accordance with the directives of Villa, which Villa deems necessary to protect the standards of quality and uniformity established by it for the System;

(vii) To comply, at all times, with Federal, State, City and other local laws, regulations and ordinances;

(viii) To maintain, at all times, sufficient food, supplies and personnel to operate the Restaurant at maximum capacity and efficiency;

(ix) To file or register, as an assumed name, the Licensed Marks, as may be appropriate when utilized in connection with the operation of the Restaurant, and any such required filings shall clearly indicate, and shall not be construed as granting Franchisee any right, title or interest, other than the license to use such names as granted in this Agreement, in or to such names;

(x) To operate the Restaurant under the Licensed Mark(s), as determined and instructed by Villa, and under no other name. However, such usage shall not be construed as granting Franchisee any right, title or interest in such names other than pursuant to the terms and conditions contained in the license granted in this Agreement;

(xi) To use and display the Licensed Marks prominently and in such manner as may, from time to time, be directed, in writing, by Villa and not to use or display any other trade name, trademark, service mark, logo or designation;

(xii) To deal fairly and honestly with the public and with Villa;

(xiii) To require the Restaurant Manager to devote his full-time and best efforts to the operation of the Restaurant;

(xiv) To pay, when due, any fines fees, penalties and taxes in connection with the operation of the Restaurant;

(xv) To conform to all standards of quality and service prescribed by Villa, so as to sustain the good will and prestige that the proprietary marks enjoy with the public.

(b) Franchisee shall serve all the specified menu items described in Villa's Confidential Operations Manual, except insofar as Villa may, in writing, consent to the elimination of one or more of such menu items. All menu items shall be prepared and served in accordance with the recipes and specifications contained in such Confidential Operations Manual, or as otherwise directed by Villa, from time to time. Without the prior written approval of Villa, no foods or beverages other than such specified menu items will be served by such Restaurant.

(c) If Franchisee shall, in any way, fail to maintain the standards of quality or service established by Villa, Villa shall have the right (in addition to its rights under Paragraph 24) to assign to such Restaurant such person or persons as it deems necessary for the training of Franchisee's employees, and to insure that standards of quality and service are maintained. Villa's actual costs for each such person so assigned to such Restaurant, plus travel and living expenses, shall be paid by Franchisee.

(d) Telephone booths, newspaper racks, juke boxes, gum machines, games, rides, or any coin vending machines will not be installed on the Premises without the written approval of Franchisor.

## 9. OPERATING ASSISTANCE

(a) Villa will furnish to Franchisee such operating assistance, in connection with the operation of the Restaurant as Villa determines, from time to time, to be necessary. Operating assistance may include advice and guidance with respect to:

(i) Hiring and evaluating personnel;

(ii) Food preparation and supplying menus, recipes and food required by Franchisee in its operations;

(iii) Formulating advertising and promotional programs;

(iv) Evaluating and testing of new food developments and other improvements in the System, and in Franchisee's Restaurant.

(b) Villa will furnish to Franchisee the Confidential Operations Manual described in Paragraph 13, and other instructional and training material needed to provide guidance in the methods, procedures, recipes and techniques for operating the Restaurant. Villa may furnish, from time to time, such other manuals, business information and literature, as Villa determines will be helpful in improving the operation of the Restaurant.

(c) Villa may advise Franchisee, from time to time, of any operating problems experienced at the Restaurant, which problems are disclosed in reports submitted to or inspections made by Villa. Franchisee may be required to correct these problems within seven (7) days, unless same pertain to violations of a health ordinance, in which case those problems must be corrected within twenty-four (24) hours after their occurrence.

(d) Except as otherwise provided herein, Villa will not charge Franchisee for such operating assistance, provided, however, that Villa shall have the right to make reasonable charges for forms and other materials supplied to Franchisee, and for special operating assistance made necessary, in the judgment of Villa, as a result of Franchisee's failure to comply with any provision of this Agreement or the Confidential Operations Manual or any specification, standard or other operating procedure prescribed by Villa.

#### 10. BOOKKEEPING AND RECORDS/COMPUTER SYSTEMS

Franchisee shall establish a bookkeeping and record keeping system, maintaining full, complete and proper books, records and related source documents in accordance with generally accepted accounting principles, and such other and additional requirements as may be required by Villa, from time to time, in order to accommodate any changes in accounting and/or bookkeeping systems as may be established relating, without limitation, to the use and retention of sales checks, cash register tapes or point-of-sale system receipts, purchase orders, invoices, payroll records, check stubs, sales tax records and returns, cash receipts and disbursements, journals and general ledgers and such other records as are normally maintained by a restaurant business which is similar to Villa Restaurants, and as may be required by Federal and State laws, rules and regulations. All such books and records shall be maintained at the Premises. Franchisee, and all of Franchisee's employees or agents who perform a cashier function, shall record, at the time of each sale, in the presence of the customer (and provide the customer with a receipt therefore), all receipts from such sale or other transaction, whether for cash or credit, on a non-resettable cash register or point-of-sale system having a cumulative total, which shall be sealed in a manner approved by Villa, and which shall possess such other features as may be required by Villa.

Franchisee may be required to purchase, lease and/or license at its expense such computer hardware and software, required dedicated telephone and power lines, modems, printers, and other computer-related accessories or peripheral equipment as Villa may specify from time to time, for the purpose of, among other functions, recording Gross Revenues and performing other management information and reporting functions. Franchisee agrees not to use any hardware and/or software in the operation of the Restaurant without Villa's express prior approval, which approval will not be unreasonably withheld.

Franchisee agrees to provide such assistance as may be required to connect its computer system with Villa's computer system or the computer system of a third party data collection service designated

by Villa. Villa has the right to retrieve and use such data and information from Franchisee's computer system as Villa, in its sole discretion, deems desirable, with the cost of such telephonic retrieval to be borne by Franchisee. In view of the contemplated interconnection of computer systems and the necessity that such systems be compatible with each other, Franchisee agrees to purchase, lease and/or license such other hardware or software necessary to complete the interconnection between franchisee's computers and Villa's computers.

To ensure full operational efficiency and optimum communication capability between and among computer systems, Franchisee agrees at its expense, to keep its computer systems in good condition, and to promptly install such additions, changes, modifications, substitutions or replacements to hardware, software, telephone and power lines, and other computer-related facilities, as Villa directs.

11. FINANCIAL STATEMENTS

If requested, Franchisee shall submit to Villa, within thirty (30) days of the end of each month, unaudited statements of profit and loss of the Restaurant for the preceding month and year to date, and, within ninety (90) days from the close of Franchisee's fiscal year, a profit and loss statement and a balance sheet from the close of each such year, each prepared in accordance with generally-accepted accounting principles. If requested by Villa, the year-end financial statements shall be audited by an independent certified public accountant.

12. INFORMATION FROM SUPPLIERS

The Franchisee agrees that Franchisor may receive information directly from the Franchisee's suppliers with regard to the purchase of supplies, materials and merchandise. The signing of this Agreement is deemed sufficient authorization and/or release necessary to obtain such information.

13. MANUALS

Franchisor will provide a Confidential Operations Manual containing mandatory and suggested standards, standard operating procedures and rules prescribed from time to time by the Franchisor, and a Recipe Manual containing mandatory and suggested menus, recipes and specifications. The Recipe Manual shall be deemed part of the Confidential Operations Manual. These manuals are "on loan" to Franchisee for the term of this Agreement and must be returned upon termination or expiration of this Agreement. Franchisee shall not, at any time, copy, duplicate, record or otherwise reproduce the foregoing materials, in whole or in part, nor otherwise make the same available to any unauthorized person(s). These manuals shall, at all times, remain the sole property of Franchisor and shall, at all times, be kept in a secure place on the Premises. Franchisee shall, at all times insure that the manuals are kept current and up to date. In the event of any dispute as to the contents of the manuals, the terms of the master copies of the manuals maintained by Franchisor at Franchisor's home office shall be controlling. The Franchisor will have the right to add to and make operations updates to promote the uniform and efficient operation of all Villa Restaurants, provided that no such additions or modifications will alter the Franchisee's fundamental status and rights under this Agreement. The Franchisee agrees to comply with the provisions of such manuals and operations updates. The term "Confidential Operations Manual" also includes alternative or supplemental means of communicating such information by other media which specifically reference that they are to be considered to be part of the Confidential Operations Manual, including bulletins, e-mails, videotapes, audio tapes, compact discs, computer diskettes and CD ROMs.

14. FRANCHISEE, MANAGER AND EMPLOYEES

(a) The Restaurant shall at all times be under the direct supervision of a Restaurant Manager (who may be the Franchisee) who has completed Villa's training program to Villa's specifications, and devotes his/her full time and effort, during business hours, to the management of the Restaurant.

(b) The Franchisee, any individual owners, partners, officers, stockholders (and the stockholder(s) of the stockholder, if the stockholder is a corporation) (for the purposes of Subparagraphs (b), (c) and (d) hereof, collectively defined as "Confidants"), acknowledge that, pursuant to this Agreement, they may have access to confidential information including, without limitation, information regarding the promotional, operational, sales and marketing methods and techniques of Villa and the System, and accordingly covenant that during the term of this Agreement, except as otherwise approved in writing by Villa, Confidants will not, either directly or indirectly, for themselves or through, on behalf of or in conjunction with any person, persons or legal entity:

(i) Divert, or attempt to divert any business, or customer of the business franchised under this Agreement, to any competitor or to any other Italian or pizzeria type restaurant operation, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the good will associated with the proprietary marks and the System;

(ii) Employ or seek to employ any person who was, during the one (1) year prior thereto, employed by Villa or by any other franchisee of Villa, or otherwise induce, directly or indirectly, or seek to induce such person to leave his or her employment; or

(iii) Own, maintain, advise, help, invest in or make loans to, be employed by, engage in or have any interest in any business (including any business operated by Franchisee prior to entry into the Agreement) specializing, in whole or in part, in operating a restaurant which sells the same or similar types of food and beverages as Villa or any of its franchisees, including any Italian or pizzeria-type restaurant. Franchisee's existing restaurants listed on the attached list are hereby excluded from this provision.

(c) Confidants shall hold in confidence the System, and all parts thereof, and shall not disclose the System, or any part thereof, to any person, entity, firm or corporation. It is understood and agreed that the System is a program of accounting, identification, schemes, specifications, standards, management systems, recipes, menus, techniques, financial information (such as product costs and sources of supply), and business operations and procedures that would, if used by other persons, firms or corporations, give such other persons, firms or corporations a substantial competitive advantage that is presently enjoyed by Villa, each of which Confidants acknowledge is a trade secret of, and proprietary to, Villa and/or its affiliate. Confidants accordingly agree that they shall not, at any time during the term of this Agreement or after termination, expiration or non-renewal of this Agreement, without Villa's prior written consent, disclose (except to such employees or agents as must have access to such information in order to construct or operate the Restaurant) or use, or permit the use of, the System or any part thereof, except as may be required by applicable law or as authorized by this Agreement.

(d) Confidants shall, at all times, treat as confidential the Confidential Operations Manual and other manuals or materials designated for use within the System, and such other

information as Villa may designate, from time to time, for confidential use in conjunction with the System, as well as all other trade secrets, confidential information, knowledge and know-how concerning the construction or operation of the Restaurant that may be imparted to, or acquired by Confidants from time to time in connection with this Agreement, and shall use diligent efforts to keep such information confidential. The Confidential Operations Manual, and any other manuals or materials designated for use with the System, and all confidential information and trade secrets shall, at all times, be deemed to be, and shall remain the sole property of Villa and/or its affiliate, and Franchisee shall acquire no right, title or interest therein by virtue of authorization pursuant to this Agreement, to possess and use the same. Confidants acknowledge that the unauthorized use or disclosure of such confidential information and trade secrets will cause incalculable and irreparable injury to Villa and its affiliate. Confidants accordingly agree that they shall not, at any time, whether during the term of this Agreement or after termination, expiration or non-renewal hereof, without Villa's prior written consent disclose, except to such employees or agents as must have access to such information in order to construct or operate the Restaurant, or use or permit the use, except as may be required by applicable law or authorized by this Agreement, of such information, in whole or in part, or otherwise make the same available to any unauthorized person or source.

(e) Franchisee shall cause any person who is actively involved in the management of the Restaurant at the time of employment, to enter into a "Confidentiality and Non-Competition Agreement" in the form recommended from time to time by Villa. The current form of Confidentiality and Non-Competition Agreement is attached hereto as Exhibit C. Franchisee shall use its best efforts to prevent any such person from using, in connection with the operation of any restaurant (other than the Restaurant and any other Villa Restaurants operated by Franchisee) wherever located, the System and any of the Villa Marks, or from operating any restaurant that looks like, copies or imitates any Villa Restaurant, or is operated in a manner tending to have such effect. If Franchisee has reason to believe that any such person has violated the provisions of such Confidentiality and Non-Competition Agreement, Franchisee shall notify Villa and shall cooperate with Villa to protect Villa against infringement or other unlawful use of the Villa Marks or the System, including but not limited to the prosecution of any lawsuits if, in the judgment of counsel for Villa, such action is necessary or advisable.

## 15. INSURANCE

(a) Franchisee shall purchase and, at all times during the term of the Agreement shall maintain in full force and effect, policies of insurance for the following coverage:

(i) All risk property insurance on contents, including improvements and betterments;

(ii) Commercial general liability insurance, to include personal injury, products liability and employers non-ownership automobile coverage;

(iii) Liquor law legal liability, in cases where the Restaurant sells alcoholic beverages;

(iv) Sign coverage;



(v) Workers' compensation and employers' liability.

(b) Franchisee shall also purchase and, at all times during the term of the Agreement shall maintain in full force and effect, the following:

(i) Loss of income insurance in an amount sufficient to cover the Royalty and Advertising fees due and payable hereunder, for a period of at least six months;

(ii) Rental value insurance in an amount sufficient to cover the rents and other fees due and payable to the Landlord and/or Merchants' Association under the Lease, if any, during any period of business interruption or inability to operate the Restaurant.

The purchase and maintenance of such insurance shall not excuse Franchisee from willful failure or neglect to operate the Restaurant in accordance with this Agreement or the Lease. In the event that Villa may be obligated to fulfill the terms of the Lease or other agreement, or act as Guarantor or Surety for Franchisee, then Villa may require that the proceeds of such insurance coverage be made payable directly to Villa and/or others designated by Villa.

(c) All policies of insurance required under this section shall be in such form, and such amounts as Villa shall reasonably determine, and with such companies duly authorized to do business in the state where the Restaurant is located, and shall protect, as named insureds, Franchisee, Villa and any other party designated by Villa. Franchisee shall furnish Villa and other named insureds, and all other persons designated by Villa, with certificates issued by each of Franchisee's insurers indicating that all required insurance are in full force and effect and will not be terminated or changed without at least thirty (30) days prior notice thereto.

(d) Should Franchisee fail, or neglect to obtain or maintain, in continuous full force and effect, the insurance coverage required by this Agreement, or by the terms and conditions of the Lease then, and in such event, at its exclusive option and without prior notice to Franchisee, Villa may purchase and obtain the required insurance coverage, and Franchisee hereby specifically agrees to pay to Villa its costs and expenses in purchasing, obtaining and maintaining such coverage.

(e) Franchisee shall deliver copies of all such insurance policies or certificates of insurance, to Villa prior to the opening for business of the Restaurant. Upon failure of the Franchisee to deliver to Villa copies of such insurance policies or certificate of insurance within the required time then, and in such event, at its option and without prior notice to Franchisee (in addition to its rights under Paragraph 24 hereof), Villa may purchase and obtain the required insurance coverage, and Franchisee hereby specifically agrees to pay to Villa its costs and expenses in purchasing, obtaining and maintaining such coverage.

(f) In any event, regardless of the provisions of this Paragraph 15, Franchisee shall indemnify, defend and hold Villa harmless against any loss, claim, action or award that would be covered by such insurance.

16. PROPRIETARY MARKS AND INTERNET

(a) Franchisee acknowledges that Villa's affiliate is the owner of all right, title and interest in and to the Licensed Marks. Villa has obtained the right from its affiliate to license Franchisee to use the Licensed Marks, in accordance with the terms and conditions of this Agreement. Franchisee's right to use the Licensed Marks is derived solely from this Agreement and is limited to conducting business pursuant to and in compliance with this Agreement. Franchisee's unauthorized use of any of the Licensed Marks constitutes a breach of this Agreement and an infringement of Villa's affiliate's rights to the Licensed Marks. This Agreement does not confer on Franchisee any goodwill or other interests in the Licensed Marks. Franchisee's use of the Licensed Marks and any goodwill established thereby inures to Villa's affiliate's exclusive benefit.

(b) Franchisee agrees to use each such Licensed Mark only in compliance with rules prescribed from time to time by Villa. Franchisee shall not use any of the Licensed Marks as part of any corporate name, or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed to Franchisee hereunder), nor may Franchisee use any of the Licensed Marks in connection with the sale of any unauthorized product or service or in any manner not explicitly authorized in writing by Villa.

(c) Franchisee shall immediately notify Villa of any apparent infringement or challenge to Franchisee's use of the Licensed Marks. Villa shall have sole discretion to take such action as it deems appropriate.

(d) If it becomes advisable at any time in the sole discretion of Villa for Franchisee to modify or discontinue use of any of the Licensed Marks and/or use one or more additional or substitute proprietary marks, Franchisee agrees to do so, and the sole obligation of Villa, in any such event, shall be to reimburse Franchisee for the direct costs of complying with its obligation.

(e) Franchisee shall not contest, directly or indirectly, Villa's or Villa's affiliate's ownership, title, right or interest in any proprietary mark, trade secret, method, procedure or advertising technique that is part of the System, or contest Villa's or Villa's affiliate's sole rights to register, use or license such proprietary marks, trade secrets, methods, procedures and techniques or any other trademark, service mark, logo or trade name which are developed by Villa or its affiliates and are derivatives of the Villa Marks which are related to Villa's business.

(f) All provisions of this Agreement applicable to the Licensed Marks, shall apply to any trade names, trade and service marks, logos and other commercial symbols, and any patents or copyrights hereafter licensed to Franchisee by Villa.

(g) Franchisee may not maintain a World Wide Web site or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with the franchised business without Franchisor's prior written approval, which Franchisor may withhold for any reason or no reason. Franchisee agrees to submit to Franchisor for approval before use true and correct printouts of all Web site pages Franchisee proposes to use in its Web site in connection with the franchised business. Franchisee understands and agrees that Franchisor's right of approval of all such Web materials is necessitated by the fact that such Web materials will include and be inextricably lined with Franchisor's Proprietary Marks. Franchisee may only use material which Franchisor has approved. Should Franchisor

grant Franchisee the right to establish a Web site, Franchisee's Web site must conform to all of Franchisor's Web site requirements, whether set forth in its Manual or otherwise. Franchisee agrees to provide all hyperlinks or other links that Franchisor requires. If Franchisor grants approval for a Web site, Franchisee may not use any of the Proprietary Marks at the site except as Franchisor expressly permits. Franchisee may not post any of Franchisor's proprietary, confidential or copyrighted material or information on its Web site without Franchisor's prior written permission. If Franchisee wishes to modify its approved site, all proposed modifications must also receive Franchisor's prior written approval. Franchisee explicitly understands that it may not post on its Web site any material which any third party has any direct or indirect ownership interest in (including, without limitation, video clips, photographs, sound bites, copyrights test, trademarks or service marks, or any other text or image which any third party may claim intellectual property ownership interests in). Franchisee agrees to list on its Web site, should Franchisor ever grant Franchisee the right to have a Web site, any Web site maintained by Franchisor, and any other information Franchisor requires in the manner Franchisor dictates. Franchisee agrees to obtain Franchisor's prior written approval for any Internet domain name and/or home page address. The requirement for Franchisor's prior approval set forth in this Paragraph will apply to all activities on the Internet or other communications network to be conducted by Franchisee, except that Franchisee may maintain one or more E-mail addresses and may conduct individual E-mail communications without Franchisor's prior written approval. Franchisee agrees to obtain Franchisor's prior approval as provided above if Franchisee proposes to send advertising to multiple addressees via E-mail.

(h) Franchisee agrees to participate as a user of Franchisor's Intranet service and to pay the monthly user fee billed Franchisee by Franchisor. All amounts billed by Franchisor for user fees shall be due and payable by Franchisee when billed by Franchisor.

#### 17. USE OF LICENSED MARKS

(a) Franchisor shall have the right to control, and Franchisee hereby grants to Franchisor the right to control the form and manner in which the Licensed Marks are used by Franchisee upon, or in connection with, any and all stationery, business cards, advertisements, press releases, brochures, coupons, packages, labels, menus, tags or other printed material used in the advertising or sale of Franchisee's services or products. Franchisee shall, prior to use, submit to Franchisor specimens for approval of use of any and all such stationery, business cards, advertisements, press releases, brochures, coupons, packages, labels, menus, tags or other printed material. Franchisee agrees to discontinue the use of any and all such stationery, business cards, advertisements, press releases, brochures, coupons, packages, labels, menus, tags or other printed material which is not, or ceases to be, approved by the Franchisor except that previously approved printed material in stock which may be used for a period of two (2) months.

(b) The Licensed Marks, where it is reasonable to do so, shall be composed of capital letters entirely or otherwise distinguished from the accompanying text to make clear that the word is a service mark and/or trademark. Franchisee agrees to apply appropriate trademark notices as prescribed under law. An encircled capital letter "R" shall be used next to those Licensed Marks which are federally registered and are being used in the United States of America or internationally; the letters "SM" shall be used next to those Licensed Marks which are not yet federally registered but are being used in the United States of America or internationally.

(c) Any stationery, business cards, advertisements, press releases, brochures, coupons, packages, labels and tags or other printed material provided by Franchisee, including cooperative advertising, and any labels applied by Franchisee and bearing the Licensed Marks, shall at all times clearly identify Franchisee to the public as the source of such services and/or products and that Franchisee is using the Licensed Marks under license by affixing the following legend:

"Trademark (or Service Mark) of Villa Holding, LLC"

18. IMPROPER USE

The Franchisee shall immediately report, in writing to Franchisor, any unauthorized use of any Villa Mark which comes to the Franchisee's attention. Franchisee shall promptly report to Franchisor particulars of any use by any third party of a trade name or mark which Franchisee might reasonably believe amounts to infringement of any of the Villa Marks or to unfair competition or palming-off at common law. If it comes to the notice of the Franchisee that any third party alleges that registrations of the Villa Marks are invalid, or that use thereof infringes any rights of that party or that the Villa Marks are open to any other form of attack, Franchisee shall not make any admissions but shall immediately, in writing, report the matter to Franchisor. Franchisor shall have complete authority relating to the conduct of all proceedings involving the Villa Marks to which it is a party. The Franchisee shall, if requested by Franchisor, cooperate with Franchisor in precluding the unauthorized use of any Villa Mark.

19. INITIAL FRANCHISE FEE

The Franchisee shall pay Villa a total Initial Franchise Fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) payable in full at the time of execution and delivery of this Agreement.

The Initial Franchise Fee is fully earned when paid, and non-refundable except as otherwise expressly provided herein.

Unless required to do so by applicable law, no refund by Villa shall bear any interest nor will Villa deposit the Initial Franchise Fee, or any part thereof, in any escrow, trust or such similar account.

20. SYSTEMS FEE (ROYALTY)

(a) Franchisee agrees to pay Villa a Systems Fee ("Royalty") of six percent (6%) of the gross revenues derived by, from, in or through the Restaurant, payable weekly by Tuesday of each week on gross revenues for the preceding calendar week (i.e. Monday through Sunday period), together with a sales report showing the computation thereof on such forms or reports as Villa shall designate or require.

(b) The term "gross revenues" shall, for all purposes of this Agreement, mean the total revenues from all sales made by, from, in or through the Restaurant, deducting only sales tax therefrom and excluding only such revenues, if any, as may be required by applicable law.

(c) If Royalty fees and/or Advertising Fund contributions are not paid when due, Franchisor has the right to deduct from Franchisee's account an amount equal to the required Royalty and/or Advertising Fund contribution, as applicable, based on the average weekly gross revenues attained by Franchisee during the previous one (1) year period, or, if Franchisee's Restaurant has not been open

for a full year, during such period that the Restaurant has been open. If, however, Franchisee subsequently provides Franchisor with the sales report required pursuant to Paragraph 20(a), Franchisor shall debit or credit Franchisee's account, as applicable, for the difference between the amount previously deducted by Franchisor and the amount actually owed pursuant to such sales report. In addition, the Franchisee shall pay the Franchisor the highest contract interest rate permitted by law, not to exceed one and one-half percent (1.5%) interest per month, pro-rated, on any overdue amounts until said amounts are paid in full. Villa has the right to assess service charges for any checks that are returned for insufficient funds and late charges if permitted by applicable law. However, Franchisee's failure to pay Royalties and other amounts due hereunder constitutes grounds for termination of this Agreement, as provided in Paragraph 24.

(d) All payments to Villa hereunder shall be effected, at Franchisee's cost, through electronic debit/credit transfer of funds programs that Villa specifies from time to time, and Franchisee agrees to sign such documents (including independent transfer authorizations) and do such things as Villa deems necessary to facilitate electronic transfers of funds.

(e) The six percent (6%) Royalty and one percent (1%) advertising fee are not refundable under any circumstances.

(f) Villa may apply any of Franchisee's payments to Villa to any of Franchisee's past due indebtedness for Royalties, Advertising Fund contributions, purchases of products or supplies or any other past due indebtedness to Villa or any of Villa's affiliates, notwithstanding any contrary designation by Franchisee. Franchisee agrees that all such payments will be made as and when due without any setoff, deduction or prior demand therefore.

(g) In the event any taxing authority, wherever located, imposes any tax, levy or assessment on any payment Franchisee makes to Franchisor, Franchisee must, in addition to all payments due to Franchisor, pay such tax, levy or assessment.

## 21. ADVERTISING FEES

(a) In addition to the Royalty described in the preceding paragraph, Franchisor may require Franchisee to pay to Franchisor as a contribution to the Advertising Fund, on Tuesday of each week, a sum equal to one percent (1%) of gross revenues during the preceding calendar week. The weekly advertising fee may be raised an additional two percent (2%) for a total of three percent (3%) by a majority vote of all Franchisees.

(b) Villa may, in its sole discretion, establish and administer a fund ("the Advertising Fund") for the creation and development of advertising, marketing and related programs. Villa will have sole discretion over all aspects of programs financed by the Advertising Fund, including creative concepts, media, materials and endorsements of marketing and advertising programs. Although the advertising and marketing programs funded by the Advertising Fund are intended to maximize general recognition and patronage of the Licensed Marks (and other marks relating to the type of restaurant to be franchised hereunder) for the benefit of all Villa Restaurants operating under the Licensed Marks, Villa cannot assure Franchisee that the Restaurant will benefit directly or pro-rata from the placement of advertising. The Advertising Fund may be used to pay for the cost of preparing and producing marketing and advertising materials and programs selected by Villa, including video, audio and written advertising

materials, and for related costs such as employing advertising agencies and market research activities. Villa may furnish Franchisee with marketing, advertising and promotional materials at cost, plus any related administrative, shipping, handling and storage charges.

(c) The Advertising Fund will be accounted for separately from Villa's other funds and will not be used to defray any of Villa's general operating expenses, except for reasonable salaries, administrative costs and overhead Villa may incur in activities related to the administration of the Advertising Fund and its programs, including collecting and accounting for contributions to the Advertising Fund. The Villa Restaurants which we and our affiliates own are not required to contribute to the Advertising Fund. All disbursements from the Advertising Fund shall be made first from income and then from contributions. Villa may spend in any fiscal year an amount which is more or less than the aggregate contributions to the Advertising Fund in that year, and the Advertising Fund may borrow from Villa or other lenders to cover deficits or cause the Advertising Fund to invest any surplus for future use. Villa will prepare annually a statement of monies collected and costs incurred by the Advertising Fund and furnish Franchisee a copy upon Franchisee's written request. Except as otherwise expressly provided in this Paragraph 21, Villa assumes no liability or obligation with respect to the establishment, direction or administration of the Advertising Fund. Villa does not act as trustee or in any other fiduciary capacity with respect to the Advertising Fund.

(d) Franchisee agrees to spend on advertising and promoting the Restaurant at least one percent (1%) of gross revenues (or such lesser amount as Franchisor may establish from time to time) during each calendar quarter beginning on the date of this Agreement. For these purposes, advertising expenditures include: (i) amounts contributed to any Advertising Fund established by Franchisor pursuant to this Paragraph 21; and (ii) amounts spent for advertising media, such as television, radio, newspaper, billboards, posters, direct mail and flyers. Advertising expenditures do not include amounts spent for items which Franchisor, in its reasonable judgment, deems inappropriate for meeting the minimum advertising requirement, including permanent on-premises signs, lighting, delivery vehicle signage, premiums, discounts, and employee incentive programs.

(e) Franchisee shall not engage in any advertising program or use any other advertising, including local advertising placed on television, print or any other media, or prepare or use any marketing materials, whether at its own expense or otherwise, unless and until it has been approved in writing by Villa.

## 22. PURCHASE OF SUPPLIES

Franchisee shall purchase all food products, beverages, ingredients, uniforms, packaging materials, menus, forms and other supplies, from suppliers, contractors and purveyors approved in writing by Villa. If Franchisee desires to purchase any such items from a supplier, contractor or purveyor other than Villa, or a supplier, contractor or purveyor who has been approved by Villa, Franchisee shall submit to Villa a written request for approval, or shall request the supplier, contractor or purveyor to do so, both of which requests shall contain a covenant to conform, at all times, to Villa's standards and specifications in effect from time to time.

Villa shall have the right to require, as a condition of its approval, that its representative be permitted to inspect the supplier, contractor or purveyor's facilities, and that samples be delivered, at Villa's option, to Villa for testing, and that such samples demonstrate, to Villa's satisfaction, an ability to

meet Villa's standards and specifications. A charge, not to exceed the cost of such inspection and testing, shall be paid by the Franchisee or by the supplier, contractor or purveyor seeking approval, and Villa shall not be liable for damage to any sample that may result from the testing process.

The supplier, contractor or purveyor must also demonstrate to Villa the existence of quality controls, and the financial and managerial capacity to supply Franchisee's needs promptly and reliably. Villa reserves the right, and the supplier, contractor or purveyor shall agree thereto as a condition to Villa's approval thereof, at its option, to reinspect the facilities and to retest the products of any such approved supplier, contractor or purveyor at any time, without prior notice and without liability, and regardless of any contracted arrangement between Franchisee and the supplier, contractor or purveyor, to revoke its approval if the supplier, contractor or purveyor has failed to continue to meet any of the foregoing criteria.

Villa reserves for itself the absolute right to be either the sole source of supply, or the sole designator of suppliers, contractors or purveyors who will provide food products, ingredients or mixes involving trade secrets, confidential formulae or confidential recipes, and shall have no obligation to release any trade secret, confidential formulae or confidential recipe to the Franchisee or any other supplier, contractor or purveyor. Villa shall have the right to profit from such sales.

If Villa does disclose trade secrets or other confidential and proprietary information to a supplier, contractor or purveyor the supplier, contractor or purveyor shall be required to execute Villa's standard form of Confidentiality and Non-Competition Agreement, as a condition to Villa's disclosure or delivery of such information.

Any and all supplier and/or manufacturer discounts and rebates obtained by Villa shall be the sole property of Villa, and Franchisee does not claim any ownership rights thereto.

## 23. INSPECTION

(a) To determine whether Franchisee is complying with this Agreement including all operational standards of the Confidential Operations Manual, Villa, through its employees, accountants, attorneys and any other agents named by Villa, shall have the right, at any time during business hours, and without prior notice to Franchisee, to enter the Restaurant and inspect same. Such rights of inspection shall include the right to:

- (i) Visually inspect and observe the Restaurant;
- (ii) Observe and video tape the operation of the Restaurant for such consecutive or intermittent periods as Villa deems appropriate;
- (iii) Remove samples of any food and beverage products, supplies, consumables or other products for testing or analysis;
- (iv) Interview personnel and guests of the Restaurant;
- (v) Inspect and copy any books, records and documents relating to the operation of the Restaurant, including all accounting and employee records and books of account.

(b) Villa shall notify Franchisee, in writing, of any deficiencies which are disclosed by such inspections, and may notify Franchisee of problems which are brought to Villa's attention.

(c) Franchisee shall correct at its own expense any deficiencies or problems within seven (7) days of receipt of notice of deficiency or problem, unless same pertain to violations of a health, sanitation or safety law or ordinance, in which case such violation will be corrected immediately, but in all events within twenty-four (24) hours.

(d) Such inspections shall be made at Villa's expense, provided that if Villa makes more than one inspection within any twelve (12) month period during the term of this Agreement in connection with Franchisee's failure to comply with this Agreement, Villa shall have the right to charge Franchisee for the costs of making all further inspections in connection with such failure to comply including, without limitation, travel expenses, room and board and compensation of Villa's employees.

(e) Villa shall have the right to audit, or cause to be audited Franchisee's books and records, including sales reports and financial statements. If any such audit shall disclose that Franchisee understated or underreported the gross revenues of the Restaurant for any period or periods, Franchisee shall pay to Villa, within fifteen (15) days after receipt of the audit report, the understated or underreported Royalty, plus any related, understated advertising fee, together with interest thereon at the highest contract interest rate permitted by law, not to exceed one and one-half percent (1.5%) interest per month, pro-rated, on any overdue amounts calculated from the date when said fees should have been paid, to the date of actual payment. Further, if such understatement for any period or periods shall be two (2%) percent or more of the originally reported gross revenues for such period or periods, Franchisee shall reimburse Villa for the cost of such audit including, without limitation, the charges of any independent accountant, and the travel expenses, room and board and compensation of such accountant and of employees of Villa.

#### 24. DEFAULT AND TERMINATION

(a) Immediate Termination. Franchisee shall be in material breach of this Agreement, and this Agreement will automatically terminate without notice, at Villa's discretion, if Franchisee becomes insolvent by reason of its inability to pay its debts as they mature; if Franchisee is adjudicated bankrupt or insolvent; if Franchisee files a petition in bankruptcy, reorganization or similar proceedings under the bankruptcy laws of the United States or has such a petition filed against it which is not discharged within 30 days; if a receiver or other custodian, permanent or temporary, is appointed for Franchisee's business, assets, property; if Franchisee requests the appointment of a receiver or makes a general assignment for the benefit of creditors; if final judgment against Franchisee in the amount of \$25,000 or more remains unsatisfied of record for 30 days or longer; if Franchisee's bank accounts, property or accounts receivable are attached; if execution is levied against Franchisee's business or property; if suit is filed to foreclose any lien or mortgage against any of Franchisee's assets and such suit is not dismissed within 30 days; or if Franchisee voluntarily dissolves or liquidates or has a petition filed for corporate or partnership dissolution and such petition is not dismissed within 30 days.

(b) Termination Upon Notice. In addition to Villa's right to terminate pursuant to other provisions of this Agreement and under applicable law, Villa has the right to terminate this Agreement, effective upon delivery of notice of termination to Franchisee, if Franchisee or any individual owners,



partners, officers, stockholders (and the stockholder(s) of the stockholder, if the stockholder is a corporation) or affiliates:

- (i) abandons or fails to actively operate the Restaurant for 3 consecutive days;
- (ii) surrenders or transfers control of the operation of the Restaurant without Villa's prior consent;
- (iii) makes any material misstatement or omission in an application for a Villa Restaurant or in any other information provided to Villa;
- (iv) suffers cancellation or termination of the lease or sublease for the Restaurant;
- (v) is convicted of, or pleads no contest to, a felony or other crime or offense that Villa reasonably believes may adversely affect the goodwill associated with the Licensed Marks;
- (vi) makes an unauthorized transfer of this Agreement;
- (vii) makes any unauthorized use or disclosure of any confidential information or uses, duplicates or discloses any portion of the Confidential Operations Manual in violation of this Agreement;
- (viii) fails or refuses to comply with any mandatory specification, standard or operating procedure prescribed by Villa relating to the cleanliness or sanitation of the Restaurant or violates any health, safety or sanitation law, ordinance or regulation and does not correct such failure or refusal within 24 hours after written notice thereof is delivered to Franchisee;
- (ix) fails to report accurately gross revenues or to make payment of any amounts due Villa or any of Villa's affiliates, and does not correct such failure within 10 days after written notice of such failure is delivered to Franchisee;
- (x) fails to make a timely payment of any amount due to a supplier unaffiliated with Villa (other than payments which are subject to bona fide dispute), and does not correct such failure within 30 days after Villa delivers to Franchisee notice of such failure to comply;
- (xi) fails to comply with any other provision of this Agreement, or any other franchise agreements with Villa or its affiliates, or any mandatory specification, standard or operating procedure prescribed by Villa and does not correct such failure within 30 days after notice of such failure to comply is delivered to Franchisee; or
- (xii) fails on 3 or more separate occasions within any period of 12 consecutive months to submit when due reports or other data, information or supporting records or to pay when due Royalties, contributions to the Advertising Fund or other payments due Villa, any of Villa's affiliates or any unaffiliated suppliers or otherwise fails to comply with this Agreement, whether or not such failure is corrected after notice is delivered to Franchisee.

25. OBLIGATIONS UPON EXPIRATION, TERMINATION OR NON-RENEWAL

Upon expiration, termination or cancellation of this Agreement, the Franchisee shall immediately cease to use any of the Licensed Marks. The Franchisee shall also refrain from taking any action which might suggest that the Franchisee has any authority to continue to act as a Franchisee of the Franchisor. The Franchisee shall immediately pay all sums owed to Franchisor. Subject to Paragraph 26 hereof, upon expiration, termination or cancellation of this Agreement;

(a) Franchisee agrees to pay Villa, within seven (7) days, such Royalty fees, Advertising Fund contributions and other charges as have then become due hereunder and are unpaid or to pay, immediately upon demand, those which thereafter become due as a result of any audit that may be conducted by Villa;

(b) Franchisee shall, on or before the last day of the term of this Agreement, take all responsible steps to remove any reference to any of the Licensed Marks wherever such reference may exist;

(c) Franchisee will take such action as may be required, to cancel all assumed name or equivalent registrations relating to the use of any of the Licensed Marks by Franchisee, and to notify the telephone company and all listing agencies, of the termination, expiration or non-renewal of Franchisee's right to use all telephone numbers and all classified and other directory listings for the Restaurant, and to authorize same to transfer to Villa, or its designee, all such numbers and directory listings. Franchisee acknowledges that as between Villa and Franchisee, Villa has the sole rights to and interest in all telephone numbers and directory listings associated with the Licensed Marks, and authorizes Villa to direct the telephone company, and all listing agencies, to transfer same to Villa or its designee. Should Franchisee fail to do so, the telephone company, and all listing agencies, may accept such direction pursuant to this Agreement, as conclusive of the exclusive rights of Villa in and to such telephone numbers and directory listings and its authority to direct their transfer;

(d) Franchisee agrees that he shall immediately remove all signs, trademarks, menu board, inserts, point of sale materials and all other items of decor and design, and all items of trade dress and trade style which would, or would tend to, identify the franchised location as a facility associated with Villa, and shall cease any use of the Licensed Marks and System, and shall return to Franchisor, such signs, manuals, plans and forms furnished to Franchisee by Franchisor, and discontinue using all unused letterhead, business cards, invoices, business forms, etc., which set forth any of the Licensed Marks;

(e) Franchisee shall return all confidential manuals to Franchisor;

(f) Franchisee shall cease doing business under the Licensed Marks and refrain from identifying himself as a franchise operating under the Licensed Marks;

(g) Franchisee shall relinquish all interest, of every kind and description, that it has in the Restaurant and in the lease and, thereafter, upon demand by Villa, Franchisee shall vacate and surrender to Villa the Premises;

(h) Villa shall continue to have the right to have all books, records and accounts of the Franchisee examined by Villa's employees or auditors or other agents, to determine whether all sums required to be paid to Villa under this Agreement have, in fact, been paid through the date of such termination or expiration. If such examination reveals any underpayment, then Franchisee shall remit any deficiencies thereof to Villa, upon demand, with interest as provided in Paragraph 23 (e) hereof;

(i) Those provisions which would, by their nature, continue for some period of time, including a covenant not to compete and a restriction on hiring Franchisor's employees and the employees of other franchisees, shall survive the expiration, termination, or cancellation of this Agreement;

(j) Franchisor may offer to purchase from the Franchisee any non-personalized inventory, supplies, and equipment. If purchased, such non-personalized inventory, supplies and equipment shall be delivered to a location specified by Franchisor.

## 26. FRANCHISOR'S RIGHT TO PURCHASE BUSINESS

Upon termination or expiration (without renewal) of this Agreement, Villa has the right, exercisable by giving notice thereof ("Appraisal Notice") within 10 days after the date of such termination or expiration, to require a determination of the "Fair Market Value" (as defined below) of all the tangible assets of the Restaurant which Franchisee owns, including inventory of non-perishable products, materials, supplies, furniture, equipment, signs, and any and all leasehold improvements, fixtures, building and land, but excluding any cash and short-term investments and any items not meeting Villa's specifications for Villa Restaurants (the "Purchased Assets"). Upon such notice, Franchisee may not sell or remove any of the tangible assets of the Restaurant from the Premises and must give Villa, its designated agents and the "Appraiser" (as defined below) full access to the Restaurant and all of Franchisee's books and records at any time during customary business hours in order to conduct inventories and determine the purchase price for the Purchased Assets.

The Fair Market Value shall be determined by good faith negotiations between Franchisee and Villa to establish the amount which an arm's length purchaser would be willing to pay for the Purchased Assets, assuming that the Purchased Assets would be used for the operation of a Villa Restaurant under a valid franchise agreement reflecting the then-current (or if Villa is not offering franchises at that time, then the most recent) standard terms upon which Villa offers franchises for Villa Restaurants, less the cost of any required remodeling in the event the determination is made upon expiration of the Term. Under no circumstances will any value be attributed to any goodwill associated with any Villa Mark. If Franchisee and Villa are unable to agree on the Fair Market Value of the Purchased Assets within 15 days after the Appraisal Notice, then Fair Market Value will be determined by a reputable accounting firm (other than a firm which conducts audits of Villa's financial statements) selected by Villa who has experience in the valuation of restaurant businesses (the "Appraiser"). Villa will notify Franchisee of the identity of the Appraiser, who will make his determination and submit a written report ("Appraisal Report") to Franchisee and Villa as soon as practicable, but in no event more than 60 days after his appointment. Each party may submit in writing to the Appraiser its judgment of Fair Market Value (together with its reasons therefore); however, the Appraiser shall not be limited to these submissions and may make such independent investigations as he reasonably determines to be necessary. The Appraiser's fees and costs shall be borne equally by the parties hereto.

Villa has the option, exercisable by delivering notice thereof within 30 days after submission of the Appraisal Report (or the date that an agreement is reached, if the parties agree to the Fair Market Value), to purchase the Purchased Assets at the Fair Market Value. Villa shall have the unrestricted right to assign this option to purchase separate and apart from the remainder of this agreement.

If Villa exercises its option to purchase, 60% of the purchase price for the Purchased Assets will be paid in cash at the closing, which will occur at the place, time and date Villa designates, but not later than 60 days after the exercise of its option to purchase the Purchased Assets. At the closing, Villa will be entitled to all warranties, title insurance policies and other closing documents and post-closing indemnifications as Villa reasonably requires, including: (a) instruments transferring good and merchantable title to the Purchased Assets, free and clear of all liens, encumbrances, and liabilities, to Villa or its designee, with all sales and other transfer taxes paid by Franchisee; and (b) an assignment of all leases of tangible assets used in the operation of the Restaurant, including land, building and/or equipment (or if an assignment is prohibited, a sublease to Villa or its designee for the full remaining term and on the same terms and conditions as Franchisee's lease, including renewal and/or purchase options), provided, however, that if any of Franchisee's owners or affiliates directly or indirectly owns the land, building and/or equipment of the Restaurant, Franchisee will, at Villa's option, cause such owner or affiliate to grant to Villa a lease at reasonable and customary rental rates and other terms prevailing in the community where the Restaurant is located. Any dispute concerning the rental rates and terms of such lease shall be resolved by the Appraiser. 20% of the purchase price (plus accrued and unpaid interest on the unpaid balance, at the Prime Rate, as defined below, from and after the closing date) shall be payable on the first anniversary of the closing date, and the remaining 20% of the purchase price (plus accrued and unpaid interest on the unpaid balance, at the Prime Rate, from and after the closing date) shall be payable on the second anniversary of the closing date. The "Prime Rate" shall be the published prime rate as of the date of closing of The Chase Manhattan Bank or any other national bank Villa selects.

If Franchisee cannot deliver clear title to all of the assets, or if there are other unresolved issues, the closing of the sale may, at Villa's option, be accomplished through an escrow on such terms and conditions as Villa deems appropriate, including the making of payments, to be deducted from the purchase price, directly to third parties in order to obtain clear title to any of the Purchased Assets. Further, Franchisee and Villa shall comply with any applicable Bulk Sales provisions of the Uniform Commercial Code as enacted in the state where the Premises are located and all applicable state and local sales and income tax notification and/or escrow procedures. Villa has the right to set off against and reduce the purchase price by any and all amounts owed by Franchisee or any of its owners or affiliates to Villa or any of its affiliates.

Upon delivery of the Appraisal Notice and pending (a) determination of Fair Market Value, (b) Villa's option period, and (c) the closing of the purchase, Villa may authorize continued temporary operations of the Restaurant pursuant to the terms of this Agreement, subject to the supervision and control of one or more of its appointed managers.

## 27. RESTRICTIVE COVENANTS

(a) Covenant Not to Compete. If this Agreement is terminated in accordance with the provisions of this Agreement, or by mutual agreement of the parties hereto, or if this Agreement expires, Franchisee agrees that for a period of two (2) years commencing on the effective date of termination or expiration, Franchisee and any individual owners, partners, officers or stockholders (and the stockholder(s) of the stockholder, if the stockholder is a corporation) and affiliates of Franchisee will not engage, directly or indirectly, as an owner (except of publicly traded securities), partner, director, officer,

employee, consultant, representative or agent, or in any other capacity, in an Italian style restaurant business or pizzeria business: (a) located at the Premises; (b) located within a five (5) mile radius of the Premises; or (c) within a five (5) mile radius of any other Villa Pizza restaurant or Cozzoli's Restaurant, whether same is operated by Villa, an affiliate or subsidiary thereof, or by another franchisee under any of the Villa Marks. To the extent that this paragraph is judicially determined to be unenforceable by virtue of its scope in terms of area or length of time, but may be made enforceable by reductions of either or both thereof, Franchisee and Villa agree that the same shall be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought. This Section shall not be applicable to Franchisee's existing locations on the attached schedule.

(b) Information Exchange. All ideas, concepts, methods and techniques useful to a restaurant business, whether or not constituting protectable intellectual property, that Franchisee creates or that are created on Franchisee's behalf, shall be promptly disclosed to Franchisor. If Franchisor adopts any of them as part of the System, they will be deemed to be Franchisor's sole and exclusive property (without compensation to Franchisee) and deemed to be works made-for-hire for Franchisor. Franchisee agrees to sign whatever assignment or other documents Franchisor requests to evidence Franchisor's ownership or to assist Franchisor in securing intellectual property rights in such ideas, concepts, techniques or materials.

28. TRANSFER BY FRANCHISOR

Franchisor shall have the right to assign and transfer all rights under this Agreement, and such right shall inure to the benefit of Franchisor's successors or assigns.

29. TRANSFER BY FRANCHISEE

Franchisee shall not transfer any rights or interest under this Agreement without the written consent of Franchisor, which consent shall not be unreasonably withheld (as provided by law and by this Agreement) provided that the Franchisee shall first have complied with the conditions in this Agreement to Franchisor's satisfaction.

30. CONDITIONS OF APPROVAL

Prior to any proposed transfer of any rights or interests hereunder, the Franchisee shall provide Franchisor with the information necessary to satisfy Franchisor that the following conditions have been met:

(a) The proposed transferee is of good moral character, has a good credit rating, has reasonable and sound business experience equal to or greater than that of the Franchisee, has sufficient financial resources to operate the Restaurant and otherwise meets Villa's standards for franchisees;

(b) The proposed transferee shall demonstrate to Franchisor that the transferee is able to operate the Restaurant being transferred;

(c) The proposed transferee (and its Owners), at Franchisor's option, shall have executed either a written assignment assuming all of the Franchisee's duties and obligations under this

Agreement, or the transferee (and its Owners) shall execute a new Franchise Agreement and any other currently used agreements, on Franchisor's then-current forms;

(d) The Franchisee shall have paid in full and otherwise have satisfied all of the obligations owing to Franchisor at or prior to the closing of the transaction;

(e) If permitted by applicable law, Franchisee shall execute a general release, under seal, in a form satisfactory to Franchisor, of any and all claims against Franchisor, its Affiliates and their respective directors, officers, employees, and agents;

(f) The Franchisor must approve the economic terms and conditions of such transfer including, without limitation, that the price and terms of payment are not so burdensome as to affect adversely the transferee's operation of the franchised Restaurant;

(g) If the Franchisee finances any part of the sale price of the transferred interest, the Franchisee and/or its owner agree that all obligations of the transferee under or pursuant to any promissory notes, agreements or security interests reserved by the Franchisee or its owners in the assets of the franchised business or the franchised premises shall be subordinate to the transferee's obligations to pay Royalty fees, Advertising Fund contributions, and other amounts due to the Franchisor;

(h) The Franchisee must make such repairs and renovations to the business premises to conform to Franchisor's then-current standards for design, trade dress, decor, and equipment;

(i) The proposed transferee, at his expense, shall agree to attend Franchisor's training program;

(j) If the transferee is a corporation, partnership, or other association, or if the transferee is more than one person, the provisions of Paragraphs 26, 29 and 38 shall apply to each principal or person. Franchisor may also require satisfactory proof that transferee is properly authorized to enter into the transaction and to perform the obligations of this Agreement; and

(k) The Franchisee has paid to Franchisor a sales commission of eight (8%) percent of the gross selling price of the Restaurant, the franchise, and all related assets (if Franchisor obtained the purchaser (transferee) for the Franchisee).

### 31. ADDITIONAL TRANSFEREES

If the Franchisee is a corporation, partnership, association or venture by more than one person, changes in the shareholders, partners, associates or participants, in terms of ownership interest or number of shareholders, partners, associates, or participants, shall be deemed a transfer of this Agreement and shall require Franchisor's approval, which shall not be unreasonably withheld (as provided in this Agreement).

32. CORPORATE TRANSFEREE

If a proposed transferee is a corporation or association, each shareholder of the corporation shall jointly and severally guarantee the performance and full payment of the obligations under this Agreement.

33. PARTNERSHIP TRANSFEREE

If a proposed transferee is a partnership, each partner, whether general or limited, shall jointly and severally guarantee the performance and full payment of the obligations under this Agreement.

34. TIME LIMITATION

Any proposed transfer under Paragraph 29 shall be deemed to have expired if not completed within ninety (90) days after Franchisor has waived its right of first refusal.

35. TRANSFER FEE

The Franchisee shall pay, prior to an approved transfer of the franchise, a transfer fee of Seven Thousand Five Hundred (\$7,500) Dollars to Franchisor to cover Franchisor's expenses with regard to any proposed transfer under this provision. If Franchisor exercises its rights to purchase, then such fee shall be waived, but in all other proposed transfers, the fee shall be paid by the Franchisee. No transfer fee shall be charged if Franchisee transfers its interest to a relative or heir.

36. DEATH OF FRANCHISEE

In the event of the death of the Franchisee, or the death of a shareholder, participant or partner of the Franchisee, Franchisor shall not withhold consent to the transfer of the franchise interest to the Franchisee's spouse or children whether by will or intestacy, or to the disposition of the franchise interest by the decedent's fiduciary or personal representative, provided that the following conditions and terms shall be met prior to Franchisor giving any consent:

(a) The fiduciary or personal representative of the decedent and the distributee or transferees shall have met the conditions in Paragraph 30 herein.

(b) Franchisor shall have a right of first refusal as provided in Paragraph 38 herein only if the transfer is for legal consideration.

(c) Franchisor shall be provided with satisfactory proof of the authority of any fiduciary or personal representative and the right of any distributee to claim or receive an interest in the franchise.

(d) If the transferee is a corporation, association or partnership comprised of persons other than the decedent's surviving spouse and children, the transferee shall also comply with the provisions of Paragraphs 31, 32 and 33 herein.

37. OPERATION AFTER DEATH

At the request of the fiduciary or personal representative of a deceased Franchisee, Franchisor, if in its sole discretion deems it desirable, may provide a manager to operate the business. In such case, the manager's salary and expenses, including but not limited to, travel, room, board, meals and other direct expenses, shall be paid for by the deceased Franchisee's personal representative or fiduciary, but only in such person's representative capacity. Franchisor, upon fifteen (15) days' notice, may, with or without cause, remove its personnel (including the manager) from the franchised business and terminate the services under this paragraph.

38. FIRST REFUSAL

If Franchisee or any of its owners desires to transfer this Agreement for legal consideration, Franchisee or such owner must obtain a bona fide, executed written offer and earnest money deposit in the amount of at least 5% of the offering price from a responsible and fully disclosed purchaser and must deliver immediately to Villa a complete and accurate copy of such offer. If the offeror proposes to buy any other property or rights from Franchisee or any of its owners or affiliates (other than rights under other franchise agreements for Villa Restaurants) as part of the bona fide offer, the proposal for such property or rights must be set forth in a separate, contemporaneous offer that is disclosed to Villa, and the price and terms of purchase offered to Franchisee or its owners for the transfer of this Agreement must reflect the bona fide price offered therefore and may not reflect any value for any other property or rights.

Villa has the option, exercisable by notice delivered to Franchisee or its owners within 30 days from the date of delivery of a complete and accurate copy of such offer to Villa, to purchase such interest for the price and on the terms and conditions contained in such offer, provided that: (a) Villa may substitute cash for any form of payment proposed in such offer; (b) Villa's credit shall be deemed equal to the credit of any proposed purchaser; and (c) Villa will have not less than 90 days from the option exercise date to consummate the transaction. Villa has the right to investigate and analyze the business, assets and liabilities and all other matters it deems necessary or desirable in order to make an informed investment decision with respect to the fairness of the terms of its right of first refusal. Villa may conduct such investigation and analysis in any manner it deems reasonably appropriate and Franchisee and its Owners must cooperate fully with Villa in connection therewith.

If Villa exercises its option to purchase, Villa is entitled to purchase such interest subject to all representations and warranties, closing documents and indemnities as Villa reasonably may require. If Villa does not exercise its option to purchase, Franchisee or its Owners may complete the sale to such offeror pursuant to and on the exact terms of such offer, subject to Villa's approval of the transfer as provided in this Agreement, provided that if the sale to such offeror is not completed within 90 days after delivery of such offer to Villa, or if there is a material change in the terms of the offer, Franchisee must promptly notify Villa and Villa will have an additional option to purchase (on the terms of the revised offer, if any, and otherwise as set forth herein) during the 30 day period following Franchisee's notification of the expiration of the 90 day period or the material change to the terms of the offer.



39. NO REPRESENTATIONS, WARRANTIES OR GUARANTEES

(a) Franchisor makes no warranties or guarantees, expressed or implied, to the Franchisee or to the Franchisee's customers with regard to any services, material, information, or supplies.

(b) Nothing in this Agreement shall be construed as:

(i) A warranty, guarantee, or representation by Franchisor as to the nature, significance, validity, or incontestability of the Licensed Marks or registrations thereof;

(ii) A warranty, guarantee, or representation by Franchisor that any use made of the Licensed Marks under this Agreement is or will be free from infringement of trademark rights of third parties;

(iii) A requirement that Franchisor shall file any trademark application, secure any trademark registration, or maintain any registration in force;

(iv) An agreement by Franchisor to bring or prosecute actions or suits against third parties for infringement of any of the Licensed Marks; or

(v) A statement, representation, or warranty of present or continuing value of any Licensed Mark, or creating any right whatsoever in or for Franchisee upon claimed or actual diminution of the value, significance, or importance of any of the Licensed Marks.

40. INDEPENDENT CONTRACTORS

Neither this Agreement nor the dealings of the parties pursuant to this Agreement shall create any fiduciary relationship or any other relationship of trust or confidence between the parties hereto. Franchisor and Franchisee, as between themselves, are and shall be independent contractors. Franchisee is solely responsible for hiring, supervising, and directing all of Franchisee's employees, for the payment and withholding of all payroll and other taxes imposed upon or determined by wages and salaries of such employees, and for complying with all applicable laws relating to worker's and unemployment compensation, occupational disease, disability and similar laws. Villa has no control over Franchisee's employees, including the terms and conditions of their employment.

If applicable law shall imply a covenant of good faith and fair dealing in this Agreement, the parties hereto agree that such covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement. Additionally, if applicable law shall imply such covenant, Franchisee acknowledges and agrees that (a) this Agreement (and the relationship of the parties which is inherent from this agreement) grants Villa the discretion to make decisions, take actions and/or refrain from taking actions not inconsistent with its explicit rights and obligations hereunder that may affect favorably or adversely Franchisee's interests; (b) Villa will use its judgment in exercising such discretion based on its assessment of its own interests and balancing those interests against the interests of the owners of Villa Restaurants generally (including Villa, and its affiliates and franchisees), and specifically without considering Franchisee's individual interests or the individual interests of any other particular franchisee; (c) Villa will have no liability to Franchisee for the exercise of its discretion in this

manner, so long as such discretion is not exercised in bad faith toward Franchisee; and (d) in absence of such bad faith, no trier of fact in any legal action or arbitration proceeding shall substitute its judgment for Villa's judgment so exercised.

Nothing contained in this Agreement, or arising from the conduct of the parties hereunder, is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose whatsoever. Franchisee must conspicuously identify itself in all dealings with customers, lessors, contractors, suppliers, public officials, employees and others as the owner of the Restaurant and must place such other notices of independent ownership on such forms, business cards, stationery, advertising and other materials as we may require from time to time.

Franchisee may not make any express or implied agreements, warranties, guarantees or representations or incur any debt in Villa's name or on Villa's behalf or represent that the relationship of the parties hereto is anything other than that of independent contractors. Villa will not be obligated by or have any liability under any agreements made by Franchisee with any third party or for any representations made by Franchisee to any third party. Villa will not be obligated for any damages to any person or property arising directly or indirectly out of the operation of Franchisee's business hereunder.

#### 41. INDEMNIFICATION

Franchisee must indemnify, defend and hold harmless Franchisor, its affiliates and all their respective shareholders, directors, officers, employees, agents, successors and assigns against, and reimburse them for, any claim, liability, obligation, actual and consequential damages or taxes asserted against or imposed on any of the foregoing indemnified parties arising directly or indirectly from the development or operation of the Restaurant, other than liabilities caused solely by Villa's own gross negligence or willful action. Villa will notify Franchisee within 30 days of the assertion of any such claim. Villa has the right to defend and/or settle any such matter in such manner it deems appropriate, without Franchisee's consent, and Franchisee must reimburse each of the foregoing indemnified parties for all costs reasonably incurred in defending and/or settling any such matter, including reasonable attorneys' fees (which shall include reasonable compensation for time spent by any in-house counsel). This section shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

#### 42. TAXES

Villa will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon the Restaurant, Franchisee's property or upon Villa, in connection with sales made or business conducted by Franchisee (except any taxes Villa is required by law to collect from Franchisee). Payment of all such taxes shall be Franchisee's responsibility. In the event of a bona fide dispute as to Franchisee's liability for taxes, Franchisee may contest its liability in accordance with applicable law. In no event, however, will Franchisee permit a tax sale, seizure, or attachment to occur against the Restaurant or any of its assets.

#### 43. MISCELLANEOUS

(a) Severability and Substitution of Provisions. Every part of this Agreement shall be considered severable. If for any reason any part of this Agreement is held to be invalid, that determination

shall not impair the other parts of this Agreement. If any covenant herein which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of geographical area, type of business activity prohibited and/or length of time, but could be rendered enforceable by reducing any part or all of it, Franchisee and Villa agree that it will be enforced to the fullest extent permissible under applicable law and public policy.

If any applicable law requires a greater prior notice of the termination of or refusal to enter into a successor franchise than is required hereunder, a different standard of "good cause", or the taking of some other action not required hereunder, the prior notice, "good cause" standard and/or other action required by such law shall be substituted for the comparable provisions hereof. If any provision of this Agreement or any specification, standard or operating procedure prescribed by Villa is invalid or unenforceable under applicable law, Villa has the right, in its sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to make it valid and enforceable.

(b) Waiver of Obligations. Villa and Franchisee may by written instrument unilaterally waive or reduce any obligation of the other under this Agreement. Any waiver granted by Villa shall be without prejudice to any other rights Villa may have, will be subject to continuing review by Villa and may be revoked, in its sole discretion, at any time and for any reason, effective upon delivery to Franchisee of 10 days' prior notice. Franchisee and Villa shall not be deemed to have waived any right reserved by this Agreement by virtue of any custom or practice of the parties at variance with it; any failure, refusal or neglect by Franchisee or Villa to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder; any waiver, forbearance, delay, failure or omission by Villa to exercise any right, whether of the same, similar or different nature, with respect to other Villa Restaurants; or the acceptance by Villa of any payments due from Franchisee after any breach of this agreement.

(c) Exercise of Rights. The rights of Franchisor and Franchisee hereunder are cumulative and no exercise or enforcement by Franchisor or Franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by Franchisor or Franchisee of any other right or remedy hereunder which Franchisor or Franchisee is entitled to enforce by law. If Franchisee commits any act of default under the Agreement for which Franchisor exercises its right to terminate this Agreement, Franchisee shall pay to Franchisor the actual and consequential damages Franchisor incurs as a result of the premature termination of this Agreement. Franchisee acknowledges and agrees that the proximate cause of such damages sustained by Franchisor is Franchisee's act of default and not Franchisor's exercise of its right to terminate.

(d) Injunctive Relief. Villa may obtain in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause it irreparable harm. Villa may have such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and Franchisee's sole remedy in the event of the entry of such injunction, shall be its dissolution, if warranted, upon hearing duly had (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived). Franchisee and each of its owners acknowledges that any violation of Paragraphs 14, 16, 17, 18, 25, 27 and 29 would result in irreparable injury to Villa for which no adequate remedy at law may be available. Accordingly, Franchisee and each of its owners consents to the issuance of an injunction prohibiting any conduct in violation of any of those sections and agrees that the existence of any claim Franchisee or any of its owners may have against Villa, whether or not arising from this Agreement, shall not constitute a defense to the enforcement of any of those Paragraphs.