

**Location:**  
**License/MRDA Ref.:**  
**Entity Name:**  
**Effective Date:**

**EXHIBIT A**

**BOSTON PIZZA RESTAURANTS, LP**

**FRANCHISE AGREEMENT**

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**ATTACHMENTS TO FRANCHISE AGREEMENT:**

- Attachment A: Location Addendum
- Attachment B: Mandatory Addendum to Lease Agreement
- Attachment C: Telephone Assignment Agreement and Power of Attorney
- Attachment D: Guaranty and Undertaking
- Attachment E: Certificate of Corporate Status
- Attachment F: Boston Link Franchisee Agreement
- Attachment G: Principals' Undertaking

## BOSTON PIZZA RESTAURANTS, LP

### FRANCHISE AGREEMENT

**THIS AGREEMENT** is made and entered into this **Insert Day** day of **Insert Month**, **Insert Year** (the "Effective Date"), by and between **Boston Pizza Restaurants, LP**, a limited partnership formed under the laws of the State of Delaware, whose principal place of business is 1501 LBJ Freeway, Suite 450, Dallas, Texas, 75234 (hereinafter referred to as "BPR" or "Franchisor") and **Insert Name of Franchisee**, a **Insert kind of entity**, with a current address of **Insert Address** (hereinafter referred to as the "Franchisee").

#### WITNESSETH:

**WHEREAS**, the Franchisor holds the exclusive United States franchise rights to a proprietary system owned by BP International Rights Holdings Inc. ("BP Holdings"), which has been developed through significant expenditures of time, skill, effort and money (hereinafter the "System") relating to the establishment, development and operation of a **Boston's The Gourmet Pizza** restaurant operating under the System and the Proprietary Marks which offers pizza and pasta dishes in a full service casual dining restaurant environment (hereinafter a "Restaurant", which term includes both franchised outlets and outlets owned by Franchisor or its affiliates);

**WHEREAS**, the System features a distinctive exterior and interior design, decor, color scheme, fixtures and furnishings for Restaurants, as well as uniform standards, specifications, methods, policies and procedures for Restaurant operations, inventory and management control, training and assistance, and advertising and promotional programs, all of which may be changed, improved upon, and further developed from time to time;

**WHEREAS**, Franchisor, through its dedicated operations, marketing methods, and merchandising policies, has developed the reputation, public image and goodwill of its System and established a firm foundation for its Restaurant operations consisting of the highest standards of training, management, supervision, appearance, services and quality of products;

**WHEREAS**, the System is identified by means of certain trade names, service marks, trade marks, logos, emblems and indicia of origin, including the mark **Boston's The Gourmet Pizza** and logo, and such other trade names, service marks, and trademarks as are now, and may hereafter be designated for use in connection with the System (the "Proprietary Marks") which Proprietary Marks are owned by BP Holdings;

**WHEREAS**, BP Holdings has licensed and granted Franchisor the exclusive right and license to sub-license and monitor the use of the System and the Proprietary Marks in the United States;

**WHEREAS**, BP Holdings continues to develop, expand, use, control and add to the Proprietary Marks and the System for the benefit of and exclusive use by the Franchisor and its franchisees in order to identify for the public the source of the products and services marketed there under and to represent the System's high standards of quality and service;

**WHEREAS**, the Franchisee acknowledges its contract is solely with the Franchisor, a limited partnership, and that it shall have no recourse against Boston Pizza Restaurants (U.S.A.), Inc. ("BP USA") as a limited partner or otherwise or against BP Holdings or any of Franchisor's other affiliated entities, and that it is relying exclusively on the assets, equity, and credit of Boston Pizza Restaurants, LP and its corporate general partner;

**WHEREAS**, the Franchisee desires to operate a Restaurant under the System and the Proprietary Marks and to obtain a license from the Franchisor for that purpose, as well as to receive the training and other assistance provided by the Franchisor in connection therewith;

**WHEREAS**, the Franchisee hereby acknowledges that it has read this Agreement and the Franchisor's Uniform Franchise Offering Circular, and that it has no knowledge of any representations about the Restaurants or about the Franchisor or its franchising program or policies made by the Franchisor or by its officers, directors, shareholders, employees or agents which are contrary to the statements in the Franchisor's Uniform Franchise Offering Circular or to the terms of this Agreement, and that it understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain the Franchisor's high standards of quality and service and the uniformity of those standards at all facilities which operate pursuant to the System and thereby to protect and preserve the goodwill of the Proprietary Marks; and

**WHEREAS**, the Franchisee understands and acknowledges the importance of the Franchisor's uniformly high standards of quality and service and the necessity of operating the Franchised Business granted hereunder in strict conformity with the Franchisor's quality control standards and specifications.

**NOW, THEREFORE**, the parties, in consideration of the promises, undertakings and commitments of each party to the other set forth herein, hereby mutually agree as follows:

## **I. GRANT OF FRANCHISE**

**A. Grant.** The Franchisor hereby grants to the Franchisee and Franchisee accepts, upon the terms and conditions herein contained, the non-exclusive and personal license, right and authority to operate a Restaurant (The Restaurant operated under this Agreement shall be referred to herein as the "Franchised Business") in strict conformity with the Franchisor's quality control standards and specifications which are a material part of the System, which may be changed, improved and further developed from time to time, only at the Franchised Location more particularly described in **Attachment A**. The Franchisee hereby accepts such license and agrees to perform all of its obligations in connection therewith as set forth herein. The Franchisee must secure control of the site (that is, have a binding letter of intent or a signed purchase or option agreement) and must receive the Franchisor's written approval for the site within one hundred and twenty (120) days of the Effective Date.

**B. Territory.** Provided the Franchisee at all times remains in full compliance with its obligations under this Agreement, the Franchisor agrees not to commence operation of, or grant a third party the right to commence operation of, a Restaurant at a physical premises within a one (1) mile radius of the Franchised Location set forth in **Attachment A**, unless such location is within the geographic boundaries of a statistical metropolitan area ("SMA") with a population greater than one million persons, in which case the Franchisor agrees not to commence operation of, or grant a third party the right to commence operation of, a Restaurant within a one-half (1/2) mile radius of the Franchised Location (the "Territory"). However, the Franchisor reserves the right to commence operation of, or grant a third party the right to commence operation of, "quick express" units within non-captive venues within the Territory, after providing the Franchisee with a thirty (30) day right of first refusal. The Franchisor also reserves the right to commence operation of, or grant a third party the right to commence operation of, "quick express" units in any captive venues within or outside the Territory, and the Franchisee shall not have any right of first refusal for "quick express" units located within captive venues. For purposes of this Agreement, "captive" venues means locations in which customers will primarily be drawn from an enclosed or limited facility, including, but not limited to, sports facilities and arenas, entertainment facilities, amusement parks, auditoriums, public transportation facilities, military bases and government facilities, college campuses, shopping malls (including food courts), grocery stores and supermarkets, hospitals and any other similar facilities and locations. A "quick express" unit is a **Boston's The Gourmet Pizza** restaurant operating under the System and the Proprietary Marks which offers a limited menu and/or limited service (rather than full service). Franchisor reserves all rights not expressly granted



herein, including without limitation, the right to take the following actions within or outside the Territory regardless of proximity to, or competitive impact on, the Franchised Business:

1. Commence operation of company-owned Restaurants or license third parties to commence operation of Restaurants providing products or services under marks other than the Proprietary Marks;

2. Notwithstanding any rights of first refusal granted to Franchisee under this Section I.B., offer and sell food products, including frozen products, under the Proprietary Marks or any other marks, through grocery stores, convenience stores, hotel shops and kiosks, theatres, gas stations or other retail locations, or through mail order or catalogues or on the Internet;

3. Notwithstanding any rights of first refusal granted to Franchisee under this Section I.B., offer or sell food products, including frozen products, under the Proprietary Marks or any other marks at "Special Events" after providing the Franchisee with thirty (30) days notice and a ten (10) day opportunity to participate in the "Special Event" pursuant to terms agreeable to the Franchisor and the Franchisee. "Special Event" means carnivals, fairs, school events, charity functions, community festivals, conventions, business gatherings, private parties and similar events and gatherings that last for no more than 30 consecutive days; and

4. Subject to the right of first refusal granted to Franchisee under this Section I.B., offer or sell any products or services, under the Proprietary Marks or any other marks, through any other channel of distribution.

The Franchisor may commence operation of company-owned Restaurants or license third parties to commence operation of Restaurants at any site the Franchisor deems appropriate outside of the Territory.

**C. Relocation.** Franchisee may relocate the Franchised Business to a new location in the Territory upon the following conditions:

1. Franchisee shall not be in default of any provision of this Agreement, any ancillary agreement with the Franchisor or the lease for the existing location;

2. Franchisee shall deliver to Franchisor a current financial statement, including a profit and loss statement for the Franchised Business during the last twelve (12) months of operation, dating back from the date of Franchisee's request, at the existing location, and a copy of the proposed lease, if applicable, for the new location;

3. The proposed new location for the Franchised Business is not within the development territory or the individual territory of any other existing or proposed Restaurant;

4. The proposed new location for the Franchised Business is acceptable to Franchisor in its sole discretion;

5. The new Franchised Business must be constructed, located and equipped in accordance with Franchisor's then current design and other standards; and

6. Franchisee must be current on all of Franchisee's financial obligations to Franchisor and its affiliates.

7. The Franchisee must receive prior written approval from BPR.

Franchisee must give Franchisor written notice of the proposed relocation one hundred eighty (180) days before the relocation date. In the event that Franchisee fails to timely deliver such notice, this shall be grounds for default with opportunity to cure as set forth in Section XIII.B herein. Relocation without providing proper notice as required in this Section to the Franchisor shall be grounds for default without opportunity to cure as set forth in Section XIII.A herein. The Franchised Business must open for business in the new location within thirty (30) days (which may be extended for another thirty (30) days for good cause (as solely determined by "BPR") of the date on which the Franchised Business in the old location closed. Franchisee shall also enter into Franchisor's then-current form of Franchise Agreement, including the then-current royalty rate and advertising contributions and expenditures. Franchisee must provide Franchisor with a copy of the site purchase agreement or executed lease, as applicable, for the new location.

**D. Reservation of Certain Rights.** Subject to Section I.B. hereinabove, the Franchisor reserves the right to commence operation of Restaurants at any site the Franchisor deems appropriate. The Franchisor also reserves the right to sell related products and services in other channels of distribution as set forth in Section I.B. The Franchisor reserves the right to offer, grant and support franchises in similar and other lines of business. The Franchisor makes no representation or warranty to the Franchisee that there will be any right to participate in such franchises.

## II. TERM AND RENEWAL

**A. Initial Term.** Except as otherwise provided herein, the term (the "Initial Term") of this Agreement shall be for ten (10) years commencing on the Scheduled Opening Date.

**B. Renewal Term.** The Franchisee may, at its option, continue the Franchised Business for an additional ten (10) year term, or at Franchisor's sole option, such period as remains in the existing lease underlying the initial term of this Agreement, if such period shall be shorter than ten (10) years (the "Renewal Term"). The Initial Term and the Renewal Term shall be referred to collectively as the "Term" throughout this Agreement. Renewal shall be subject to the following conditions, which must be met prior to the Renewal Term, unless and to the extent expressly waived in writing by the Franchisor:

1. The Franchisee shall give the Franchisor written notice of its election to renew this Agreement not less than six (6) months prior to the end of the current term of this Agreement;

2. At least six (6) months prior to the expiration of the current term of this Agreement or one (1) month after the date of notice pursuant to Section II.B.1. whichever is later, the Franchisor may inspect the Franchised Business and give notice of all required modifications to the nature and quality of the products and services offered at the Franchised Business, the Franchisee's advertising, marketing and promotional programs, its financial and inventory control systems, and the maintenance, refurbishing, equipment upgrade and replacement, renovating and remodelling necessary to comply with the Franchisor's then current standards and specifications and with the requirements of the lease for the Franchised Business. If the Franchisee elects to renew this Agreement, then the Franchisee shall complete, to the Franchisor's satisfaction, all such required modifications, as well as adopt and implement any new methods, programs, modifications, techniques or operational systems required by the Franchisor's notice no later than two (2) months prior to expiration of the current term of this Agreement;

3. The Franchisee shall not be in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between the Franchisee and the Franchisor or its subsidiaries, affiliates and suppliers. The Franchisee shall have substantially complied with all of the terms and conditions of such agreements during the terms thereof and shall not have committed any Material Defaults during the term of the Agreement;

4. The Franchisee shall have satisfied all monetary obligations (which shall not include any incorrect billings by Franchisor) owed by the Franchisee to the Franchisor and its subsidiaries,

affiliates and suppliers and shall have timely met those obligations throughout the term of this Agreement;

5. The Franchisee shall have executed upon renewal the Franchisor's then-current form of Franchise Agreement. The new Franchise Agreement shall supersede in all respects this Agreement, and the terms of which may differ from the terms of this Agreement, including, without limitation, the requirement of a higher percentage royalty fee and/or advertising contributions. In lieu of the then current initial franchise fee or its equivalent for such renewal period, however, the Franchisee shall be required to pay a renewal fee of twenty-five percent (25%) of the then-current initial franchise fee;

6. The Franchisee or its Operating Principal and its approved manager or managers, including its General Manager and Kitchen Manager as designated from time to time by Franchisor in Franchisor's sole discretion, shall have attended the Franchisor's then-current orientation and training programs at the Franchisee's expense;

7. The Franchisee, its shareholders, directors and officers shall have executed a general release, in a form prescribed by the Franchisor, of any and all claims against the Franchisor and its subsidiaries and affiliates, and their respective officers, directors, agents and employees. The Franchisee shall not be required, however, to release the Franchisor for violations of or failure to comply with federal or state franchise registration and disclosure laws;

8. The Franchisee shall have presented evidence satisfactory to the Franchisor that it has the right to remain in possession of the premises where the Franchised Business is located for the duration of the renewal term;

9. The Franchisee's operation and management of the Franchised Business shall be in full compliance with the System; and

10. The Franchisee shall maintain and be in good standing with all of its necessary and applicable licenses and permits.

In the event that any of the foregoing conditions to renewal have not been met at least two (2) months prior to the expiration of the current term of this Agreement, then the Franchisor shall have no obligation to renew this Agreement and shall give the Franchisee at least thirty (30) days prior written notice of its intent not to renew this Agreement, which notice shall set forth the reasons for such refusal to renew.

### **III. DUTIES OF FRANCHISOR**

**A. Pre-Opening Obligations.** The duties of the Franchisor prior to the opening of the Franchised Business are as follows:

1. To provide an Initial Training program in the operation of the Franchised Business, featuring both classroom and on-the-job training, for the Franchisee, or Operating Principal, and up to three (3) of its approved managers, including its General Manager and Kitchen Manager, and also provide an Investor Orientation Program for all non-operating Principals;

2. To provide the Franchisee with written specifications for the operation and management of the Franchised Business;

3. To loan to the Franchisee one (1) set of the Franchisor's confidential systems manuals (the "Manuals") that will include specifications for management and operations, equipment, supplies, and inventory. The Manuals are confidential and remain the property of the Franchisor. The Franchisor may modify the Manuals from time to time in its sole discretion;

4. To provide a set of prototypical plans for the construction of a typical Restaurant. These plans are for informational purposes only and shall not be relied upon by the Franchisee in the construction of its Franchised Business. The Franchisee is required to employ a registered architect and/or engineer previously approved by BPR, develop its own working drawings for the construction of its Franchised Business which must substantially comply with Franchisor's prototypical plans unless changes are approved in writing in advance by Franchisor, and provide all final design and construction documents to the Franchisor for its review and approval prior to the commencement of construction;

5. To provide the Franchisee with such site selection assistance as the Franchisor deems advisable, subject to the availability of personnel. The Franchisor's written approval of the site is required as evidenced by execution of **Attachment A**; however, a designation of the site as being suitable for a Restaurant shall not be deemed a representation or warranty as to the likelihood of success by the Franchisee. **THE FRANCHISOR HAS PROVIDED NO DATA AND MADE NO STATEMENT THAT WOULD EXPRESSLY OR IMPLIEDLY SUGGEST THAT APPROVAL OF A SITE IS ANY REPRESENTATION AND WARRANTY OF THE SITE'S EVENTUAL PERFORMANCE.** The Franchisee acknowledges and agrees that its success will be due to factors beyond the control of the Franchisor; and

6. To provide to the Franchisee up to five (5) employees to provide on-site pre-opening and opening supervision and assistance for three (3) weeks. BPR reserves the right to charge three hundred fifty dollars (\$350) per employee per day for this on-site training in its sole discretion. This on-site training is in addition to the initial training program described in Section III.A.1, above, which is provided free of charge, except that, the Franchisee must pay the expenses of its attendees at the initial training program.

**B. Post-Opening Obligations.** The obligations of the Franchisor following the opening of the Franchised Business are as follows:

1. To provide such general advisory assistance and field support deemed by Franchisor, in Franchisor's sole discretion, to be helpful to the Franchisee in the ongoing operation, advertising and promotion of the Franchised Business including the provision of periodic Brand Equity Review ("B.E.R.") Assessments. In the event that the Franchised Business fails a B.E.R. assessment, the Franchisor will charge the Franchisee for all costs associated with such assessment;

2. To continue its efforts to establish and maintain high standards of quality, cleanliness, safety, customer satisfaction and service;

3. To provide to the Franchisee updates, revisions and amendments to its Manuals, as the Franchisor deems advisable in its sole discretion;

4. Subject to the availability of the Franchisor's staff, to provide management consulting services for special projects or assistance at the rate of three hundred fifty dollars (\$350) per person per day, plus reimbursement of all reasonable expenses incurred by the Franchisor in connection with the rendering of such services. (The Franchisor reserves the right to make reasonable adjustments from time to time to such daily rate in its sole discretion; these consulting fees are non-refundable and must be paid in advance.) Such services will be provided only upon the request of the Franchisee, and do not include Franchisor's periodic B.E.R. Assessment of the Franchised Business or advice unilaterally given by the Franchisor with respect to concept changes required by the Franchisor;

5. To administer the National Cooperative Advertising Fund with the advertising contributions remitted by its franchisees;

6. To coordinate and conduct periodic mandatory training programs for its network of franchisees as the Franchisor deems necessary in its sole discretion; and

7. On a periodic basis, to conduct, as the Franchisor deems advisable, quality control audits of the Franchised Business and its operations and evaluations of the methods and the staff employed therein.

All of the obligations of the Franchisor hereunder are to the Franchisee, and no other party is entitled to rely on, enforce or obtain relief for breach of such obligations either directly or by subrogation.

#### IV. FEES

A. **Payments to Franchisor.** In consideration of the right and license to operate the Franchised Business granted herein, the Franchisee shall pay to the Franchisor the following fees:

1. **Initial Franchise Fee.** The total initial franchise fee payable to the Franchisor by the Franchisee is fifty thousand dollars (\$50,000) which is payable upon execution of the Franchise Agreement. The initial franchise fee is deemed fully earned upon receipt by the Franchisor, and is non-refundable.

2. **Royalty Fees.** The Franchisee shall pay to the Franchisor a continuing non-refundable weekly royalty fee of five percent (5%) of Gross Sales as that term is defined herein. Subject to applicable banking laws and regulations, the Franchisor shall establish a direct debit program with the Franchisee's bank to allow for the electronic transfer of the weekly royalty payment. In the event that the direct debit program is not available, Franchisee must pay the Franchisor directly and the payment must be received by the Franchisor on the Thursday of the week following the week for which the payment is due.

3. **Mandatory Advertising.** Throughout the term of this Agreement and any renewals thereof, the Franchisee must spend a total of four percent (4%) of its Gross Sales on local marketing and the National Cooperative Advertising Fund (the "Advertising Fund"). The Franchisor will require the Franchisee to contribute three percent (3%) of its Gross Sales to the Advertising Fund and to spend one percent (1%) of its Gross Sales on local marketing, for a total of four percent (4%) of Gross Sales on mandatory advertising, both as required pursuant to Section X.

4. **Interest Charges on Late Payments.** If any sums required to be paid by the Franchisee to the Franchisor under this Agreement are not received in full by the Franchisor when due, Franchisor shall assess a late fee of one hundred dollars (\$100) for each week that any payment is delinquent. In addition, all overdue amounts will bear interest, until paid, at the rate of two (2) times the prime rate then being charged by the Chase Manhattan Bank, N.A. on the date payment was due, or the highest rate permitted by applicable state law, whichever is less (the "Default Rate"). Interest shall be calculated on a daily basis. Interest charges are non-refundable. Such interest shall be in addition to any other remedies Franchisor may have.

B. **Audit & Reporting Procedures.** The Franchisor has the right to audit the books and records of the Franchisee upon reasonable notice. An audit will be conducted at the Franchisor's expense, unless such audit discloses an understatement in any report of three percent (3%) or more, in which case the Franchisee must pay for any and all costs and expenses incurred by the Franchisor in connection with the audit (including, without limitation, reasonable accountants' and attorneys' fees), together with interest on undisclosed or under-reported amounts at the Default Rate, which will be payable immediately upon receipt of written notice from the Franchisor. All such audit fees, costs and expenses, as well as the interest thereon, are non-refundable.

The Franchisee must maintain and preserve during the term of this Agreement, and must preserve for the time period specified in the Manuals, full, complete and accurate books, records and accounts and all supporting materials in accordance with the Franchisor's procedures and guidelines. The Franchisee is required by this Agreement to periodically submit to the Franchisor, at the Franchisee's expense, certain

reports, records, information and data as the Franchisor may reasonably designate upon request or as specified in writing.

During the term of this Agreement, the Franchisee must submit to the Franchisor, a financial statement including all Gross Sales during the preceding month and such other data and information regarding the operation of the Franchised Business as the Franchisor may reasonably require. All such reports must be received by the Franchisor on or before the tenth (10th) day of each calendar month. The Franchisee must also submit to the Franchisor, upon request, a copy of any of its federal and state sales or income tax returns applicable to the Franchised Business.

At its expense, the Franchisee must submit to the Franchisor an annual financial statement that includes an income statement in a form acceptable to the Franchisor and Franchisee's lender, together with copies of federal and state tax returns for the Franchisee within ninety (90) days of the Franchisee's fiscal year end. The financial statement must be compiled by an independent certified public accounting firm and signed by the Franchisee's President or Treasurer attesting that the statement is true and correct.

The Franchisee must also submit exact copies of the Franchisee's invoices for goods purchased from suppliers and copies of Franchisee's operating reports to its landlord and/or shopping mall operator immediately following Franchisor's request for the same.

**C. Definition of Gross Sales.** "Gross Sales" is defined as all sales generated through the Franchised Business including fees for any products or goods sold by the Franchisee, whether for cash or credit (regardless of collectability, except as provided below), and income of every kind or nature related to the Franchised Business, including, without limitation, revenues from the sale of branded merchandise and food products and from the use of jukeboxes, vending machines, video games, pinball machines or similar arcade-like machines, and from video lottery terminals where permitted by law; provided, however, that "Gross Sales" shall not include any sales tax or other taxes collected from customers by the Franchisee for transmittal to the appropriate taxing authority. When calculating Gross Sales, the Franchisee may deduct that portion of the normal full menu price of any item that is not collected by the Franchisee as a result of Franchisor-approved promotions (whether local or system-wide, including coupons) and manager discounts (collectively, "Sales Discounts"), as well as discounted employee meals. Sales Discounts and discounted employee meals must be fully disclosed on all reports submitted to the Franchisor by the Franchisee and Franchisor reserves the right, in its sole discretion, to disallow any Sales Discounts not meeting the requirements set forth herein. Sales Discounts and discounted employee meals each may not exceed two and one-half percent (2½%) of Gross Sales (as calculated prior to the deduction for Sales Discounts and discounted employee meals).

## V. DUTIES OF FRANCHISEE

**A. Compliance with System.** The Franchisee understands and acknowledges that every detail of the appearance and operation of the Franchised Business in compliance with the System is critical to the Franchisor, the Franchisee and other franchisees in order to:

1. Develop and maintain high and uniform operating standards;
2. Increase the demand for the products and services sold by franchisees; and
3. Protect the Proprietary Marks and the System, and the Franchisor's trade secrets, reputation and goodwill.

**B. Site Requirements.** The Franchisee will have a period of one-hundred twenty (120) days following the Effective Date of this Agreement to secure Franchisor's approval of the site as evidenced by franchisor's execution of Attachment A, and to provide the Franchisor with fully executed site control documents and related addenda that may be required by the Franchisor in its sole discretion. At the

Franchisees request, the Franchisor may, in its sole discretion, provide general site-related assistance to the Franchisee, provided that the Franchisee understands and agrees that the Franchisor makes no warranty regarding the Franchise Business, or the Franchisee's success or failure at the Franchisee's chosen site.

**C. Pre-Opening Requirements.** The Franchisee will have a period of two hundred ten (210) days following the Effective Date of this Agreement to commence construction of the Franchise Business. Commencement of construction is defined as excavation for footings with continuous, uninterrupted construction progress thereafter until opening of the facility. Before commencing any construction or leasehold improvements of the Franchised Business, the Franchisee, at its expense, shall comply with all of the following requirements.

1. The Franchisee shall have received the Franchisor's prior written approval of the site selected by the Franchisee for the operation of the Franchised Business, as evidenced by the parties' execution of Exhibit A and submittal of all fully executed site control documents, in accordance with the terms of this Agreement;

2. The proposed site must be in compliance with all applicable local and state laws, regulations and ordinances including all zoning, signage and parking requirements;

3. The Franchisee agrees to be responsible for all reasonable expenses incurred by the Franchisor in its review and approval of the proposed site(s), the Franchisor's review and monitoring of the construction of the Franchised Business and the final inspection of the Franchised Business prior to its authorized opening.

4. The Franchisee shall employ a qualified general contractor, or such other qualified person as the Franchisor may approve, in its sole discretion for the purposes of supervising the construction of the Franchised Business and ensuring the completion of all construction or leasehold improvements. The Franchisee shall submit to the Franchisor a statement identifying the general contractor and describing the general contractor's qualifications and financial responsibility, and the Franchisor shall supply the Franchisee with its approval or disapproval of the general contractor within ten (10) business days of the Franchisor's receipt of such statement;

5. The Franchisee shall obtain all liquor and business licenses, permits and certifications required for lawful construction and ongoing operation of the Franchised Business (including, without limitation, zoning, access, variances, health and safety, sign and fire requirements) and shall certify in writing to the Franchisor that all such licenses, permits and certifications have been obtained;

6. The Franchisee shall provide to the Franchisor written evidence of the Franchisee's funding commitments in a form acceptable to the Franchisor. The Franchisee further agrees to provide the Franchisor with authorization to contact funding sources directly to discuss all financial aspects of the proposed development.

7. The Franchisor shall secure construction insurance coverage as required in Section X1.C.

**D. Construction and Opening Requirements.** The Franchisee shall completely construct and equip, at Franchisee's expense, the approved Franchised Location in accordance with Franchisor's standards and specifications. During the period of construction, Franchisee shall provide to Franchisor such periodic progress reports as Franchisor may require, in its sole discretion. Such reports shall be signed by Franchisee and its general contractor, warranting that construction is proceeding on schedule and in accordance with the approved final plans and with all applicable laws, ordinances and regulations. Franchisor and its agents shall have the right to inspect the construction at all reasonable times. Franchisee shall complete construction (including all exterior and interior carpentry, electrical, painting,

and finishing work, and installation of all furnishings, fixtures, equipment, and signs) in accordance with the approved final plans, at Franchisee's expense, within one (1) year following the Effective Date of this Agreement, exclusive of time lost by reason of strikes, lockouts, fire, and other casualties and acts of God. Franchisee shall promptly notify Franchisor of the date of completion of construction and thereafter the Franchisor shall conduct a final inspection of the Franchised Business and its premises. Franchisee shall not open the Franchised Business without the express written authorization of Franchisor, and Franchisor's authorization to open may be conditioned upon Franchisee's strict compliance with all initial inventory, fixtures, furnishings, and equipment requirements. Franchisee shall open the Franchised Business for operation within thirty (30) days after receipt of Franchisor's written authorization to open, which will not be unreasonably withheld, provided that the Franchised Business has been fully staffed and that all employees have successfully completed training. Franchisor and Franchisee agree that time is of the essence in the construction and opening of the Franchised Business.

**E. Initial Training.** In accordance with the terms and conditions set forth in Section III above, the Franchisee, or Operating Principal, and up to three (3) designated managers shall attend and complete to the Franchisor's reasonable satisfaction the Franchisor's initial training program at least thirty (30) days prior to the opening of the Franchised Business. The training program shall consist of at least six (6) weeks of initial training in Restaurant operations at the Franchisor's training center in Dallas, Texas, followed by a one (1) week program at Boston Pizza International Inc.'s training facility in Richmond, British Columbia, Canada or at BPR's training facility in Dallas, Texas, (the "Initial Training Program"). In addition, the Franchisor shall also furnish to one person initial training of up to three (3) weeks as Kitchen Manager (the "Kitchen Manager Training Program"). Franchisor will provide the initial training program at no cost to the Franchisee for up to five (5) of Franchisee's employees. The Franchisee shall be responsible for all expenses associated with said training, including meals, lodging, travel and wages. In addition, the Franchisor will provide to the Franchisee up to five (5) employees to provide on-site pre-opening and opening supervision and assistance for at least three (3) weeks. The Franchisor reserves the right to charge three hundred fifty dollars (\$350) per Franchisor employee per day for this on-site training.

**F. Investor Orientation Program.** In addition to Item V.E. above, all non-operating principals of the Franchisee are required to attend the Franchisor's Investor Orientation Program at least 120 days prior to the opening of the Franchised Business. The Investor Orientation Program shall consist of basic reviews and interaction with development, training, construction, marketing and financial departments. The Investor Orientation Program includes at least twenty-two (22) hours of classroom and "on-the-job" training and is held at the Franchisor's corporate facilities in Dallas, Texas. The program is provided at no cost to the Franchisee; however, the Franchisee shall be responsible for all other related expenses, including travel, meals, lodging and wages.

**G. Supervision Requirements.** At all times after the date of the opening of the Franchised Business, the Franchised Business shall be under the direct, on-premises supervision of the Franchisee or an Operating Principal, who is a general partner or owns at least ten percent (10%) of the voting shares of the Franchised Business (the "Operating Principal"), designated by Franchisee and approved by Franchisor, who: (i) has attended and successfully completed the Franchisor's training program; and (ii) who shall be responsible for overseeing the operation of the Franchised Business and communicating with the Franchisor, and shall be the person designated by the Franchisee with whom the Franchisor may conduct all communications. In addition, Franchisee shall also have at all times (a) a General Manager (the "General Manager") who shall work on a full-time basis in the management and operation of the Franchised Business, be the full-time General Manager of the Franchised Business on a day-to-day basis, and shall have successfully completed the Initial Training Program, as provided herein, to the satisfaction of the Franchisor; and (b) a Kitchen Manager (the "Kitchen Manager") who shall work, on a full-time basis at the Franchised Business as its Kitchen Manager and shall have successfully completed the Kitchen Manager Training Program, as provided herein, to the satisfaction of the Franchisor. The Operating Principal, General Manager and Kitchen Manager are collectively referred to as the "Managers." The Operating Principal and the General Manager may be the same person provided such



person meets all requirements of both positions. A General Manager designated under this Section is strongly encouraged to hold an equity position within the Franchised Business of not less than ten percent (10%). The Franchisee shall not permit anyone to replace any Manager without the prior written approval of the Franchisor. The Franchisor may require, as a condition of such approval, that the proposed replacement successfully complete the Initial Training Program or Kitchen Manager Training Program, as applicable, to the satisfaction of the Franchisor. The Franchisor reserves the right to charge its then current standard training fee to the Franchisee for training any proposed replacement. In the event of the resignation, termination, incapacity or death of any Operating Principal or General Manager, the Franchisee shall have a period of thirty (30) days after any such event to complete arrangements for a replacement who will successfully complete training within 120 days of placement and is otherwise reasonably acceptable to the Franchisor. The Franchisor will charge its then current training fee for the provision of any training beyond that provided to the initial five (5) persons, including substitute, refresher and any other training.

**H. On-Going Training and Bi-Annual Meetings.** The Franchisee shall cause its employees (including any person subsequently acting as a Manager of the Franchised Business) to attend and complete, to the Franchisor's reasonable satisfaction, such special programs or periodic additional training as the Franchisor may require in writing from time to time. Attendance by Franchisee or its General Manager is required at no fewer than three (3) national or regional meetings held by the Franchisor of no more than four (4) days duration at a location to be designated each year by Franchisor, or at such other location as may be specified by the Franchisor. In addition, Franchisee shall be required to send at least one (1) employee to an annual "Train the Trainer" meeting each year. The Franchisor shall only provide and pay for instruction and training materials in connection ongoing training and meetings. The Franchisee and/or its General Manager and its employees shall be responsible for any other expenses incurred, including meals, lodging, travel and wages. Franchisor reserves the right to cancel its annual, regional or training meetings, reschedule its annual, regional or training meetings, or increase the number of meetings in any given year in its sole discretion. If required by Franchisor, some or all of the Managers will be required to complete, to the satisfaction of the Franchisor, a refresher training program any time after the seventh year of the Initial Term has elapsed, or, in the event a partial or complete Refurbishment of the Franchised Business has been completed prior to the end of the seventh year of the term, upon completion of such partial or complete Refurbishment of the Franchised Business.

**I. Operation of the Franchised Business.** The Franchisee shall use the Franchised Premises solely for the operation of the Franchised Business that is licensed hereunder in strict accordance with the Manuals; shall keep the Franchised Business open and in normal operation for such minimum hours and days as the Franchisor may from time to time prescribe; and shall refrain at all times from using or permitting the use of the premises of the Franchised Business for any other purpose or activity other than as contemplated by this Agreement without first obtaining the written consent of the Franchisor.

**J. Maintenance and Equipment Upgrades.** The Franchisee shall continuously maintain the Franchised Business in the highest degree of sanitation, repair and condition as the Franchisor may reasonably require, and in connection therewith shall make such additions, alterations, repairs and replacements thereto (but not without the Franchisor's prior written consent) as may be required for that purpose, including without limitation, such periodic redecorating, replacement of inventory and replacement of obsolete signs, fixtures or materials, and upgrading of equipment as the Franchisor may reasonably direct, or as otherwise required under the lease for the Franchised Business.

**K. Health and Safety Standards.** The Franchisee shall meet and maintain the highest safety standards and ratings applicable to the operation and management of the Franchised Business and its personnel as the Franchisor may reasonably require.

**L. Working Capital.** The Franchisee shall meet and maintain sufficient levels of working capital for use in connection with the management and operation of the Franchised Business as the

Franchisor may reasonably require. The amount of working capital required to be maintained by the Franchisee shall be determined from time to time by the Franchisor in its sole discretion.

**M. Refurbishment.** Subject to the express provisions of Section V.J. with regard to equipment upgrades, on or before the Refurbishment Date set forth on Attachment A, the Franchisee shall refurbish (a "Refurbishment") the Franchised Business, at its expense, to conform to the then current Restaurant design and decor, trade dress, color scheme, equipment, furniture and fixture package, and presentation of trademarks and service marks consistent with the design concepts then in effect for new Restaurants licensed to operate under the System and in accordance with the Manuals, including, without limitation, such structural changes, remodeling, redecoration and other modifications to existing improvements as deemed necessary by the Franchisor.

**N. Compliance with Uniform Standards.** The Franchisee shall operate the Franchised Business in conformity with such uniform methods, standards and specifications as the Franchisor may from time to time prescribe to ensure that the highest degree of product quality and service is uniformly maintained. The Franchisee shall conduct its business in a manner that reflects favorably at all times on the System and the Proprietary Marks. The Franchisee shall at no time engage in deceptive, misleading or unethical practices or conduct any other act which may have a negative impact on the reputation and goodwill of the Franchisor or any other franchisee operating under the System. Pursuant to this ongoing responsibility, the Franchisee agrees:

1. To maintain in sufficient supply as the Franchisor may prescribe in the Manuals or otherwise in writing and use at all times only such products and supplies as conform to the Franchisor's standards and specifications as contained in the Manuals, and to refrain from deviating from the Manual without the Franchisor's prior written consent;
2. To sell or offer for sale only such products and services as meet the Franchisor's uniform standards of quality and quantity which have been expressly approved for sale in writing by the Franchisor in accordance with the Franchisor's methods and techniques; to sell or offer for sale all approved items; to refrain from any deviation from the Franchisor's standards and specifications for preparing, serving or selling such products or services; and to discontinue selling and offering for sale any such products or services as the Franchisor may, in its sole discretion, disapprove in writing at any time;
3. To lease or purchase and install at the Franchisee's expense all fixtures, furnishings, signs and equipment as the Franchisor may reasonably specify from time to time in the Manuals or otherwise in writing, and to refrain from installing or permitting to be installed on or about the Franchised Business without the Franchisor's prior written consent any fixtures, furnishings, signs, cards, promotional literature, equipment or other items not previously specifically approved as meeting the Franchisor's standards and conforming to the Franchisor's specifications;
4. To purchase or lease and maintain any and all signs for use at the Franchised Business, whether for interior or exterior use, in conformity with the Franchisor's quality control standards and specifications;
5. To employ such minimum number of employees as may be prescribed by the Franchisor and to comply with all applicable federal, state and local laws, rules and regulations with respect to such employees;
6. To maintain a competent, conscientious staff;
7. To maintain all licenses and permits in good standing; and
8. To maintain and implement written policies prohibiting unlawful harassment, discrimination and retaliation by any person in connection with the operation of the Franchised Business

and display all required employment-related notifications in compliance with applicable federal and state law.

**O. Purchase and Lease of Products, Equipment and Supplies.** Franchisee shall lease or purchase all products, initial inventory, equipment, supplies and other materials required for the operation of the Franchised Business solely from approved suppliers who shall have proved, to the continuing reasonable satisfaction of the Franchisor, the ability to meet the Franchisor's reasonable standards and specifications for such products and related items. For certain proprietary products the sole approved supplier may be the Franchisor. Such approved suppliers must meet all of the Franchisor's specifications and standards as to content, quality, appearance, warranty, performance and serviceability and must adequately demonstrate their capacity and facilities to supply the Franchisee's needs for an effective and efficient operation of the Franchised Business as well as all Restaurants operating under the Franchisor's System. Franchisee acknowledges and agrees that Franchisor may derive revenue from the sale of certain proprietary food products or receive rebates from Franchisee's purchases, and Franchisor shall be entitled to utilize this revenue for any purpose in its sole discretion.

**P. Inspection of Premises.** The Franchisee shall permit the Franchisor or its agents or representatives to enter upon the premises of the Franchised Business at any time for purposes of conducting inspections, including Brand Equity Review Assessments ("B.E.R. Assessment"), taking photographs and interviewing employees and customers. The Franchisee shall cooperate fully with the Franchisor's agents or representatives in such inspections by rendering such assistance as they may reasonably request. Upon notice from the Franchisor or its agents or representatives, and without limiting the Franchisor's other rights under this Agreement, the Franchisee shall take such steps as may be necessary to immediately and diligently correct any deficiencies detected during such inspections, including, without limitation, immediately ceasing and preventing the further use of any products, equipment, inventory, advertising materials, supplies or other items that do not conform to the Franchisor's then current specifications, standards or requirements. In the event the Franchisee fails or refuses to correct such deficiencies within five (5) business days after receipt of written notice of such deficiencies, the Franchisor shall have the right to enter upon the premises of the Franchised Business, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such corrections as may be required, at the sole expense of the Franchisee, which the Franchisee agrees to pay upon demand. Franchisee's failure to earn a satisfactory minimum score on three (3) consecutive B.E.R. Assessments may constitute an incurable Material Default.

**Q. Proprietary Methods.** The Franchisee acknowledges and agrees that the Franchisor has developed certain products, services, operational systems and management techniques and may continue to develop additional products and proprietary methods and techniques for use in the operation of the Franchised Business which are all highly confidential and which are trade secrets of the Franchisor. Because of the importance of quality control, uniformity of product and the significance of such proprietary products in the System, it is to the mutual benefit of the parties that the Franchisor closely controls the dissemination of this proprietary information. Accordingly, the Franchisee agrees that in the event such information and techniques become a part of the System, the Franchisee shall comply and strictly follow these techniques in the operation of its business and shall purchase from the Franchisor or from an approved source designated by the Franchisor any supplies or materials necessary to protect and implement such techniques.

**R. Development of the Market.** The Franchisee shall at all times use its best efforts to promote and increase the sales and consumer recognition of the products and services offered at the Franchised Business pursuant to the System and the Manuals, to effect the widest and best possible distribution of the Franchisor's products and services from the Franchised Business and to devote its best efforts in controlling the Franchised Business, its managers, assistants and employees.

**S. Display of Proprietary Marks and Logos.** The Franchisee shall display the Franchisor's Proprietary Marks and logos at the Franchised Business, on uniforms and otherwise in the manner

prescribed by the Franchisor. The color, design and location of said displays shall be specified by the Franchisor and may be changed from time to time in the sole discretion of the Franchisor. The Franchisee shall conspicuously display to customers any sign or notice designated by the Franchisor serving to notify and inform third parties that the Franchisor is engaged in the business of franchising and providing sufficient information to enable third parties to contact the Franchisor to inquire about prospective franchises. The Franchisee shall not display any signs or posters at the premises or elsewhere without the prior written consent of the Franchisor.

**T. Computerized Point-of-Sale System.** The Franchisee must purchase and maintain the computer hardware required by the Franchisor for operation of the Franchised Business, including computer(s), modem(s), cash drawer(s), receipt printer and report printer. In addition, the Franchisee shall purchase from Franchisor's required source the Franchisor's proprietary computer software for operation of the point of sale system. Moreover, the Franchisee must source all maintenance service and repairs from a Franchisor approved supplier. The Franchisor shall have unlimited access to the data generated by the Franchisee's computerized point of sale system and will poll via modem all of its franchisees' computer systems in order to compile sales data, consumer trends, food and labor costs, and other such financial and marketing information as it may deem appropriate. In order to accomplish the polling referenced above, the Franchisee will maintain a dedicated telephone or broadband connection. The Franchisor may distribute this data on a confidential basis to its franchisees. The Franchisee must purchase and pay for upgrades or new software as required by the Franchisor from time to time in Franchisor's sole discretion.

**U. Intranet/Extranet.** The Franchisee agrees to participate in any Extranet or Intranet that the Franchisor may from time to time establish in its sole discretion. The Franchisor may require the Franchisee to obtain specified computer hardware, software and/or an Internet connection (collectively, "Computer Facilities") and may periodically modify specifications for same, all at the Franchisee's expense.

The Franchisor may charge the Franchisee a reasonable fee if the Franchisor develops or has developed (and, once developed, for modifying and enhancing) proprietary software, an Extranet or an Intranet and for other computer maintenance and support services that the Franchisor or any of its affiliates provides to the Franchisee, and the Franchisee agrees to sign any software license agreement or similar document that the Franchisor or any of its affiliates prescribes to regulate the Franchisee's use of, and the respective rights and responsibilities of the Franchisor, Franchisee, and others with respect to, the software, the Intranet and the Extranet, as applicable.

The Franchisee will have sole and complete responsibility for: (1) the acquisition, operation, monitoring, maintenance and upgrading of the Computer Facilities, including date related readiness of the system; (2) the manner in which the Franchisee's Computer Facilities interface with the Franchisor's computer system, Intranet and Extranet and those of third parties; and (3) any and all consequences that may arise if the Computer Facilities are not properly installed, operated, monitored, maintained and upgraded.

Franchisee shall at all times comply with the terms of the Boston Link Franchise Agreement attached to this Agreement as **Attachment F**.

**V. Franchisee's Organizational Structure.** The following requirements shall apply to the Franchisee if the Franchisee is a corporation, limited liability company, partnership, or other legal entity, in addition to those requirements set forth elsewhere in this Agreement, the Manuals or otherwise:

1. The Franchisee shall be a newly organized entity and its Articles of Incorporation or other organizational documents, as applicable, shall at all times provide that its activities are confined exclusively to operating the Franchised Business hereunder and shall contain certain provisions designed

to effectively restrict the transferability or alienability (including by way of security) of the ownership interests of the entity subject to the terms and restrictions set forth in Section XII.

2. Copies of the Articles of Incorporation, Bylaws and/or other organizational, constitutional and governing documents, and any amendments thereto, including all relevant resolutions authorizing entry into this Agreement, shall be promptly furnished to the Franchisor, prior to Franchisee's execution of this Agreement.

3. Each stock certificate of the Franchisee or other form of evidence of ownership issued to shareholders or other interest holders, as applicable, in Franchisee shall have conspicuously endorsed upon its face a statement in a form satisfactory to the Franchisor, such as:

“THE TRANSFER, PLEDGE OR ALIENATION OF THIS STOCK IS SUBJECT TO THE TERMS AND RESTRICTIONS CONTAINED WITHIN THE FRANCHISE AGREEMENT BETWEEN BOSTON PIZZA RESTAURANTS, LP AND INSERT NAME OF FRANCHISEE.”

4. The Franchisee shall maintain a current list of all owners of record and all beneficial owners of any class of voting stock or other ownership interest, as applicable, of the Franchisee and shall furnish the list to the Franchisor upon request, together with the addresses and phone numbers of each shareholder or other interest holder.

#### **W. Execution of Guaranty, Undertaking and Other Requirements.**

Each of Franchisee's "Controlling Principals" shall jointly and severally guarantee the Franchisee's performance hereunder and shall bind themselves to the terms of this Agreement by executing the Guaranty and Undertaking attached hereto as **Attachment D**; provided, however, that the requirements of this Section V.W. shall not apply to an entity publicly-held (listed on a recognized exchange or NASDAQ) as of the date of this Agreement. The term "Controlling Principal" means one or more of Franchisee's principals who (a) individually or collectively own a Controlling Interest in Franchisee, or (b) have been designated by Franchisor as Controlling Principals. Except for Controlling Principals who have signed a Guaranty and Undertaking in the form attached hereto as **Attachment D**, each individual who owns any common stock or other voting equity interests in Franchisee or has authority to cause Franchisee to take or omit any action that Franchisee is required to take or omit in accordance with this Agreement (referred to herein as a "Principal") shall execute the Principals' Undertaking attached hereto as **Attachment G**. As used herein, "Controlling Interest" means possession, directly or indirectly, of the power to direct or cause the direction, of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

In addition to the obligations specifically set forth in this Section V, the Franchisee shall comply with all other requirements set forth in this Agreement, in the Manuals or as the Franchisor may designate from time to time.

## **VI. PROPRIETARY MARKS**

**A. Grant of License.** BP Holdings licensed to the Franchisor the exclusive license to use and license others to use the Proprietary Marks in the United States, including the federally registered mark "Boston's The Gourmet Pizza." The Franchisor hereby grants the Franchisee the right and license to use the Proprietary Marks only in connection with the operation of its Franchised Business and the provision of services and products to its customers. The Franchisor represents with respect to the Proprietary Marks that: (1) the Franchisor has, to the best of the Franchisor's knowledge, licensed from BP Holdings, all right, title and interest in and to the Proprietary Marks in the United States and to the best of the Franchisor's knowledge, BP Holdings owns all right, title and interest in and to the Proprietary Marks in the United States; (2) the Franchisor has taken all steps which it deems reasonably necessary to

preserve and protect the ownership and validity of such Proprietary Marks in the United States; and (3) the Franchisor will use and license the Franchisee and other franchisees to use the Proprietary Marks only in accordance with the System and the operating standards and quality control specifications attendant thereto which underlie the goodwill associated with and symbolized by the Proprietary Marks.

**B. Conditions for Use.** With respect to the Franchisee's use of the Proprietary Marks pursuant to the license granted under this Agreement, the Franchisee agrees that:

1. The Franchisee shall use only the Proprietary Marks designated by the Franchisor and shall use them only in the manner required or authorized and permitted by the Franchisor.

2. The Franchisee shall use the Proprietary Marks only in connection with the right and license to operate the Franchised Business granted hereunder.

3. During the term of this Agreement and any renewal hereof, the Franchisee shall identify itself as a licensee and not the owner of the Proprietary Marks and shall make any necessary filings under state law to reflect such status. In addition, the Franchisee shall identify itself as a licensee of the Proprietary Marks on all invoices, order forms, receipts, business stationery and contracts, as well as at the Franchised Business on any sign provided by the Franchisor, which shall be conspicuously displayed, to customers.

4. The Franchisee's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement or in the Manuals, and any unauthorized use thereof shall constitute an infringement of the Franchisor's rights and grounds for termination of this Agreement.

5. The Franchisee shall not use the Proprietary Marks to incur or secure any obligation or indebtedness.

6. The Franchisee shall not use the Proprietary Marks as part of its corporate or other legal name.

7. The Franchisee shall comply with the Franchisor's instructions in filing and maintaining the requisite trade name or fictitious name registrations, and shall execute any documents deemed necessary by the Franchisor or its counsel to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability.

8. Franchisee must notify Franchisor immediately by telephone, and promptly thereafter in writing, of any apparent infringement of, or challenge to, Franchisee's use of any Proprietary Marks, or any claim by any person of any rights in any Proprietary Marks, and Franchisee and the Principals will not communicate with any person other than Franchisor, its counsel and Franchisee's counsel in connection with any infringement, challenge, or claim. Franchisor may take any actions it deems appropriate in connection with any infringement or challenge, and the right to control exclusively any settlement, litigation, or proceeding (including, but not limited to, actions before the Trademark Office and Trademark Trial and Appeal Board) arising out of any alleged infringement, challenge, or claim or otherwise relating to any Proprietary Marks. Franchisee shall not enter into any settlement of any claim or suit or conduct any settlement negotiations relative thereto without the prior approval of Franchisor. Franchisee will execute all instruments and documents, render any assistance, and do any other acts or things that may, in the opinion of Franchisor, reasonably be necessary or advisable to protect and maintain the interests of Franchisor in any litigation or other proceeding or to otherwise protect and maintain the interests of Franchisor in the Proprietary Marks. Franchisee shall at all times have the right to be represented by counsel at Franchisee's expense.

9. If it becomes advisable at any time, in the sole discretion of the Franchisor, to modify or discontinue the use of any name or Proprietary Mark and/or to use one or more additional or substitute

names or marks in connection with the advertising, marketing or operation of the Franchised Business, the Franchisee shall comply with Franchisor's directions within a reasonable time period designated by Franchisor after receiving notice thereof, including, at Franchisee's expense, making such changes to the interior and exterior signs and menus as Franchisor deems necessary. Franchisor will not be obligated to reimburse Franchisee for any expenses or loss of revenue attributable to any modified or discontinued names or Proprietary Marks or for any expenditures Franchisee incurs to promote modified or substitute names or marks.

**C. Acknowledgements.** The Franchisee expressly understands and acknowledges that:

1. BP Holdings, and the Franchisor, by way of license from BP Holdings, are the exclusive owners of all right, title and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them;

2. The Proprietary Marks are valid and serve to identify the System and those who are licensed to operate a Restaurant in accordance with the System;

3. The Franchisee's use of the Proprietary Marks pursuant to this Agreement does not give the Franchisee any ownership interest or other interest in or to the Proprietary Marks, except the nonexclusive license granted herein;

4. Any and all goodwill arising from the Franchisee's use of the Proprietary Marks and/or the System shall inure solely and exclusively to the benefit of BP Holdings and, in accordance with all laws, its licensee, the Franchisor. Upon expiration or termination of this Agreement no monetary amount shall be assigned as attributable to any goodwill associated with the Franchisee's use of the System or the Proprietary Marks;

5. The license and rights to use the Proprietary Marks granted hereunder to the Franchisee are nonexclusive, and the Franchisor thus may: (a) itself use, and grant franchises and licenses to others to use, the Proprietary Marks and the System; (b) establish, develop and franchise other systems, different from the System licensed to the Franchisee herein, without offering or providing the Franchisee any rights in, to or under such other systems; and (c) modify or change, in whole or in part, any aspect of the Proprietary Marks or the System;

6. The Franchisor reserves the right to substitute different trade names, trademarks and service marks for use in identifying the System, the Franchised Business and other Restaurants operating thereunder, all of which shall become Proprietary Marks;

7. The Franchisor shall have no liability to the Franchisee for any senior users that may claim rights to the Proprietary Marks; and

8. The Franchisee shall not register or attempt to register the Proprietary Marks in the Franchisee's name or that of any other person, firm, entity or corporation.

**VII. CONFIDENTIAL MANUALS.**

**A. Compliance.** In order to protect the reputation and goodwill of the Franchisor and to maintain uniform standards of operation in connection with the Proprietary Marks, the Franchisee shall conduct its business in strict compliance with the operational systems, procedures, policies, methods and requirements prescribed in the Manuals and any supplemental bulletins, notices, revisions, modifications or amendments thereto, all of which shall be deemed a part thereof. One registered set of the Manuals shall be provided to the Franchisee on loan from the Franchisor during the training program, and the Franchisee shall sign a corresponding receipt for the Manuals. The Franchisor reserves the right to

provide the Manuals and updates to the Manuals in electronic form, and the Franchisee agrees to comply with all confidentiality procedures including, if applicable, use of restricted passwords.

**B. Use.** The Franchisee agrees to immediately adopt and use the programs, services, methods, standards, materials, policies and procedures set forth in the Manuals, as they may be modified by the Franchisor from time to time in Franchisor's sole discretion. The Franchisee acknowledges that the Franchisor is the owner or licensee of all proprietary rights in and to the System, and the Manuals, and any changes or supplements thereto.

**C. Confidentiality.** The Franchisee and the Principals shall at all times treat the Manuals, any other manuals created for or approved for use in the operation of the Franchised Business and all of the information contained therein as proprietary and confidential, and shall use all reasonable efforts to maintain such information as confidential. The Manuals must remain on the premises of the Franchised Business at all times.

**D. Trade Secrets.** The Franchisee acknowledges, knows and agrees that the Manuals have been designated as "trade secrets" owned and treated as such by the Franchisor.

**E. Access.** The trade secrets must be accorded maximum security consistent with the Franchisee's need to make frequent reference thereto. The Franchisee shall strictly limit access to the Manuals to employees who have a demonstrable and valid need to know the information contained therein in order to perform their duties. The Franchisee shall strictly follow any provisions in the Manuals regarding the care, storage and use of the Manuals and all related proprietary information.

**F. Duplication.** The Franchisee and the Principals shall not at any time, without the Franchisor's prior written consent, copy, duplicate, record or otherwise reproduce in any manner any part of the Manuals, updates, supplements or related materials, in whole or in part, or otherwise make the same available to any unauthorized person.

**G. Franchisor's Property.** The Manuals shall at all times remain the sole property of the Franchisor. Upon the expiration or termination of this Agreement for any reason, the Franchisee shall return to the Franchisor the Manuals and all supplements thereto.

**H. Updates or Revisions.** The Franchisor retains the right to prescribe additions to, deletions from or revisions to the Manuals, which shall become binding upon the Franchisee upon being mailed or otherwise delivered to the Franchisee, as if originally set forth therein. The Manuals, and any such additions, deletions or revisions thereto, shall not alter the Franchisee's rights and obligations hereunder.

**I. Master Set.** The Franchisee shall at all times insure that its set of the Manuals is kept current and up-to-date, and in the event of any dispute as to the contents of the Manuals, the terms contained in the master set (#0001) of the Manuals maintained by the Franchisor at the Franchisor's headquarters shall be controlling.

**J. Replacement Fee.** If the Manuals, or any volume thereof, are lost, stolen or destroyed, the Franchisee shall pay the Franchisor a non-refundable replacement fee of Five Hundred Dollars (\$500) for each volume of the replacement Manuals.

### VIII. CONFIDENTIAL INFORMATION

**A. Confidential Relationship.** The parties expressly understand and agree that the Franchisor will be disclosing and transmitting to the Franchisee and the Principals certain trade secrets and other confidential and proprietary information concerning various aspects of the Franchisee's operation of the Franchised Business, its methods of operation, techniques and all proprietary systems, procedures and materials relevant thereto pursuant to the System and this Agreement.



**B. Obligations of Franchisee and Principals.** In order to preserve and protect the trade secrets and the confidential and proprietary information (the "Confidential Information") which are disclosed to the Franchisee and the Principals during the term of this Agreement, the Franchisee and the Principals agree that:

1. The Franchisee and the Principals shall treat and maintain the Confidential Information as confidential both during the term of this Agreement and thereafter;

2. The Franchisee and the Principals shall use the Confidential Information only for its operation of the Franchised Business under this Agreement;

3. The Franchisee and the Principals shall disclose the Confidential Information only as necessary to its employees or agents who have a demonstrable and valid need to know the Confidential Information and not to anyone else;

4. The Franchisee shall restrict disclosure of the Confidential Information to only those of Franchisee's employees or agents who are directly connected with the performance of work requiring knowledge thereof and shall disclose only so much of the Confidential Information as is required to enable those employees or agents to carry out their assigned duties;

5. The Franchisee shall advise Franchisee's employees or agents of the confidential nature of such information and the requirements of nondisclosure thereof; and

6. The Franchisor and the Franchisee shall conduct a review to determine which employees will have access to the Confidential Information and to the Manuals. The Franchisee and the Principals shall not disclose any Confidential Information or provide access to the Manuals to such employee or agent until that person executes a nondisclosure agreement in a form prescribed by the Franchisor, acknowledging the confidential and proprietary nature of the Confidential Information and agreeing not to disclose such information during the course of employment or thereafter. The Franchisor shall be designated a third-party beneficiary of such nondisclosure agreements with the right to enforce its provisions independently of the Franchisee.

**C. Confidential Information Defined.** Any and all information, knowledge, know-how, systems, programs and other methods and techniques which the Franchisor designates as confidential shall be deemed Confidential Information for purposes of this Agreement, except information which the Franchisee can demonstrate came to its attention prior to its disclosure by the Franchisor or which, at the time of its disclosure by the Franchisor to the Franchisee, had become a part of the public domain through publication or communication by others or which, after disclosure to the Franchisee by the Franchisor, becomes a part of the public domain through publication or communication by others. It is understood and agreed that information, improvements to the System or techniques prepared, compiled or developed by the Franchisee, its employees or agents during the term of this Agreement and relating to the Franchised Business, whether developed separately or in conjunction with the Franchisor, shall be considered as part of the Confidential Information. The Franchisee hereby grants to the Franchisor an irrevocable, worldwide, exclusive, royalty-free license, with the right to sub-license such information, improvement or technique.

**D. Protection of Information.** The Franchisee acknowledges that it has knowledge of confidential matters, trade secrets, management and training techniques, operational, accounting, quality control procedures, recipes, programs and other methods developed by the Franchisor through and in its System which, for purposes of this Agreement, are owned by the Franchisor and which are necessary and essential to the operation of the Franchised Business, without which information the Franchisee could not efficiently, effectively and profitably operate the same. The Franchisee further acknowledges that such Confidential Information was unknown to it prior to negotiation for and execution of this Agreement (except as may have been disclosed to the Franchisee under obligation of strict confidence pursuant to

other agreements with the Franchisor) and that the unique and novel combination of “know how” and methods developed by the Franchisor and licensed to the Franchisee by the Franchisor for the operation of the Franchised Business are peculiar to the Franchisor. The Franchisee shall take all steps necessary, at its own expense, to protect the Confidential Information and shall not divulge the same either during or upon the termination of this Agreement without the prior written consent of the Franchisor.

**E. Remedies.** The Franchisee acknowledges that in addition to any remedies available to the Franchisor under Section XIII hereunder, the Franchisee agrees to pay all court costs and reasonable attorneys’ fees incurred by the Franchisor in obtaining specific performance of a temporary restraining order and/or an injunction against violation of the requirements of this Section VIII, provided that, Franchisor prevails in obtaining such relief.

**F. Communication with Customers.** In order to maintain the high standards of quality control throughout the System, the Franchisor reserves the right to use test customers from time to time, without prior notification to the Franchisee, in order to determine whether the Franchised Business is maintaining high standards of quality, integrity, safety, appearance and customer service.

**G. Communication with Lenders.** The Franchisee hereby expressly permits the Franchisor to discuss the Franchisee’s financial situation relating to the Franchised Business with the Franchisee’s lender(s). In addition, the Franchisee permits the Franchisor to have access to all lending documents and other financial information pertinent to these discussions.

## **IX. ACCOUNTING, INSPECTIONS AND RECORDS**

**A. Maintenance of Books and Records.** The Franchisee shall maintain during the term of this Agreement and shall preserve for not less than seven (7) years from the date of preparation, full, complete and accurate books, records and accounts in accordance with the System and in the form and manner prescribed by the Franchisor in the Manuals or otherwise in writing from time to time in its sole discretion.

**B. Reporting.** The Franchisor may, from time to time in its sole discretion, poll via modem the Franchisee’s computerized point of sale system to obtain any and all information the Franchisor deems necessary to its monitoring of the Franchised Business, including Gross Sales. The Franchisee shall provide the Franchisor with monthly reports on Gross Sales. Each report shall cover a period from the first day to the last day of the preceding month and must be received by the Franchisor on or before the tenth (10th) day following the end of the reporting period. Each report shall disclose the Gross Sales and other such information from which the royalty fee and advertising contributions are calculated for the preceding month. Each report will be in the form and format prescribed by Franchisor. In the event Franchisor fails to receive a report on or before its due date, Franchisor shall assess and collect from the Franchisee a late fee of One Hundred Dollars (\$100.00).

**C. Financial and Related Reporting.** During the term of this Agreement, the Franchisee shall, at the Franchisee’s expense, submit to the Franchisor an annual financial statement which shall include an income statement and balance sheet prepared in accordance with generally accepted accounting principles and copies of federal and state tax returns for the Franchisee within ninety (90) days of the completion of the fiscal year of the Franchisee. All financial statements will be in the form prescribed by the Franchisor and will conform to the standard chart of accounts prescribed by the Franchisor. Each annual financial statement and tax return shall be compiled by an independent certified public accounting firm and signed by the Franchisee’s President or Treasurer attesting that the statement is true and correct. The Franchisor also reserves the right to require the Franchisee to submit to the Franchisor: (i) certified financial statements for any period or periods of any fiscal year, which shall be certified by the Franchisee’s accounting firm and attested to by the Franchisee’s Treasurer or Chief Financial Officer; and (ii) interim financial statements for any period or periods of any fiscal year, which shall be attested to by the Franchisee’s Treasurer or Chief Financial Officer. In addition, Franchisee shall submit exact copies of

the Franchisee's invoices for goods purchased from suppliers and copies of the Franchisee's operating reports to its landlord or shopping mall operator, immediately following the Franchisor's request for such information.

**D. Other Submissions.** The Franchisee shall also submit to the Franchisor, for review and auditing, such other forms, and other reports, including annual accounting of local advertising expenditures and any and all other information and data as the Franchisor may reasonably designate, in the form and at the times and places reasonably required by the Franchisor, upon request and as specified from time to time in the Manuals or otherwise in writing, at any time during the term of this Agreement.

**E. Inspection of Financial Records.** The Franchisor or its designated agents shall have the right upon reasonable notice to examine and copy, at its expense, the books, records, receipts and tax returns of the Franchisee. The Franchisor shall also have the right upon reasonable notice, to have an independent audit made of the books of the Franchisee. If an inspection should reveal that any payments to the Franchisor have been understated in any report to the Franchisor, then the Franchisee shall immediately pay to the Franchisor, upon demand, the amount understated plus interest calculated at the Default Rate on a daily basis. If any inspection discloses an understatement in any report of three percent (3%) or more, the Franchisee shall, in addition to the payment of interest thereon, reimburse the Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, reasonable accountants' and attorneys' fees). The foregoing remedies shall be in addition to any other remedies available to the Franchisor.

## **X. ADVERTISING**

Recognizing the value of advertising, and the importance of the standardization of advertising programs to the furtherance and protection of the Proprietary Marks, goodwill and public image of the System, the parties agree as follows:

**A. Submission and Approval of Promotional and Marketing Materials.** All promotional and marketing materials to be used by the Franchisee in any medium, including any signage used on the interior or exterior of the Franchised Business, shall be presented in a dignified manner and shall conform to such standards and requirements as the Franchisor may specify from time to time in the Manuals or otherwise. The Franchisee shall submit to the Franchisor for its prior written approval, samples of all promotional and marketing materials in whatever form that the Franchisee desires to use at least ten (10) days before their implementation. The Franchisor shall approve, disapprove, or revise such materials. The Franchisee shall comply with all revisions to said promotional and marketing materials that the Franchisor may require prior to approving said promotional and marketing materials. The Franchisee shall not use any advertising or promotional plans or materials that have not been approved in writing by the Franchisor, and the Franchisee shall cease to use any plans or materials promptly upon notice by the Franchisor. Failure by the Franchisee to obtain the prior written approval of the Franchisor for all proposed advertising shall be deemed a default of this Agreement in accordance with Section XIII.A hereof. Prior to publishing or otherwise utilizing any original advertising materials conceived of or prepared by Franchisee, Franchisee shall assign to the Franchisor, and will cause the author and the first owner of the copyright in the Franchisee's original advertising, to assign to the Franchisor all intellectual property rights, including copyright, in and to the Franchisee's original advertising. Furthermore, Franchisee will cause the author to waive any and all moral rights in the Franchisee's original advertising materials. The Franchisee will do all things and will execute, and cause all relevant third parties to execute, without further consideration such further assurances, assignments, applications and other instruments as may be requested by the Franchisor to effect the assignments in this Section, and to register or record the Franchisor's rights in ownership of the intellectual property in the Franchisee's original advertising.

**B. The National Cooperative Advertising Fund Contribution.** The Franchisor will establish and maintain the National Cooperative Advertising Fund (the "Advertising Fund"). The Franchisee shall

pay to the Franchisor a continuing non-refundable advertising contribution of three percent (3%) of its Gross Sales throughout the term of this Agreement and any renewals thereof at the then-current rate. The Franchisor may collect the Franchisee's contribution weekly via direct debit or by requiring Franchisee to pay Franchisee's contribution in the same manner in which Franchisee pays its Royalty Fees. The advertising sums paid by the Franchisee and the other franchisees shall be maintained in an account separate from other monies of the Franchisor. The Advertising Fund shall be administered exclusively by the Franchisor, who may utilize any advertising fees it receives from Franchisee or other franchisees to pay for direct or indirect costs of designing, placing and administering advertising in all media (including Internet, websites or other electronic advertising or commerce), various materials, coupons, or other promotional materials, and for special promotions, commissions, wages and benefits (including those which are reasonably related to Franchisor's own employees) and other expenses which the Franchisor considers to be appropriate in Franchisor's sole discretion. The Franchisor may also use the Advertising Fund to conduct system-wide advertising and/or regional advertising on behalf of the franchise system. Franchisor cannot and does not ensure that any particular franchisee will benefit directly or pro rata from the placement of advertising. Upon request by the Franchisee, the Franchisor shall annually account for advertising funds expended, including a reasonable allocation for the Franchisor's overhead expenses incurred in connection with administration and management. It is understood and agreed that the Franchisor shall allocate advertising funds, as it deems appropriate. The Franchisor's sole discretion as to allocation of the advertising fees may not be challenged or contested.

**C. Minimum Local Marketing Expenditure.** In addition to the Advertising Fund contribution, the Franchisee shall be required to spend quarterly a minimum of one percent (1%) of its Gross Sales on its own local marketing and promotion. At the Franchisor's direction, the local marketing expenditure must be conducted with other franchisees in the Franchisee's region. All of the Franchisee's advertising must comply with the policies and procedures established by the Franchisor for the prior approval of all proposed marketing and promotional campaigns and materials, as specified in this Section X. and elsewhere in this Agreement, in the Manuals and otherwise in writing by the Franchisor. This amount is in addition to any advertising requirements imposed by Franchisee's lease. Franchisee agrees to locally advertise at least on a quarterly basis, in a manner prescribed and/or approved by the franchisor. The Franchisee shall submit to the Franchisor, on a form prescribed by the Franchisor in the Manual, a quarterly accounting of its local marketing and promotion expenditures.

## **XI. INSURANCE**

**A. Procurement.** The Franchisee shall procure, prior to the commencement of any operations under this Agreement, and thereafter maintain in full force and effect during the term of this Agreement, at the Franchisee's expense, an insurance policy or policies protecting the Franchisee and the Franchisor, and their officers, directors, partners and employees, against any loss, liability, personal injury, death, property damage or expense whatsoever from fire, lightning, theft, vandalism, malicious mischief and the perils included in the extended coverage endorsement, arising or occurring upon or in connection with the Franchised Business or the construction of or leasehold improvements to the Franchised Business, or by reason of the operation or occupancy of the Franchised Business, as well as such other insurance applicable to such other special risks, if any, as the Franchisor may reasonably require for its own and the Franchisee's protection. The Franchisee shall be obligated to procure such insurance and to submit copies of such policies to the Franchisor thirty (30) days prior to the opening to the public of the Franchised Business.

**B. Minimum Coverage.** All policies required under this Section XI shall be written by an insurance company satisfactory to the Franchisor in accordance with the standards and specifications set forth in the Manuals or otherwise in writing, and shall include, at a minimum (except as additional coverage and higher policy limits may reasonably be specified from time to time by the Franchisor in the Manuals or otherwise in writing) the following:

1. Comprehensive general liability insurance, including contractual liability, broad form property damage, personal injury, advertising injury, product liability, automobile liability, completed operations and independent contractors coverage, and fire damage coverage in the amount of at least five million dollars (\$5,000,000), or such higher amount as required by the lease, combined single limit, and naming the Franchisor and other Indemnittees (as defined in Section XVIII.B.) as additional insured(s) in each such policy or policies;

2. Workers' compensation and employer's liability insurance in an amount designated by Franchisor, but in no event less than the minimum amount mandated by the laws of the state in which the Franchised Business is located and operated. Franchisee shall also maintain such other insurance as may be required by statute or rule of the state in which the Franchised Business is located and operated. Notwithstanding the foregoing, if permitted by applicable law, Franchisee may, subject to Franchisor's consent, self-insure Franchisee's workers provided that Franchisee is, and at all times remains, in full compliance with all applicable state, federal and local laws and regulations, if any, in providing such self-insurance;

3. Fire, vandalism and extended coverage insurance with primary and excess limits of not less than the full replacement value of the Franchised Business and its furniture, fixtures and equipment; and

4. Business interruption insurance in amounts equal to at least the average monthly royalties and Advertising Fund contributions payable to the Franchisor, but in no event less than one hundred thousand dollars (\$100,000) annual coverage.

**C. Construction Coverage.** In connection with any construction, leasehold improvements, renovation, refurbishment or remodelling of the premises of the Franchised Business, the Franchisee shall cause the general contractor to maintain with a reputable insurer comprehensive general liability insurance (with comprehensive automobile liability coverage for both owned and non-owned vehicles, builder's risk, product liability and independent contractors coverage) in at least the amount of one million dollars (\$1,000,000) with the Franchisor named as an additional insured, and worker's compensation and employer's liability insurance as required by state law. A copy of the Certificate of Insurance for all such insurance and worker's compensation coverage shall be provided to the Franchisor prior to commencement of any such work in respect of the premises of the Franchised Business.

**D. Certificates.** At least thirty (30) days prior to the grand opening of the Franchised Business and on each policy renewal date thereafter, the Franchisee shall submit to the Franchisor, original or duplicate copies of all policies and policy amendments. The evidence of insurance shall include a statement by the insurer that the policy or policies will not be cancelled or materially altered without at least thirty (30) days prior written notice to the Franchisor.

**E. Independence of Coverage Requirements.** The Franchisee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by the Franchisor, and the Franchisee's performance of that obligation shall not relieve it of liability under the indemnity provision set forth in Section XVIII of this Agreement.

**F. Failure to Procure.** Should the Franchisee for any reason fail to procure, maintain or provide evidence of the insurance required by this Agreement, as revised from time to time for all franchisees by the Manuals or otherwise in writing, the Franchisor shall have the right and authority (without, however, any obligation) to immediately procure such insurance and to charge the same to the Franchisee, which charges, together with a reasonable fee for the Franchisor's expenses in so acting, including all attorneys' fees, shall be payable by the Franchisee immediately upon notice.

**G. Third Parties.** The Franchisee shall ensure that all third parties, with whom the Franchisee conducts business, are properly insured.

## **XII. TRANSFER OF INTEREST**

**A. Transfer by Franchisor.** The Franchisor shall have the right to assign this Agreement, and all of its rights and privileges hereunder, to any person, firm, corporation or other entity provided that, with respect to any assignment resulting in the subsequent performance by the assignee of the functions of the Franchisor: (i) the assignee shall, at the time of such assignment, be capable of performing the obligations of the Franchisor hereunder, as determined by Franchisor in its sole discretion, and (ii) the assignee shall expressly assume and agree to perform such obligations and Franchisor shall thereby be released from any and all further liability to Franchisee.

Specifically, and without limitation to the foregoing, the Franchisee expressly affirms and agrees that the Franchisor may sell all or a portion of its assets, its rights to the Proprietary Marks and the System outright to a third party, including a direct competitor of Franchisor; may go public; may engage in a private placement of some or all of its securities; may merge, acquire other corporations or other legal entities, or be acquired by another corporation or other legal entity; may undertake a refinancing, recapitalization, leveraged buy-out or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, the Franchisee expressly and specifically waives any claims, demands or damages arising from or related to the loss of said Proprietary Marks (or any variation thereof) and/or the loss of association with or identification of "Boston Pizza Restaurants, LP" as the Franchisor hereunder.

Nothing contained in this Agreement shall require the Franchisor to remain in the restaurant business or to offer the same products and services, whether or not bearing the Franchisor's Proprietary Marks, in the event that the Franchisor exercises its rights hereunder to assign its rights in this Agreement.

### **B. Transfer by Franchisee.**

1. Franchisee and the Principals acknowledge that the integrity of the Restaurants and the stability of the System depend on the business qualifications, financial capabilities, honesty and integrity of Franchisor's franchisees. Franchisee and the Principals further acknowledge that Franchisor's lack of opportunity to evaluate and approve each potential franchisee's qualifications and the terms of each proposed Transfer could irreparably damage the System. Consequently, Franchisee and the Principals agree not to effectuate a Transfer, except as expressly permitted herein, and in any such case, without Franchisor's prior written consent. Any Transfer or attempted Transfer lacking Franchisor's prior written consent or that otherwise violates the restrictions in this Section XII will be null and void and of no effect against Franchisor and will constitute a material breach of this Agreement for which the Franchisor may then immediately terminate this Agreement pursuant to Section XIII.A.

As used herein, "Transfer" means the voluntary, involuntary, direct or indirect sale, assignment, transfer, license, sublicense, sublease, collateral assignment, grant of a security, collateral or conditional interest, inter-vivos transfer, testamentary disposition or other disposition of:

(a) the Franchised Business, this Agreement or any interest in or right under this Agreement; of all or substantially all of the assets of the Franchised Business (including, but not limited to, any arrangements in which any interest the Franchised Business or its premises is sold to a third party and leased back to the Franchisee) or in an interest therein, including (i) any transfer in, or as a result of, a divorce, insolvency, dissolution proceeding or otherwise by operation of law; (ii) any transfer upon Franchisee's death or the death of any of Franchisee's Principals by will, declaration of or transfer in trust or under the laws of intestate succession; or (iii) any foreclosure upon the Franchised Business or the transfer, surrender or loss by Franchisee of possession, control or management of the Franchised Business; and/or

(b) any direct or indirect Ownership Interest in Franchisee or revenues or income of the Franchised Business, including (i) any transfer, redemption or issuance of a legal or beneficial Ownership Interest in Franchisee or any legal entity that has a Controlling Interest (as defined in Section V.W.) in Franchisee or of any interest convertible to or exchangeable for a legal or beneficial Ownership Interest in Franchisee or any legal entity that has a Controlling Interest in Franchisee; (ii) any merger or consolidation between Franchisee or any legal entity that has a Controlling Interest in Franchisee and another legal entity, whether or not Franchisee is the surviving legal entity; (iii) any transfer in, or as a result of, a divorce, insolvency, dissolution proceeding or otherwise by operation of law; (iv) any transfer upon Franchisee's death or the death of any of Franchisee's Principals by will, declaration of or transfer in trust or under the laws of intestate succession; or (v) any foreclosure upon the Franchised Business or the transfer, surrender or loss by Franchisee of possession, control or management of the Franchised Business.

- As used herein, "Ownership Interest" means any direct or indirect, legal or beneficial ownership interest of any type, including but not limited to (1) in relation to a corporation, the ownership of shares in the corporation; (2) in relation to a partnership, the ownership of a general partner or limited partnership interest; (3) in relation to a limited liability company, the ownership of a membership interest; or (4) in relation to a trust, the ownership of the beneficial interest of such trust.

Notwithstanding the foregoing, Franchisor's prior written consent shall not be required for a transfer of less than a five percent (5%) interest in a publicly-held corporation or for transfer to a wholly-owned subsidiary corporation of the Franchisee formed expressly for that purpose. For such purposes, and under this Agreement in general, a publicly held corporation is a "Reporting Company" as defined by the Securities Exchange Act of 1934. The Franchisee must notify the Franchisor in writing at least sixty (60) days prior to the date of the intended assignment or transfer. Any purported assignment or transfer, by operation of law or otherwise, not having the written consent of the Franchisor shall be null and void and shall constitute a material breach of this Agreement.

2. Neither Franchisee nor any Principal shall effectuate a Transfer before the Franchised Business opens for business under any circumstances. After the Franchised Business opens, Franchisor's consent to a Transfer is subject to any or all of the following conditions:

(a) All of the Franchisee's accrued monetary obligations and all other outstanding obligations to the Franchisor, its subsidiaries, affiliates and suppliers shall be up to date, fully paid and satisfied;

(b) The Franchisee shall not be in default of any provision of this Agreement, any amendment hereof or successor hereto, any other franchise agreement or other agreement between the Franchisee and the Franchisor, or its subsidiaries, affiliates or suppliers;

(c) Subject to any restrictions under applicable franchise registration and disclosure laws, the Franchisee and each of its partners, shareholders, officers and directors shall have executed a general release under seal, in a form satisfactory to the Franchisor, of any and all claims against the Franchisor and its officers, directors, shareholders (or other interest holders, as applicable) and employees in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;

(d) The transferee shall demonstrate to the Franchisor's satisfaction that the transferee meets the Franchisor's educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to operate the Franchised Business (as may be evidenced by prior related experience, Franchisor's testing criteria or otherwise); meets at least the same managerial, financial and other criteria required of new franchisees; and shall have sufficient equity capital to operate the Franchised Business;

(e) The transferee shall enter into a written assignment, under seal and in a form satisfactory to the Franchisor, assuming and agreeing to discharge all of the Franchisee's obligations under this Agreement. If the transferee is not an individual, then the shareholders, partners or other owners of the transferee shall jointly and severally guarantee the obligations of the Franchisee under this Agreement in writing in a form satisfactory to the Franchisor;

(f) At the Franchisor's option, the transferee shall execute (and/or, upon Franchisor's request, shall cause all interested parties to execute) for a term ending on the expiration date of this Agreement and with such renewal term as may be provided by this Agreement, the standard form of Franchise Agreement then being offered to new franchisees and such other ancillary agreements as the Franchisor may require for the Franchised Business, which agreements shall supersede this Agreement in all respects and the terms of which agreements may differ from the terms of this Agreement, including, without limitation, a higher percentage royalty fee and advertising contributions and the implementation of other fees;

(g) The transferee shall upgrade, at the transferee's expense, the Franchised Business to conform to the then-current specifications then being used in new Restaurants, and shall complete the upgrading and other requirements within the time specified by the Franchisor;

(h) Unless the Franchisor expressly otherwise agrees in writing, no assignment by the Franchisee, whether consented to or not by the Franchisor, shall release the Franchisee from liability under this Agreement or any other agreements contemplated hereby. In addition, the Franchisee shall remain liable for all direct and indirect obligations to the Franchisor in connection with the Franchised Business prior to the effective date of the Transfer, shall continue to remain responsible for its obligations of nondisclosure, no competition and indemnification as provided elsewhere in this Agreement and shall execute any and all instruments reasonably requested by the Franchisor to further evidence such liability;

(i) At the transferee's expense, the transferee and its manager and employees shall complete any training programs then in effect for current franchisees upon such terms and conditions as the Franchisor may reasonably require unless such employees have been trained previously by the Franchisor;

(j) The transferee shall have signed an Acknowledgement of Receipt of all required legal documents, such as the Franchise Offering Circular and the then current Franchise Agreement and ancillary agreements;

(k) At least thirty (30) days in advance of the Transfer, the transferor shall pay to the Franchisor a transfer fee equal to twenty-five percent (25%) of the then-current initial franchise fee to cover the Franchisor's administrative expenses in connection with the proposed Transfer; and

(l) The transferor must provide the Franchisor with a copy of the agreements of purchase and sale between the transferor and the transferee. The terms and price of the proposed transaction between the transferor and a transferee shall be fair and reasonable in the sole discretion and based upon the good faith judgment of the Franchisor. **THIS RIGHT OF APPROVAL SHALL NOT CREATE ANY SPECIAL LIABILITY OR DUTY ON THE PART OF THE FRANCHISOR TO THE PROPOSED TRANSFEREE.**

3. Franchisee may grant a security interest in this Agreement or the franchise granted hereunder to the limited extent permitted by Section 9-408 of the Uniform Commercial Code. Any such security interest may only attach to an interest in the proceeds of the Franchised Business' operations and may not under any circumstances entitle or permit the secured party to take possession of or operate the Franchised Business or to transfer Franchisee's interest in this Agreement or the Franchised Business without Franchisor's express prior consent. The grant of a security interest in a manner consistent with



this Section XII.B.3 will not be subject to the prohibition in Sections XII.B.1 and XII.B.2. Except as expressly set forth in this Section XII.B.3, the Franchisee shall grant no security interest in itself, this Agreement, the Franchised Business or in any of Franchisee's assets.

4. The Franchisee acknowledges and agrees that each of the foregoing conditions of Transfer that must be met by the Franchisee and the transferee are necessary and reasonable to assure such transferee's full performance of the obligations hereunder.

**C. Additional Transfer Requirements for Legal Entity Transferees.** If a proposed transferee is a corporation, limited liability company, limited partnership, or other legal entity and is subject to Section XII.B.2, then in addition to meeting the requirements set forth in Section XII.B.2, the transferee must comply with the requirements set forth in Section V.V.

**D. Offerings by Franchisee.** Securities or partnership interests in the Franchisee may be offered to the public, by private offering or otherwise, but only with the prior written consent of the Franchisor, whether or not the Franchisor's consent is required under Section XII.B. hereof, which consent shall not be unreasonably withheld. All materials required for such offering by federal or state law as well as any materials to be used in any exempt offering shall be submitted to the Franchisor for review at least sixty (60) days prior to such documents being filed with any government agency or distributed to investors. No offering by the Franchisee shall imply (by use of the Proprietary Marks or otherwise) that the Franchisor is participating in an underwriting, issuance or offering of the Franchisee's securities, and the Franchisor's review of any offering shall be limited solely to the subject of the relationship between the Franchisee and the Franchisor. The Franchisee and any other participants in the offering must fully indemnify the Franchisor in connection with the offering pursuant to an indemnity agreement in form and substance satisfactory to the Franchisor and its counsel. For each proposed offering, the Franchisee shall pay to the Franchisor a non-refundable amount as is necessary to reimburse the Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering, including, without limitation, legal and accounting fees. Subsequent to approval of such offering documents, the Franchisee shall give the Franchisor at least sixty (60) days written notice prior to the proposed effective date of any offering or other transaction covered by this Section XII.D.

**E. Franchisor's Right of First Refusal.**

1. Any party who holds an interest (as reasonably determined by the Franchisor and not including the Franchisor's System, Proprietary Marks or other property of the Franchisor) in the Franchisee or in the Franchised Business and who desires to accept any bona fide offer from a third party to purchase such interest or portion thereof that would create a change of controlling interest in the Franchisee or the Franchised Business, shall notify the Franchisor in writing of each such offer and, except as otherwise provided herein, the Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of such written notification, to send written notice to the seller that the Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party less any amount of the purchase price attributable to the goodwill associated with the Franchised Business, the Proprietary Marks, the System or any other property of the Franchisor. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same right of first refusal by the Franchisor as in the case of an initial offer. In the event that the Franchisor elects to purchase the seller's interest, closing on such purchase must occur by the later of: (i) the closing date specified in the third party offer; or (ii) within sixty (60) days from the date of notice to the seller of the Franchisor's election to purchase. Failure of the Franchisor to exercise the option afforded by this Section XII.E. shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section XII, with respect to a proposed Transfer.

2. In the event the consideration, terms and/or conditions offered by a third party are such that the Franchisor may not reasonably be required to furnish the same consideration, terms and/or conditions, then the Franchisor may purchase the Franchised Business proposed to be sold for the

reasonable equivalent in cash. If the parties cannot agree, within a reasonable time, on the reasonable equivalent in cash of the consideration, terms and/or conditions offered by a third party, an independent appraiser shall be designated by the Franchisor, and his determination shall be final and binding.

**F. Transfer Upon Death or Mental Incapacity.** Upon the death, mental incapacity or disability of the Franchisee or a shareholder of a corporation or a general partner of a partnership which has been formed to own and operate the Franchised Business pursuant to the System, the Franchisor shall consent to the Transfer of said interest in the Franchisee, the Franchised Business and this Agreement to the spouse, heirs or relative by blood or by marriage, of said Franchisee, shareholder or partner, whether such Transfer is made by will or by operation of law, if, in the Franchisor's sole discretion and judgment, such person or persons meet the Franchisor's educational, managerial and business standards; possess a good moral character, business reputation and credit rating; have the aptitude and ability to conduct the Franchised Business herein; have at least the same managerial and financial criteria required by new franchisees and shall have sufficient equity capital to operate the Franchised Business. If said Transfer is not approved by the Franchisor, the executor, administrator or personal representative of such person shall transfer his interest to a third party approved by the Franchisor within six (6) months after such death, mental incapacity or disability. Such Transfer shall be subject to the Franchisor's right of first refusal and to the same conditions as any other Transfer if controlling interest is affected.

**G. Non-Waiver of Claims.** The Franchisor's consent to a Transfer of any kind shall not constitute a waiver of any claims it may have against the transferring party, and it will not be deemed a waiver of the Franchisor's right to demand exact compliance with any of the terms of this Agreement, or any other agreement to which the Franchisor and the transferee are parties, by the transferee.

**H. Operation of the Franchised Business by Franchisor.** In order to prevent any interruption of the business of the Franchised Business and any injury to the goodwill and reputation thereof which would cause harm to the Franchised Business and thereby depreciate the value thereof, the Franchisee hereby authorizes the Franchisor, and the Franchisor shall have the right, but not the obligation, to operate said Franchised Business for so long as the Franchisor deems necessary and practical, and without waiver of any other rights or remedies the Franchisor may have under this Agreement, in the event that: (i) any of the Franchisee's principals, shareholders or partners is absent or incapacitated by reason of illness or death and that the Franchisee is not, therefore, in the sole judgment of the Franchisor, able to do the business licensed hereunder, or (ii) any allegation or claim is made against the Franchised Business, the Franchisee or any principals, directors, shareholders, partners or employees of the Franchisee, involving or relating to misrepresentations or any fraudulent or deceptive practice. In the event that the Franchisor should operate the Franchised Business, the Franchisor at its option shall not be obligated so to operate it for a period more than ninety (90) days. All revenues from the operation of the Franchised Business during such period of operation by the Franchisor shall be kept in a separate account and the expenses of the Franchised Business, including reasonable royalty fees, advertising contributions, compensation and expenses for the Franchisor's representative, shall be charged to said account. If, as herein provided, the Franchisor elects to temporarily operate the Franchised Business on behalf of the Franchisee, the Franchisee hereby agrees to indemnify and hold the Franchisor harmless from any and all claims arising from the acts and omissions of the Franchisor and its representatives.

### **XIII. DEFAULT AND TERMINATION**

The terms and conditions regarding default and termination contained herein shall be subject to any applicable state statutes or regulations regarding the termination of a franchise.

**A. Material Default With No Opportunity To Cure.** The Franchisee shall be deemed to be in material default ("Material Default") and the Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording the Franchisee any opportunity to cure the default, effective immediately upon receipt of notice from the Franchisor to the Franchisee, upon the occurrence of any of the following events:

1. If the Franchisee becomes insolvent or makes a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by the Franchisee or such a petition is filed against and consented to by the Franchisee, or if the Franchisee is adjudicated bankrupt, or if a bill in equity or other proceeding for the appointment of a receiver of the Franchisee or other custodian for the Franchisee's business or assets is filed and consented to by the Franchisee, or if a receiver or other custodian (permanent or temporary) of the Franchisee's business or assets is appointed by any court of competent jurisdiction, or if proceedings for a conference with a committee of creditors under any state, federal or foreign law should be instituted by or against the Franchisee, or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedes bond is filed), or if execution is levied against the Franchisee's operating location or property, or suit to foreclose any lien or mortgage against the premises or equipment is instituted against the Franchisee and not dismissed within thirty (30) days, or if any substantial real or personal property of the Franchised Business shall be sold after levy thereupon by any sheriff, marshal or constable;

2. If the Franchisee ceases to do business at the Franchised Business for two (2) or more consecutive days, excluding holidays, or loses the right to possession of the premises upon which the Franchised Business is located or otherwise forfeits the right to do or transact business in the jurisdiction where the Franchised Business is located; provided, however, that if any such loss of possession results from the governmental exercise of the power of eminent domain, or if, through no fault of the Franchisee, the premises are damaged or destroyed by a disaster such that they cannot, in the Franchisor's judgement, reasonably be restored within one hundred twenty (120) days, then, in either such event, the Franchisee shall have sixty (60) days to identify an alternative location within the Territory for the operation of the Franchised Business (the "Substituted Site") and submit all information reasonably requested by the Franchisor in connection with the Substituted Site for its review and approval. The Franchisor's approval of the Substituted Site shall not be unreasonably withheld, but may be conditioned upon the payment of an agreed minimum royalty fee to the Franchisor during the period in which the Franchised Business is not in operation. Notwithstanding the foregoing, the Franchisor shall have a right to terminate this Agreement if the Franchisee is not in possession of the Substituted Site within 120 days of the event and open for business to the general public within (12) twelve months of the events.

3. If the Franchisee fails to operate and maintain the point-of-sale system in accordance with the Franchisor's requirements and guidelines as outlined in the Manuals, or if Franchisee attempts to modify such system without the prior written approval of Franchisor;

4. If the Franchisee understates by five percent (5%) or more its Gross Sales in connection with any report required to be submitted to the Franchisor;

5. If the Franchisee has made any material misrepresentation or omission in this Agreement or any other agreement to which the Franchisee and the Franchisor are parties;

6. If the Franchisee (or the principal stockholder or general partner of a corporation or partnership franchisee) repeatedly engages in the excessive use of alcohol and/or abuse of drugs;

7. If the Franchisee or any shareholder, member, partner, or other person controlling more than five percent (5%) of Franchisee's stock, membership interest or partnership interest, by act or omission, permits or commits tortious conduct or a violation of any applicable law, ordinance, rule or governmental regulation (including, but not limited to, any applicable employment law (e.g., harassment, discrimination, retaliation, equal employment, treatment of disabled persons, child labor or wages and hour law)) constituting a felony, or constituting a misdemeanor, lesser criminal offense or a violation of law which in Franchisor's sole judgment has, or is likely to have, an adverse effect upon the System, the Proprietary Marks, or the goodwill associated therewith;

8. If the Franchisee fails to obtain and maintain all required licenses under state and local law;