

**EXHIBIT B**

**TO**

**FIGARO'S ITALIAN PIZZA, INC.**

**OFFERING CIRCULAR**

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**MASTER FRANCHISEE AGREEMENT**

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**FIGARO'S ITALIAN PIZZA, INC.**  
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**EXHIBITS:**

- Exhibit 1 Territory
- Exhibit 2 Development Schedule

## MASTER FRANCHISEE AGREEMENT

THIS AGREEMENT ("Agreement") is effective \_\_\_\_\_, \_\_\_\_\_. It is by and between FIGARO'S ITALIAN PIZZA, INC. an Oregon corporation, with its principal offices at 1500 Liberty Street SE, Suite 160, Salem, Oregon, 97302 ("Figaro's") and \_\_\_\_\_ ("Master").

### 1. PREAMBLE.

- 1.1 Figaro's has developed and owns a unique System, as defined below. Each Figaro's Store is owned and operated either by Figaro's, or by its Franchisees.
- 1.2 Figaro's is the owner of the Marks, together with all the goodwill connected to the Marks. Figaro's continues to develop the Marks in order to identify for the public the source of the products and services marketed at Figaro's Stores, and to represent the System's high standards of products, operations, quality, appearance and service.
- 1.3 It is the purpose of this Agreement to define the terms on which Master will act as Figaro's sales and operations representative within the Territory.

### 2. DEFINITIONS.

- 2.1 Commission. Commission means all sums to be paid to Master under this Agreement as specified in Section 5. Master will NOT receive any commission on interest income earned by Figaro's on uncollected initial franchise fees, transfer fees, continuing licensing fees, or on promissory notes from Franchisees. Master will NOT receive any commission on any Franchisee payment other than for initial franchise fees, transfer fees and continuing licensing fees as outlined in Section 5. Master only will receive commission on initial franchise fees, transfer fees and continuing licensing fees earned and collected by Figaro's in cash.
- 2.2 Confidential Information. Confidential Information means trade secret, confidential commercial information, or any other information, knowledge, or data of Figaro's (or any affiliate of Figaro's) which is not generally known to the public. This includes, but is not limited to, information relating to research, financial information, product development, manufacturing or manufacturing processes, recipes and menus, maintenance or repair processes, purchasing, product or material costs, sales or sales strategies or prospects, pricing or pricing strategies, advertising or promotional programs, product information, or mailing or customer lists or any intellectual property rights relating to each of the foregoing.
- 2.3 Franchise. Franchise means the rights granted by Figaro's to develop and operate a Store. "Figaro's Store," "Franchisee Store" and "Store" means the entire retail business enterprise that Figaro's operates at a single location or its Franchisees are authorized to operate under a Franchise Agreement at a single location.
- 2.4 Franchisee. Franchisee means a person or legal entity that operates a Store pursuant to a Franchise Agreement.
- 2.5 Franchise Agreement. Franchise Agreement means the form of agreement and the exhibits, addenda, guarantees, and related documents, as modified from time to time, used by Figaro's in granting a Franchise for the ownership and operation of a Store.
- 2.6 Franchise Development Marketing. Franchise Development Marketing means services performed by Master on behalf of Figaro's in the Territory, as defined in section 3.3.1.

- 2.7 Marks. "Marks" is defined in Figaro's most current Franchise Agreement as of the date of this Agreement, which Master has received.
- 2.8 Site Acquisition Services. Site Acquisition Services means services performed by Master on behalf of Figaro's, in the Territory, as defined in section 3.7.1(a)-(d).
- 2.9 Quality Control. Quality Control means services performed by Master on behalf of Figaro's in the Territory, as defined in sections 3.7.1(e)-(j). This includes but is not limited to, regular quality assurance visits to each Store, initial classroom and subsequent on-site hands-on training of Franchisees, opening assistance and continuing support of Franchisees. Master will provide the level of Quality Control within the Territory required by Figaro's. Master understands that maintaining the required level of ongoing training, quality control and field support service is crucial to the success of the System in the Territory.
- 2.10 Quality Control, Site Acquisition and Training Fees. Upon Master's request, Figaro's or another certified master franchisee designated by Figaro's may provide Quality Control, Site Acquisition, mystery shopper or local training services on behalf of Master. If so, Master will pay Figaro's (or the designated master franchisee through Figaro's) for these services. When Figaro's or a designated master franchisee provides Quality Control, Site Acquisition, mystery shopper or local training services to a franchisee in the Territory, Master will compensate Figaro's (or the designated master franchisee through Figaro's) at Figaro's then current and standard rate for such assistance, training and supervision as outlined in the Operations Manual. Figaro's may deduct this payment from Master's share of franchise fees collected. These applicable fees and how they will be collected and distributed between Figaro's and designated master franchisees who are providing services, will be established in the Operations Manual. They may be changed at any time by Figaro's upon not less than 30 days prior written notice.
- 2.11 System. "System" is defined in Figaro's most current Franchise Agreement as of the date of this Agreement, which Master has received.
- 2.12 Term. Term means the term of this Agreement as defined in Section 3.2.
- 2.13 Territory. Territory will be that region described on Exhibit 1 attached to this Agreement.
- 2.14 Other Definitions. Except as otherwise stated in this Agreement, all capitalized, or otherwise defined, terms will have the same definition as defined terms contained in Figaro's most current form of Franchise Agreement as of the date of this Agreement. Master acknowledges receipt of the present form of Figaro's Uniform Franchise Offering Circular and Franchise Agreement.

3. **MASTERS' RIGHTS AND OBLIGATIONS.**

- 3.1 Initial Fee. Master has paid to Figaro's a non-refundable Master Franchisee License Fee of \$\_\_\_\_\_.
- 3.2 Term and Renewal of Agreement. This Agreement will commence on the date first set forth above and will continue for ten years.

Master will have the right to renew this franchise before the expiration of the initial term of the franchise for successive five-year terms. Master will not be required to pay a renewal fee or additional Master Franchisee License Fee, providing all of the following conditions have been fulfilled.

- A. Master has, during the entire term of this Agreement, substantially complied with all its provisions and system standards.

- B. Master is in substantial compliance with the provisions of Master's franchise agreements for the individual store franchises owned by Master.
- C. Master has given notice of renewal to Figaro's as provided in this Agreement.
- D. Master has satisfied all monetary obligations owed by Master to Figaro's (and its subsidiaries and affiliates) and has timely met these obligations throughout the term of this Agreement.
- E. Master executes, upon each renewal, Figaro's then-current form of Master Franchisee Agreement (with appropriate modifications to reflect the fact that the agreement relates to the grant of a renewal franchise). The renewal agreement will supersede in all respects this Agreement. The terms of the renewal agreement may differ from the terms of this Agreement, including, without limitation, a different percentage for Continuing Licensing Fees and advertising contributions.
- F. Master has complied with Figaro's then-current qualification and training requirements.
- G. Master and Figaro's, prior to renewal and following applicable law, execute a general release, in a form Figaro's prescribes.

If Master desires to renew, Master will give Figaro's written notice at least 9 months, but not more than 15 months, prior to the expiration of this Agreement. Within 60 days after Figaro's receipt of the timely notice, Figaro's will furnish Master with written notice of any reasons that could cause Figaro's not to accept the renewal notice. Figaro's notice will include any deficiencies that require correction and a schedule for correction by Master. Renewal will be conditioned upon Master's compliance with these requirements within 60 days of Figaro's notice and continued compliance with all the terms and conditions of this Agreement up to the date of termination of the initial term (or as Figaro's otherwise expresses in writing).

If Master does not comply with Figaro's notice, Figaro's will give Master written notice of Figaro's election not to renew the franchise at least three months before the expiration of this Agreement. The notice will specify the reasons for non-renewal.

If Master continues to operate with Figaro's express or implied consent, following the expiration or termination of this Agreement, the continuation will be a month-to-month extension of this Agreement. This Agreement will then be terminable by either party upon 30 days written notice. Otherwise, all provisions of this Agreement will apply while operations continue.

- 3.3 Appointment of Master. Figaro's grants Master the exclusive right to advertise for and market to prospective Franchisees for Stores to be located within the Territory. Master may, in its sole discretion, provide Quality Control services. In this event, once Master has successfully passed all required training, Master may perform Quality Control of Franchisee Stores located in the Territory and in other locations if so requested by Figaro's. Master may do so only as long as Master remains certified by Figaro's. Master may not sell or negotiate the sale of franchises. Figaro's retains all right to specify the form of individual franchise agreement and to accept or reject all franchise candidates. So long as Master is not in material default under this Agreement, Figaro's will not grant similar rights within the Territory to other parties, provided however that Figaro's may grant certain franchise rights to those parties described on Exhibit 1. The exceptions to this exclusive territory are the same as contained in Section 2 of the Franchise

Agreement and in any Franchise Agreement in effect in the Territory. Figaro's may conduct Multi-Area Marketing Programs (as defined in the Franchise Agreement) within the Territory.

3.3.1 Franchise Development Marketing. Master will diligently market for new Franchisees in the Territory. Master must submit all ads, marketing materials and programs for prospective franchisees to Figaro's for approval prior to use. Approval will not be unreasonably withheld. Advertising to attract franchisee candidates is to be placed in media in the Territory and must be approved in advance by Figaro's. Except with Figaro's prior written permission, Master will not under any circumstances place advertisements using the Marks in or originating from any area other than the Territory.

Master may not advertise in any media whose primary circulation is outside the Territory, except with Figaro's prior written permission. All Internet marketing is part of Figaro's multi-area marketing programs described in the Operations Manual and defined in this Agreement and in the Franchise Agreement, and must be coordinated through Figaro's and approved by Figaro's. Master may not market independently on the Internet or acquire an independent Internet domain name or web site. Master may not independently market using any digital, electronic or computerized form or any form of media now or in the future developed (e.g. materials to be made available through the internet, interactive electronic transmissions, etc.).

All advertising placed by Master must follow the provisions of this Agreement.

Master is solely responsible for preparing and placing all advertising to attract franchisee candidates, at Master's expense. Beginning ninety (90) days after execution of this Agreement, Master must purchase, place and run not less than \$1,000 in such advertising during each calendar quarter during the first twelve months this Agreement is in effect; \$2,000 during each calendar quarter during the second year and \$2,500 during each calendar quarter during each remaining year of this Agreement on advertising exclusively designed to attract franchisee candidates. If the Territory encompasses more than one million inhabitants, the minimum quarterly advertising placement is increased pro rata. i.e. - if the Territory contains three million inhabitants (200% more than one million), the minimum in the first twelve months is \$3,000 during each quarter which is 200% more than \$1,000. Upon renewal of this Agreement, the minimum advertising requirement will be based upon the then current standards for new Master franchisees.

On a periodic basis as specified by Figaro's, Master will provide copies of invoices representing the ads Master has purchased, placed and run during the period to meet the requirements above, and include copies of the actual advertising placed, including 'tear sheets' or other proof of performance.

Figaro's regional and national advertising may result in leads being generated for prospects within the Territory. Figaro's will deliver or direct these leads to Master. From time to time, Figaro's and Master may jointly elect to place advertisements to sell franchises in local media located in the Territory. Prior to placement of any such advertising, Figaro's and Master will negotiate the portion of the costs of such advertising each will be responsible to pay.

3.3.2 Master agrees to fully comply and cooperate with the following:

A. Upon the sale of a franchise, the master franchisee in whose territory the franchisee resides will be paid the applicable Commission on the Initial

Franchise Fee. That master franchisee also will receive one credit for that franchise sold towards the applicable Minimum Performance Requirement for that master franchisee. For example, many franchises sold within the Figaro's system do not, at the time of the sale, provide for a specific location for the franchise. Subsequent to the execution of the franchise agreement, the franchisee identifies a desired location. The resulting territory assignment may lead to franchise stores being opened in the Territory.

- B. Prior to commencing operations, if the franchisee receives permission to reassign the franchise to an available location outside the territory of the master franchisee who made the original franchise sale, immediately upon the opening of the franchise store Figaro's will charge back to the selling master franchisee and the selling master franchisee will refund to Figaro's within thirty days of invoice an amount equal to 50 percent of the Commission originally paid for the sale (i.e. 25 percent of the net Initial Franchise Fee). Within thirty days of the end of the month following the month in which the franchise store opens, Figaro's will remit the refund collected from the selling master franchisee to the master franchisee in whose territory the franchised store actually opens for business.
- C. In this instance, the master franchisee which made the original sale will retain one credit towards the selling master franchisee's Minimum Performance Requirement and the master franchisee in whose territory the store opens also will receive one credit towards the opening master franchisee's Minimum Performance Requirement, effective as of the date the franchise store opens for business.
- D. The master franchisee in whose territory the franchise store is physically located will have full responsibility to provide Quality Control services including, but not limited to, initial training and opening support. That master franchisee will receive the entire applicable Commission on the Continuing Licensing Fee payments related to the franchise store as provided for in that master franchisee's agreement. The selling master franchisee will not receive any Commission on the Continuing Licensing Fee payments related to that franchise store.

3.3.3 Notwithstanding the exclusive rights of Master within the Territory, Master may request, or Figaro's may require, that Figaro's, or a master franchisee designated by Figaro's, handle some or all of the initial store opening assistance and initial and ongoing training (Quality Control) efforts in the Territory as follows:

- A. Master may elect to handle only franchise sales marketing and ask Figaro's to provide initial store pre-opening and opening assistance and initial and ongoing training and all Quality Control to franchisees in the Territory. If so, Master will pay the applicable pre-opening and opening assistance and initial and ongoing training fees to Figaro's or to the master franchisee designated by Figaro's, as determined by Figaro's. In addition, Master will pay to Figaro's or to the designated master franchisee the applicable Quality Control fees. In this instance, Figaro's or the designated master franchisee will provide:
  - 1. training school facilities and coordinate the scheduling of trainees and training sessions, and
  - 2. store pre-opening and opening assistance and Quality Control for all franchisees in the Territory.



- B. Master may elect to handle franchise sales marketing and to offer local store pre-opening and opening assistance and all other initial and ongoing Quality Control to franchisees in the Territory, except for the initial training school. If so, Figaro's, or a master franchisee designated by Figaro's, will provide the initial training school. Master must be certified by Figaro's to provide initial store pre-opening and opening assistance and all other initial and ongoing Quality Control, except for the initial training school, on behalf of master franchisees and/or on behalf of Figaro's in consideration for the applicable Quality Control and Training fees established in the Operations Manual. In this instance, Figaro's or the designated master franchisee will provide training school facilities and coordinate the scheduling of trainees and training sessions.
- C. Master may elect to handle all franchise sales marketing, local store pre-opening and opening assistance, initial and ongoing training and site acquisition services and all other Quality Control services to franchisees in the Territory. In order to do so, Master must be certified by Figaro's to provide store pre-opening and opening assistance, initial and ongoing training and site acquisition services, and all other Quality Control on behalf of Figaro's and/or other master franchisees in consideration for the applicable fees established in the Operations Manual.
- D. Master may elect to not provide Site Acquisition Services in the Territory. If so, Site Acquisition Services will be provided by Figaro's or by a master franchisee designated by Figaro's in its sole discretion. Master will compensate Figaro's or the designated master franchisee by paying to Figaro's the standard fee for such services as outlined in the Operations Manual.

Currently, the quality control fees are: a) training school - \$1,500 for up to two trainees for two weeks; b) through the first 90 days of a store's opening - including store pre-opening and opening assistance fees, site acquisition services fees, and initial and ongoing quality control fees - \$5,000; c) ongoing servicing fees are \$440 per service staff person per day, \$220 per service staff person per half-day. Each fee is in addition to travel time and out-of-pocket travel costs. Master also incur the fully burdened costs of mystery shopping services and support and quality control programs. These fees are subject to change upon 30 days prior written notice as outlined in and more fully described in the Operations Manual.

In instances in which Figaro's handles some, but never all, of the marketing and sale of franchises in the Territory, Master will continue to be exclusively responsible for the ongoing advertising expenditures outlined in Subsection 3.3.1, above and to also actively handle sales and marketing activities in the Territory. In addition, Master will pay Figaro's for Figaro's sales efforts 10 percent of the initial franchise fees (net of any grand opening advertising allowance and franchise coordination fee) generated by sales handled by Figaro's. By way of example, a franchise sold at \$47,500 initial fee which includes \$12,500 grand opening allowance and a \$10,000 franchise coordination fee will generate a payment to Figaro's of \$2,500 (10 percent of \$25,000). Figaro's will deduct this payment from Master's share of franchise fees collected.

If Figaro's is handling franchise sales marketing for Master, at any time Master may determine that Figaro's assistance is no longer desired. Provided that Master is performing at the franchise sales level established in Exhibit 2, upon 90 days advance written notice, Master may instruct Figaro's to no longer handle franchise sales marketing.

- 3.3.4 Figaro's or its affiliates may open in whole or part one additional Store in the Territory per year during the Term and any renewal terms of this Agreement. If Figaro's does not open a Store in any given year, it may not open that Store in any future year. These Stores will qualify towards the Minimum Performance Requirement described below.
- 3.3.5 Master specifically acknowledges and agrees that any web site will be deemed "advertising" under this Agreement and will be subject to (among other things) Figaro's approval. (As used in this Agreement, the term "web site" means an interactive electronic document, contained in a network of computers linked by communications software that Master operates or authorizes others to operate and that refers to the franchised business, proprietary marks or Figaro's. The term web site includes, but is not limited to, Internet and World Wide Web home pages. "Internet" means any of one or more local or global interactive communications media, that is now available, or that may become available, and includes web sites and domain names. Unless the context otherwise indicates, Internet includes methods of accessing limited access electronic networks, such as Intranets, Extranets, and WANs.) In connection to any web site, Master agrees to the following:
- A. Figaro's will allow Master to establish a web page as part of Figaro's web site.
  - B. Master will not establish or use the web page without Figaro's prior written approval.
  - C. Before establishing the web page, Master will submit to Figaro's a sample of the web page format and information in the form and manner Figaro's may reasonably require.
  - D. In addition to any other applicable requirements, Master will comply with Figaro's standards and specifications for web sites as prescribed by Figaro's from time to time in the Operations Manual or otherwise in writing or on a franchisee forum intranet system.
  - E. If Master proposes any material revision to the web page or any of the information contained in the web site, Master will submit the revision to Figaro's for prior written approval.
  - F. Master will use only approved key words, meta tags and titles pertaining to the pizza industry. Figaro's will e-mail or respond via facsimile approved key words, meta tags and titles upon Master's request by e-mail or facsimile.
  - G. Subject to the terms of use on its web site, Figaro's may gather, develop and use in any lawful manner information about any visitor to the web site. This includes but is not limited to any customers, franchisees or prospective franchisees of Master regardless of whether they were referred to Master via the web site or were otherwise in contact with Master.
  - H. Figaro's has established an intranet or comparable on-line facility. Master must utilize it in the manner required by Figaro's. Master understands and agrees that Figaro's may elect to provide certain assistance, deliver information and materials or otherwise communicate with Master via the intranet. Master at its sole expense will maintain and update as needed all computer system requirements and services necessary to access the

intranet in the manner required by Figaro's. Master is required to have DSL or other high speed Internet service to Master's business or home office where Master will be able to access downloads from Figaro's of advertising materials, operations manual revisions, training materials and corporate news.

- I. Training and training materials may be delivered in the formats or media of Figaro's choosing. This includes but is not limited to course books or training exercises on paper, video, CD-ROM or other electronic format, via web cast or an intranet. Master will participate in the training and shall be solely responsible for the cost of doing so, including costs of computer equipment and services needed to participate.
- J. The Operations Manual may be delivered to Master by hard paper copy, computer diskette, CD-ROM, via an intranet or other downloading mechanism to Master's computer or via another medium chosen at the discretion of Figaro's.

3.4 Master's Operating Form of Business. Master agrees to perform its obligations in full compliance with this Agreement. Master may hire representatives, employees or agents to assist it in performing the obligations under this Agreement. All persons so hired must agree to fully comply with Master's obligations and requirements pursuant to this Agreement.

3.5 Minimum Performance Requirement. Master will identify and assist prospective Franchisees, perform Site Acquisition Services, and perform Quality Control of all Franchisee-operated Stores located in the Territory, except as otherwise provided in paragraph 3.3.3 above. If Figaro's acquires a competitor's operating Stores in the territory that are converted to Figaro's, Figaro's will assign these to Master for Quality Control and such stores will be credited towards the minimum performance requirements of this section as if they had been sold by Master. Master will comply with the minimum performance requirements of a minimum number of Stores sold as set forth in Exhibit 2 (the "Minimum Performance Requirement" or "MPR"). All Figaro's franchises that Master has sold in the Territory pursuant to this Agreement will be counted toward the Minimum Performance Requirement. Stores opened and/or sold in the territory prior to the execution of this Agreement will not be counted towards the Minimum Performance Requirement unless so specified in Exhibit 2. Figaro's may terminate this Agreement upon 30 days' written notice, at Figaro's option, if Master has failed to meet these minimum performance requirements during two out of any three consecutive 12-month periods commencing upon execution of this Agreement ("Agreement Year"). Upon termination for this cause, Master may not establish any new or additional Figaro's franchise or offer, assist or service any other party to establish or operate a Figaro's franchise pursuant to this Agreement. Master will cease training and support and all Quality Control services for the Figaro's Franchise Stores in the Territory and will not receive any portion of the Continuing Licensing Fees received from those Stores. Figaro's will be free to resell the master franchisee rights to the Territory and or to market Figaro's franchises directly within the Territory with no obligation to remit any of the revenues from sales or Continuing Licensing Fees of those franchises to Master. All of Master's rights under this Agreement will cease and Master will comply with terms and conditions of this Agreement related to its expiration or termination.

3.6 Franchise Development Compliance. Master will, at Master's expense, comply with all franchise registration and disclosure laws that pertain to Master (including registration as a franchise broker, if required). Figaro's will comply with all franchise registration and disclosure laws that pertain to Figaro's (including preparing and registering, if required, the offering circular). If laws or regulations governing Master's activities pursuant to this Agreement require the preparation, amendment, or filing of information or documents

together (including an appointment of broker and broker information in the offering circular), Figaro's and Master will prepare such documents and filings cooperatively. Figaro's and Master will each bear their own costs of compliance with such requirements. Master will cooperate with Figaro's, and provide all complete and accurate disclosure and registration information requested by Figaro's or required by law. Master will not make any material misrepresentations, omit to disclose or fail to disclose material facts to Figaro's, its prospective Franchisees or governmental authorities.

### 3.7 Master's Service Obligations to Franchisees.

3.7.1 Services. All of the following provisions apply to Master's operations in the Territory following:

- Master's successful completion of training and certification, and
- The opening of the first Store owned and operated by Master in the Territory.

Prior to successful training and certification and the opening of Master's first store, Figaro's will deduct from monies due from Figaro's to Master Figaro's then current and standard Quality Control and Training fees. This deduction will cover Figaro's provision of store pre-opening and opening assistance, training, and other Quality Control services to Figaro's franchisees in the Territory. Thereafter, subject to the provisions of Subsection 3.3.3, above, all sales marketing, training, operational assistance and supervision will be provided by Master at Master's expense to all Figaro's franchisees in the Territory, including transferee franchisees.

In consideration for the rights granted to Master by this Agreement, once Master's first Store has opened for business, Master or his representatives, employees or agents retained by him, agrees to perform the following services at Master's expense, as directed by Figaro's:

- A. Identify and maintain a list for Figaro's of possible locations for each Store in the Territory;
- B. Coordinate with Franchisees in negotiating economic terms for leases for each proposed location in the Territory;
- C. Coordinate with Franchisee's real estate counsel and architects, contractors, and other vendors with regard to the development and opening of each proposed location in the Territory;
- D. Using procedures reasonably required by Figaro's, complete and submit to Figaro's all Figaro's-provided forms and Figaro's-specified reports relating to site selection, leases, plans, and construction. All proposed sites for Stores will meet Figaro's then applicable site selection criteria;
- E. Provide the required initial training for up to two people for two six-day weeks for each franchisee;
- F. Provide training of new employees and assistance prior to and during the opening of each Franchise Store located in the Territory;
- G. Make periodic quality assurance visits to each Franchisee Store located in the Territory, using such schedules, reports and methods as may be required by Figaro's;

- H. Provide all other Quality Control, general ongoing assistance and support to each Franchisee Store located in the Territory;
- I. Use and transmit to Figaro's the Figaro's-provided forms and Figaro's-specified reports, and software and computer information and communication systems, as Figaro's prescribes from time to time. Master will purchase the necessary software and computer information and communications systems. Using procedures reasonably required by Figaro's, Master will complete and submit reports relating to Quality Control visits and mystery shopper programs, and store pre-opening and opening assistance; and
- J. Provide full ongoing assistance and training to all transferees. When an existing franchisee sells a store to a new franchisee, a transfer fee is paid. The transferee is required to attend the training program. This training and all assistance needed for the transferee to assume operation of the franchise will be Master's responsibility.

3.7.2 Performance of Master's Duties. Master's duties must be performed in conformity with Figaro's responsibilities and duties to its Franchisees as set forth in this Agreement and in each applicable franchisee's franchise agreements. All required acts or occurrences of Master will conform, in all material respects, to the Confidential Operations Manual and the System. Master will provide such required services to all Stores operating in the Territory for which Master has been assigned Quality Control.

All service and support Master provides must comply with directives of Figaro's as issued from time to time. All service and support Master provides must be of the level of quality required by Figaro's. Master may not train or instruct franchisees to operate in a manner inconsistent in any way with Figaro's Confidential Operations Manual, policies and directives, as modified from time to time. Master's responsibility includes promptly reporting to Figaro's any non-complying franchisee, and to assist, using best efforts, to enforce Figaro's System standards.

Any and all data ever received by Figaro's or by Master from a franchisee, including but not limited to franchise purchase applications, payment history, sales reporting, audit reports, performance evaluations, etc. will all be made available on an ongoing basis to Master and Figaro's to the extent requested. Master shall keep franchise and franchisee information and data confidential and will use it only for purposes related to the evaluation, service and support of franchisees.

3.7.3 Prerequisites to Performing Services. The training school for master franchisees will be held for a minimum of ten days at training facilities designated by Figaro's. It is offered for up to four persons associated with Master. It is mandatory for Master or Master's Designated Director of Training to attend and complete this training to Figaro's satisfaction and Master must own, open and operate Master's first individual unit Franchisee Store before servicing or supporting any Franchisee Stores. In addition, Master must satisfactorily complete any aptitude or other qualification testing and any certification, retraining and recertification processes required by Figaro's.

Master and its trainers and field service personnel are required to attend Figaro's conventions that are held annually or less frequently and an up to two-day session Figaro's may hold for master franchisees and their field staffs just before or after the convention. Master also must attend, if Figaro's so requires, up to two

additional annual sessions of up to three days duration during each year, at Master's expense. Master agrees that that it will be a *default constituting a substantial breach of a material provision of this Agreement pursuant to relevant law, thus establishing good cause for termination*, if Master (or Masters owners, officers, or key employees) do not attend the required convention sessions and additional annual sessions.

3.7.4 Master Elects Not to Provide Services or is Incapable. If Master elects, at its sole discretion, not to provide the services outlined above in 3.7.1 to franchisees in the territory and/or for so long as Figaro's deems Master incapable of providing such services, the services will be provided by Figaro's or other Masters designated by Figaro's. Figaro's will deduct its fee for provision of such services from payments due to Master.

3.8 Master's Owned Stores. Master has, prior to or simultaneously with execution of this Agreement, purchased and signed a Figaro's standard form of Franchise Agreement for each of three stores. Each of these Franchise Agreements has been amended to require Master to open a Store within the Territory within **18** months, the second within **36** months and the third within **60** months of the date of the first franchise agreement. The first Store to be opened by Master in the Territory must be a dine-in model strictly conforming to Figaro's then current specifications for newly opened dine-in stores. Once the first Store is open, Master may open either smaller delivery/take-out models or dine-in models for the second and third stores. Master agrees that Master's failure to open any of these three stores when required by and in strict compliance with the relevant Franchise Agreement and Master's failure to maintain at least one open store at all times beginning **24** months from the date of this Agreement are material breaches of this Agreement which will be a *default constituting a substantial breach of a material provision of this Agreement pursuant to relevant law, thus establishing good cause for termination*, that will result in termination of this Agreement without refund. Master understands and agrees that an essential element of this Agreement and of the relationship between the parties is that these three model stores will be built and opened for business in the Territory within the required time frames and that at least one store remain operational at all times.

Any failure to commence operation of the stores caused by a war or civil disturbance, a natural disaster, a labor dispute, shortages or other events beyond Master's reasonable control will be excused for a period of time that is deemed reasonable by Figaro's under the circumstances. As of 24 months of the date of the first franchise agreement and continuously thereafter, Master must own the majority interest in and have and operate at least one Store open and continuing in operation in the Territory, and be in compliance with the applicable Franchise Agreement, throughout the Term. If this Agreement is transferred, the transferee must continuously fulfill this requirement by either acquiring the required Stores from the transferor or by otherwise owning and operating the required number of Stores in the Territory.

Figaro's will provide at its expense its standard training school services and initial store opening services to Master for the first Store opened by Master. Master will be responsible for all out-of-pocket costs to attend the school, as described in Master's relevant franchise agreement.

#### 4. FIGARO'S APPROVAL OF PROSPECTIVE FRANCHISEES.

4.1 Review of Prospective Franchisees. Master agrees to refer each qualified applicant for a Franchise to Figaro's for its approval. A qualified applicant is one that Master believes to be of good character, has adequate financial resources, and otherwise meets Figaro's criteria for Franchisees.

- 4.2 Application Process. Master agrees to assist qualified applicants to complete expeditiously the application process. Each application for a franchise must contain all information reasonably requested by Figaro's, including a site report for each site at which the applicant proposes to establish a Store, financial statements, and customary financial, business and personal information and references for each applicant.
- 4.3 Approval of Franchisees. Figaro's will conduct a pre-approval telephone or personal interview with each franchise applicant. By written notice to Master within ten business days from receipt of all information pertaining to an applicant and completion of the interview, Figaro's will approve or disapprove applicants for franchises. The grant of the Franchise will be evidenced by the execution by Figaro's and the applicant of Figaro's then current Franchise Agreement. Figaro's will have the absolute right and discretion to accept or reject the application, and any lease or site.

Master agrees that all future franchise sales whether to existing or prospective Franchisees will be subject to the following:

A. The written approval of Figaro's, which approval may not be unreasonably or in bad faith withheld. Figaro's will give Master reasonable written notice of business or financial circumstances that might require Figaro's to reject sales to otherwise qualified franchise candidates or to limit Master's franchise sales efforts.

B. Approval by Figaro's evidencing that the promotion, development, negotiation and sale of each franchise was done in strict compliance with all applicable state and federal franchise, antitrust, contract, real estate and business laws.

C. Figaro's may monitor the use, delivery and acknowledgment of receipt of all Uniform Franchise Offering Circulars, Franchise Agreements, advertising and promotional materials, and written and oral representations made to all existing or prospective franchisees by Master.

D. Master and Figaro's will fully comply with good business practices and all applicable state and federal franchise, antitrust, contract, real estate and business laws associated with the promotion, development, negotiation and sale of franchises and the establishment of franchise locations. Each will hold the other harmless for and defend the other against any damages directly or indirectly accruing as a result of any breach of this obligation.

E. Figaro's may approve or reject any franchise candidate presented by Master, based upon FIGARO'S's franchisee qualification requirements generally in force as from time to time established and of which Master has previously been given notice in writing. Approval or rejection will be based upon Figaro's reasonable judgment as to the qualifications and probabilities of success for any franchise candidate. Figaro's approval will not be unreasonably withheld.

F. If Figaro's rejects a franchise candidate presented by Master, Figaro's will give Master notice in writing of the reasons for the rejection.

Master has no authority to and will not negotiate the terms of any Franchise Agreement or grant any Franchise. Neither Master nor Master's principals will, personally or in concert with other parties, purchase Figaro's franchise agreements for the purpose of resale prior to the Store commencing operations. If Figaro's believes that is an issue, Figaro's may refuse to sell or may terminate the franchise agreements in question.

5. PAYMENTS TO MASTER.

- 5.1 Commission on Sale or Transfer of Franchise. Master will receive a Commission of 50% of the Initial Franchise Fee and applicable transfer fees, collected from each franchise sold or transferred in the Territory, while this Agreement is in effect. Initial Franchise Fees are so designated in the Franchise Agreement and are limited to initial payments by Franchisees for the right to enter into a Franchise Agreement to own and operate a Store. Master will not be entitled to any share of amounts paid or received for advertising (including the Grand Opening Fee), qualification, site selection, and similar services (including the Franchise Coordination Fee), goods, inventory, equipment, real estate, or fixtures. Master will not be entitled to a commission on franchises sold/acquired pursuant to Section 3.8, above. The above fees and costs, including the Grand Opening Fee and the Franchise Coordination Fee, may be separately identified and incorporated by the relevant Franchise Agreement into the Initial Franchise Fee. However, the Master will not receive a Commission for any of these fees and costs.

Commissions on transfers will be deemed earned by the master franchisee in whose territory the store being transferred is or will be located. Master's Commission will be due and payable to Master within 15 days after each and all of the following has occurred:

- (i) receipt of the executed Franchise Agreement by Figaro's,
- (ii) receipt of the applicable payment by Figaro's,
- (iii) completion of the pre-approval telephone interview and
- (iv) satisfaction of all conditions precedent to the entitlement of Figaro's to use such payment.

If Figaro's refunds any initial franchise fee, Master will refund the related Commission paid to it within 10 days after notice or Figaro's will make the appropriate deduction from the next payments due to Master.

- 5.2 Commission on Continuing Licensing Fees. Figaro's agrees to pay Master a Commission of 50% of Continuing Licensing Fees received from each Franchisee Store located within the Territory that commences operations while this Agreement is in effect. Figaro's will assign its company-owned and all other Stores that open while this Agreement is in effect and that are located within the Territory to Master for Quality Control and for Master's Services if appropriate as outlined in this Agreement. For such Stores assigned to Master, Master will perform Quality Control and Master's Services and will be paid the same amount as the Commission on Continuing Licensing Fees. The Commission on continuing license fees will be paid to Master on the 25th day of each month based upon the Continuing Licensing Fees paid to Figaro's for the previous month. If Figaro's refunds any Continuing Licensing Fee, Figaro's will deduct the Commission previously paid to Master related to the refunded fee from the next payments due to Master.

Except for Stores that commenced operations prior to the execution of this Agreement, regardless of the source of any franchise sold, and

- provided the franchise Store is located within the Territory, and
- provided that Master is not in default under this Agreement, and
- provided that this Agreement has not been terminated or expired,

Master will receive the Commission from every Store operating within the Territory. This also applies to commissions on Continuing Licensing Fees received from Stores in the Territory owned by Master. However, if a Store is wholly owned and operated by Figaro's and Figaro's has expressly requested that Master not provide services, no commission or



payment will be made to Master for that store.

With respect to Stores opened within the Territory prior to the execution of this Agreement, it is Figaro's intention to assign the rights and responsibilities for servicing and performing quality control of those Stores to Master at the earliest practical date. Figaro's and Master will determine in good faith the relative costs and profitability of Master providing the services and quality control in reference to the geographic and economic distribution of all Figaro's Stores in the Territory. Based upon that mutual assessment, in its sole discretion, Figaro's may offer the rights and responsibility to Master together with the appropriate share of the Continuing Licensing Fee. If Master does not accept the offer, these Stores will not be assigned to Master and will continue to be serviced by Figaro's and no portion of the Continuing Licensing Fees for these Stores will be shared with Master.

5.3 Interest and Reports. Figaro's will pay Master 10% per annum interest on past due Commissions owed. Figaro's will provide to Master with the Commission, a report setting forth:

- the Franchisees who have paid Figaro's;
- the amounts paid;
- the date the Franchisee made the payment, and
- a computation of the payment.

Figaro's payments to Master will be based on the amounts Figaro's actually collects from Franchisees during the previous month. No Commission will be paid on accrued or earned but uncollected fees. All fees or other monies due from Franchisees are first paid to Figaro's and Figaro's will subsequently calculate and process the payment due to Master.

5.4 Collection and Disputes. Master will cooperate with Figaro's to collect all amounts owed by Franchisees and to enforce the Franchise Agreements. If Figaro's files an action to collect Continuing Licensing Fees against a Franchisee in the Territory, the Commission payable to Master will be computed from the net proceeds of any monetary award against the Franchisee actually received by Figaro's. Net proceeds, for the purposes of this paragraph, is defined as the gross award or settlement payment actually received by Figaro's, less unreimbursed attorneys' fees, costs and expenses incurred by Figaro's in any such action.

5.5 Continuing Licensing Fee Deferral or Waiver. Nothing contained in this Agreement will in any way limit Figaro's right to defer, reduce, waive or forgive any franchise or continuing licensing fee or to otherwise modify any Franchise Agreement, provided that Figaro's acts with reasonable business judgment.

5.6 Commissions on Continuing Licensing Fees Upon Non-renewal or Termination. If this Agreement is not renewed, expires or is terminated for cause, Master will receive only the Commission earned and accrued through the date of expiration or termination.

5.7 Amounts Owed to Figaro's May be Offset from Amounts Due to Master. At any time, Figaro's may deduct from amounts it owes to Master any sums that Master owes to Figaro's.

6. **ACCOUNTING, REPORTS AND FINANCIAL STATEMENTS.**

- 6.1 **Reports.** Within 25 days of the end of each month, Figaro's will furnish to Master a summary of the franchisee reports furnished to Figaro's by each Franchisee within the Territory.
- 6.2 **Retention of Records.** During the Term, Figaro's and Master will maintain full, complete and accurate books, records and accounts in accordance with generally accepted accounting principles ("GAAP"). Figaro's and Master will retain the books, records and accounts for a period of seven years during, and following, the expiration or termination of this Agreement. Said books, records and accounts will include, without limitation, all sales and income tax returns which reflect operations of Stores, reports from franchisees reflecting their gross receipts, and reports or schedules reflecting Commissions payable.
- 6.3 **Audit Rights.** During normal business hours and with reasonable prior notice to Figaro's and Master, either party will have the right to inspect and audit, or cause to be inspected and audited, the other party's business records, bookkeeping and accounting records, sales and income tax records and returns, and other records for the purpose of determining compliance with this Agreement. Figaro's and Master will fully cooperate with representatives of the other party and their independent accountants to conduct any such inspection or audit. In the event such inspection or audit discloses an underpayment, the other party will pay to the wronged party within 15 days after receipt of the inspection or audit report, the amount of such underpayment. This payment will include interest at the lesser of 10% per annum, or the then current maximum interest rate allowable by law, from the date originally due until the date of payment.

7. **MASTER'S USE OF THE MARKS.** Master may use the Marks only as specified in this Agreement. Master may identify itself as a master franchisee of Figaro's. Master may not use the Marks or similar words or symbols as part of any legal entity name, nor as part of a domain name or other Internet address. Figaro's owns the rights to use of the Marks and similar words and symbols used on the Internet for domain names, locators, metatags, and links and otherwise. Figaro's may change the Marks or their permitted use, in its sole discretion, at any time. Master will assist Figaro's in attaining each franchisee's compliance with such changes within the Territory.

8. **TERMINATION OR EXPIRATION.** Master may terminate this Agreement at any time upon not less than 60 days prior written notice.

In addition to all other remedies available at law or in equity, Figaro's will have the option to cure Master's breaches at Master's expense. If Master breaches or defaults in any of the terms of this Agreement, Figaro's has the right to appoint a receiver to take possession, manage and control assets, collect profits, and pay the net income for the operation of the master franchise as ordered by a court of jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists, and without the necessity of notice to Master.

Figaro's will have the right to terminate this Agreement only for "cause." For purposes of this Agreement, among other things, Master agrees that it will be a default constituting a substantial breach of a material provision of this Agreement pursuant to relevant law, thus establishing good cause for termination, and that "cause" is defined as:

- A. Master's material breach of this Agreement, if such breach is not cured within 60 days after notice from Figaro's to Master specifying the nature of the breach. If the termination is for failure to meet minimum performance requirements, Section 3.5 of this Agreement shall govern the cause and timing of termination.

- B. Master's conviction of any felony that reflects unfavorably upon Figaro's or the Marks.
- C. Master's commission of a material act of dishonesty that results in direct or indirect damage to Figaro's or the Marks.
- D. Master's abandonment of the business by failing to operate continuously and actively for a period after which it is reasonable under the facts and circumstances to conclude that Master does not intend to continue business under this Agreement.
- E. Master's failure at any time to be in full compliance with paragraph 3.8 of this Agreement or in full compliance with any of the individual unit franchise agreements related to paragraph 3.8.
- F. Master's failure on three or more separate occasions within any period of 36 consecutive months to submit when due reports or other information or supporting records; to purchase, place and run advertising when due; to pay amounts due for purchases from Figaro's, its affiliates or suppliers or other payments due to Figaro's or its affiliates; or otherwise fail to comply with this Agreement, whether or not Master's failures to comply are corrected after Figaro's delivers notice to Master.
- G. Master's material breach of a Franchise Agreement or any other agreement between Figaro's and Master, which is not cured upon the notice, if any, specified in the Franchise Agreement or the other agreement. If Master or any of Master's shareholders, partners, or officers violate any material provision of any other franchise or similar agreement with Figaro's, that breach will be considered a breach of this Agreement and of the other agreements. Figaro's then may terminate or otherwise enforce this Agreement and the other agreements.

After termination or expiration of this Agreement, Master will cease all use of the Marks and Confidential Information. Master will abide thereafter by all post-termination covenants in this Agreement, including without limitation confidentiality, non-competition, and indemnity.

9. **RELATIONSHIP OF THE PARTIES; COMPLIANCE WITH LAWS.** This Agreement does not create a fiduciary relationship between the parties. The parties are independent contractors and nothing in this Agreement is intended to make either of them an agent, subfranchisor, joint venturer, partner or employee of the other for any purpose. Neither Figaro's nor Master will make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other or represent that their relationship is other than independent contractors. Neither Figaro's nor Master will be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized under this Agreement or otherwise expressed in a signed writing. Master will conduct its business in compliance with all applicable laws, will pay all applicable taxes, and will obtain all required licenses and permits, all at its own expense. Master will prominently display on its business cards and stationary and on any office premises it uses a statement that clearly indicates that its business is independently owned and operated by Master as an independent franchisee and not as Figaro's agent.

10. **INDEMNIFICATION.**

- 10.1 **By Master.** Master agrees to indemnify, defend and hold harmless Figaro's and its subsidiaries, affiliates, owners, directors, officers, employees, managers, agents, members, personal representatives and assignees, and to reimburse them for any loss, liability, expense or damages (actual, consequential and exemplary) that any of them may suffer, sustain or incur by reason of, arising from or in connection with Master's conduct of

business pursuant to this Agreement. This includes without limitation any matters for which Master is responsible including those brought against Master and Figaro's jointly alleging that Master and Figaro's were negligent or otherwise liable. Figaro's will not be liable to Master or to any other person because of Master's act, omission, neglect, or breach. If it is established that both Master and Figaro's were negligent or otherwise liable, Master and Figaro's will contribute to the relevant award based upon the adjudicated and assigned respective degree of fault.

10.2 By Figaro's. Figaro's agrees to indemnify, defend and hold Master, and its subsidiaries, affiliates, owners, directors, officers, employees, managers, agents and assigns, harmless against and to reimburse them for any loss, liability, expense or damages (actual, consequential and exemplary) which any of them may suffer, sustain or incur by reason of, arising from or in connection with Figaro's conduct of business pursuant to this Agreement.

10.3 Survival and Expenses. Any indemnification obligation under this Section 10 will survive the termination or expiration of this Agreement. Indemnification obligations will include the obligation for the indemnitor to pay all reasonable costs and attorneys' fees of the indemnitee. The obligation of the indemnitor will be joint and several among all parties collectively constituting the indemnitor.

10.4 Insurance.

A. Master will obtain liability insurance reasonably required by Figaro's to protect Figaro's and Master against Master's activities.

B. Immediately upon execution of this Agreement, Figaro's will name Master as an additional insured party under an errors & omissions insurance policy. Figaro's obtains this insurance coverage to protect Figaro's, Master and other interested parties against various acts and omissions by Master and others.

Figaro's will charge Master for a pro rata portion of the premiums for this insurance and a reasonable administration fee. Master will pay Figaro's for these charges within 30 days after receipt of Figaro's invoice.

As the number of master franchisees grows in the Figaro's system, it is expected that Master's pro rata portion of the total premium and administration costs will decrease accordingly, offset by any increase in the gross premium amount. In its sole discretion, Figaro's may elect to discontinue, modify or not obtain insurance. This includes Figaro's discretion to raise or lower coverage amounts and limits, deductibles, etc.

C. In addition to participation in any coverage obtained by Figaro's, Master may obtain similar coverage to protect Master's interests.

11. **RIGHT TO CURE.** In the event Master fails to perform any material obligation of, or to pay any amounts owing under, this Agreement or any agreement contemplated hereby, then Figaro's may perform such obligation or pay such amounts owing, after 30 days notice to Master. Any payment so made will be reimbursed to Figaro's by Master upon demand.

In addition, if Master breaches any provision of this Agreement that is curable and Figaro's gives Master notice of the breach, in addition to curing the breach Master must pay Figaro's a Cure Fee of \$1,000 to help defray Figaro's administrative and corporate costs related to the breach and remedy.

12. **RESTRICTED ACTIVITIES.**

- 12.1 **Confidential Information.** Both during and after the Term, Master will not divulge or communicate to any person, corporation, governmental agency, or other entity (except in performing Master's duties hereunder), or use for Master's own purposes, any Confidential Information. Master will use its best efforts to prevent the publication or disclosure by any other person or entity of any Confidential Information. During the Term, all Confidential Information will remain Figaro's property and will be delivered or returned by Master to Figaro's upon the termination or expiration of this Agreement. After termination or expiration of this Agreement, Master will not use or divulge any part of the Confidential Information. Master will take all steps reasonably necessary to grant back to Figaro's all rights to any Confidential Information that Master may have acquired in the performing of this Agreement.
- 12.2 **Irreparable Injury.** Master agrees and acknowledges that, by virtue of this Agreement; Master will have access to and maintain an intimate knowledge of Figaro's activities and affairs, including Confidential Information. As a result of such access and knowledge, and because of the special, unique, and extraordinary services that Master is capable of performing for Figaro's or one of Figaro's competitors, Master acknowledges that the access and knowledge received and the services to be rendered pursuant to this Agreement are of a character giving them a peculiar value. The loss of this access, knowledge and service cannot adequately or reasonably be compensated by money damages. Master agrees that any material breach by Master of its obligations under this Agreement, may cause irreparable injury to Figaro's, and that Figaro's will be entitled to seek preliminary and permanent injunctions enjoining Master from violating such provisions.
- 12.3 **Nonsolicitation.** Master and Figaro's agree that during, and for a period of two years after the termination of this Agreement, Master and Figaro's will not, directly or indirectly, solicit any person as an employee or agent who is or was employed by or an agent of the other during the Term.
- 12.4 **Non-Competition.** Master will not, directly or indirectly compete or assist in competition with any business selling pizza, during and for two years after the termination or expiration of this Agreement. This covenant applies within the Territory and within a 10 mile radius of any Store or of any other Figaro's master franchisee territory.
- 12.5 **Inducement to Contract.** Master and Figaro's acknowledge, and by execution of this Agreement affirm, that the provisions set forth in this Section, and each of its subsections, are a material inducement to Figaro's decision to enter into this Agreement with Master and that without the protections afforded herein, Figaro's would not have entered into this Agreement.
- 12.6 Master agrees that the existence of any claims Master may have will not constitute a defense to the enforcement by Figaro's of any of the confidentiality requirements and covenants not to compete described in this Agreement. Master acknowledges that any violation of the confidentiality requirements and covenants not to compete would result in irreparable injury to Figaro's for which no adequate remedy at law may be available and Master accordingly consent to the issuance of an injunction prohibiting any conduct by Master in violation of the terms of the covenants not to compete.

Master agrees that each of the confidentiality requirements and covenants not to compete described in this Agreement will be constructed as independent of any other covenant or provision. If all, parts or any portion of any covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Figaro's is a party, Master expressly agrees to be bound by any lesser covenant subsumed within the terms of that covenant that imposes

the maximum duty permitted by law, as if the resulting covenant were separately stated in this Agreement. Each of the covenants described in this Agreement is a separate and independent covenant in each of the separate counties and states in the United States in which Figaro's transacts business. To the extent that any covenant may be determined to be judicially unenforceable in any county or state, that covenant will not be affected with respect to any other county or state. Master understands and acknowledges that Figaro's will have the right, in Figaro's sole discretion, to reduce the scope of any of covenants, confidentiality requirements or covenants not to compete set forth in this Agreement that apply to Master or to any other of Figaro's franchisees. Figaro's may do so without Master's consent, effective immediately upon Master's receipt of written notice. Master agrees that Master will comply with any covenant that pertains to Master as Figaro's so modifies it.

Master acknowledges Figaro's will suffer immediate and irreparable harm that will not be compensable by damages alone if Master repudiates or breaches any of the provisions of any part of this Agreement that relates to the confidentiality or protection of confidential information and trade secrets or Master's covenants to not compete against Figaro's or Figaro's franchise system or Master's threats or attempts to do so. For this reason, under those circumstances, Figaro's, in addition to and without limitation of any other rights, remedies or damages available to Figaro's at law or in equity, will be entitled to obtain temporary, preliminary and permanent injunctions in order to prevent or restrain the breach, and Figaro's will not be required to post a bond as a condition for the granting of this relief. Master also agrees that a violation of any of Figaro's confidentiality or non-competition covenants will entitle Figaro's, in addition to all other remedies available at law or equity, to recover from Master any and all funds, including, without limitation, wages, salary, and profits, which will be held by Master in constructive trust for Figaro's, received by Master in connection with such violation.

Master specifically acknowledges the receipt of adequate consideration for the confidentiality and non-competition covenants contained in this Agreement and that Figaro's is entitled to require Master to comply with these covenants. Those covenants will survive termination or expiration of this Agreement. Master represents that if this Agreement expires or is terminated, whether voluntarily or involuntarily, Master has experience and capabilities sufficient to enable Master to find employment or otherwise earn a livelihood in areas which do not violate this Agreement and that Figaro's enforcement of a remedy by way of injunction will not prevent Master from earning a livelihood.

13. **GOVERNING LAW.** This Agreement is accepted by Figaro's in the State of Oregon and will be governed by the substantive laws of Oregon without regard to Oregon choice of law provisions. Provided, however, that any law of the State of Oregon that regulates the sale of franchises or business opportunities or governs the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section. Oregon laws will prevail, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051, et seq.) and except in those states whose franchise laws require exclusive application of those laws. This choice of laws will not include and does not extend the scope of application of any Oregon franchise or business opportunity laws except as they may otherwise apply pursuant to their terms and definitions. No franchise or business opportunity, antitrust, "implied covenant," unfair competition, fiduciary or any other doctrine of law statute, law or regulation of Oregon or any other state is intended to be made applicable to this Agreement unless it would otherwise apply absent this paragraph. The foregoing will not be construed as a waiver of any of Master's rights under any applicable franchise registration, disclosure or relationship law of another territory, state or commonwealth. Any portion of this Agreement that requires enforcement in any other state, and is enforceable under the laws of that state but not of Oregon, will be construed and enforced according to the laws of that state. All issues or disagreements relating to this Agreement will be mediated, arbitrated, tried, heard, and decided in Salem, Marion County, Oregon, which Master agrees is the most convenient venue for

these purposes. Master acknowledges and agrees that this location for venue is reasonable and the most beneficial to the needs of and best meets the interest of, all of the members of the Figaro's franchise network.

14. **DISPUTES.** The laws of the State of Oregon will govern the legal relations of the parties, and all other matters under this Agreement. Any dispute arising out of or relating to this Agreement shall first be the subject of good faith negotiation between the parties. Failing successful negotiation, any dispute then shall be mediated in Marion County, Oregon, in accordance with the rules of the American Arbitration Association or its successor. If the dispute is not resolved after good faith negotiation and mediation, it shall be submitted to binding arbitration in Marion County, Oregon, in accordance with the rules of the American Arbitration Association or its successor with one arbitrator being appointed pursuant to its rules. Judgment upon the award may be entered in any court having jurisdiction. Nothing contained in this Agreement shall bar the right of either party to seek and obtain temporary injunctive relief from a court of competent jurisdiction in accordance with applicable law against threatened conduct that will cause loss or damage, pending completion of the arbitration. Any arbitration between Figaro's and Master shall be of Master's individual claim and Master and Figaro's agree that the claim subject to arbitration shall not be arbitrated on a class-wide basis.

If Master is an entity with more than one owner, the partnership agreement, shareholders agreement, limited liability operating agreement or other similar agreement for the entity ("Owners Agreement") must contain the following provisions which will supersede any contrary provisions in that agreement:

1. Master's owners ("Owners") agree to submit any dispute they cannot resolve relating to the operation and management of the franchise business to arbitration by Figaro's president or his designee. If the arbitration submission is accepted by Figaro's president, it must be held at Figaro's headquarters or at another location the Owners and the arbitrator agree. The decision of the arbitrator will be final and subject to enforcement by the courts of competent jurisdiction. If the submission to arbitration is not accepted by Figaro's president, the Owners must resolve their disputes in accordance with the other provisions of this Master Franchisee Agreement.
2. The term "operations and management" includes, but is not limited to, questions relating to:
  1. Allocations of management responsibilities between the Owners;
  2. Contributions to capital for purposes of business operations, repairs and remodeling;
  3. The reasonable salaries of the Owners;
  4. Marketing efforts;
  5. The termination of the employment of an Owner;
  6. Procedures for making and implementing management decisions;
  7. Whether an Owner has performed duties with respect to the operation or management of the franchise business.
3. Unless the Owners and the arbitrator agree in writing otherwise, "operation and management" does not include questions relating to:
  1. Allocations, computations or distributions of profit or loss;
  2. Accounting issues;
  3. Elections of officers of the entity;
  4. Investments of cash not necessary for the operation of the business;
  5. Determining whether an Owner is disabled or incompetent within the meaning of the Owners Agreement;
  6. The fair market value of the Owners' interests in the entity;

7. Whether an event has occurred, which gives rise to a right to buy the interest of an Owner other than a right resulting from an Owner's default determined to exist under 2, above;
  8. Whether an Owner has met his obligations to purchase the interest of any current or former Owner;
  9. Matters relating to the winding up of the entity after a dissolution;
  10. Matters relating to the legal validity of the Owners Agreement.
4. The Owner's agreement must provide that the Owner or Owners who are to be responsible for on premises operation of the franchise business must own 50% or more of the capital interests in the entity and that the Owners of the entity must have voting rights proportionate to their interests in capital.
  5. The Owners agree to notify Figaro's in writing of their intent to enter into, modify or amend any Owners Agreement. Notice must be given at least 10 business days before they enter into that agreement, modification or amendment. The purpose of this notice is to enable Figaro's to review it for compliance with this section.
  6. Inclusion of these provisions in the Owner's Agreement will be a condition to Figaro's consent to the transfer of the franchise to an entity.
15. **CUMULATIVE RIGHTS.** The rights of Figaro's and Master hereunder are cumulative and no exercise or enforcement by Figaro's or Master of any right or remedy will preclude the exercise or enforcement by Figaro's or Master of any other right or remedy hereunder or which Figaro's or Master is entitled by law to enforce.
  16. **ENTIRE AGREEMENT.** This Agreement, including the preambles and the exhibits, contains the entire understanding of the parties. There are no other representations, warranties or other agreements express or implied. This Agreement will supersede all prior existing agreements between the parties concerning the subject matter of this Agreement. This Agreement may not be modified except by written agreement signed by both Master and Figaro's.
  17. **CONSTRUCTION.** The captions used in this Agreement are intended for convenience only and will not in any way affect the meaning or construction of any provision of this Agreement. All words used in this Agreement, regardless of their number and gender, include any number and any other gender, as the context requires, the same as if the words were fully written in the number and gender. Any use of the word "includes," or "including," or other various forms does not limit in any way the antecedent word or phrase. The rule of construction that a written agreement is construed against the party preparing or drafting such agreement will specifically not be applicable to the interpretation of this Agreement.

This document including any exhibits attached to this Agreement and the documents referred to in this Agreement will be construed together and constitute the entire agreement between the parties. There are no other oral or implied understandings between the parties with respect to the subject matter of this Agreement. Except as expressly and otherwise provided in this Agreement, this Agreement may not be modified, nor may any rights be waived or abridged, orally or by course of dealing, but only by a written instrument signed by the parties. The words "this Agreement" include any future modifications unless otherwise suggested by the context. No salesperson, representative, or other person has the authority to bind or obligate Figaro's in any way, except Figaro's president or a vice president at Figaro's home office by an instrument in writing.

This document supersedes all communications and negotiations between the parties that relate to the subject matter of this Agreement. No previous course of dealing or usage in the trade not specifically set forth in this Agreement will be admissible to explain, modify, or contradict this Agreement. The parties intend to confer no benefit or right on any person or entity not a party to



this Agreement and no third party will have the right to claim the benefit of any provision of this Agreement as a third party beneficiary of that provision.

The words "will," "shall" and "must" used in this Agreement indicate a mandatory obligation.

All captions and headings are for reference purposes only and are not part of this Agreement. The recitals set forth in this Agreement are specifically incorporated into and constitute a part of the terms of this Agreement. If there is any typographical, word processing, printing or copying error in this Agreement, the error will be interpreted and corrected consistent with the following order of interpretation:

1. The content and expressed intent and exhibits of Figaro's Uniform Franchise Offering Circular(s) previously delivered to Master.
2. The content and expressed intent of franchise agreements Figaro's has executed with Figaro's other franchises reasonably contemporaneous to this Agreement.

If, any part of this Agreement is declared invalid, that declaration will not affect the validity of the remaining portion which will remain in full force and effect as if this Agreement had been executed with the invalid portion omitted. The parties declare their intention that they would have executed the remaining portion of this Agreement without including any part, parts, or portions which may be declared invalid in the future. Provided, however, that if Figaro's determines that the finding of invalidity materially and adversely affects the basic consideration of this Agreement, Figaro's may, at Figaro's option, terminate this Agreement.

If applicable law shall imply a covenant of good faith and fair dealing in this Agreement, the parties agree that covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement. If applicable law shall imply such a covenant, the parties acknowledge and agree that:

- A. This Agreement (and the relationship of the parties which is inherent from this Agreement) grants us the discretion to make decisions, take actions or refrain from taking actions not inconsistent with Figaro's explicit rights and obligations under this Agreement that may favorably or adversely affect Master's interests.
- B. Figaro's will use Figaro's business judgment in exercising Figaro's discretion based on Figaro's assessment of Figaro's own interests and balancing those interests against the interests of the owners of other Figaro's businesses generally (including us, Figaro's franchisees and parties related to us) and specifically without considering the individual interests of Master or any other particular franchisee;
- C. Figaro's will have no liability to Master for the exercise of Figaro's discretion in this manner, so long as Figaro's discretion is not exercised in bad faith toward Master; and
- D. In the absence of bad faith, no trier of fact in any judicial or arbitration proceeding will substitute its judgment for the business judgment Figaro's exercises.

If, at any time during the term of this Agreement, Master consists of two or more persons (whether acting in partnership or otherwise and whether or not all have signed this Agreement), the rights, privileges and benefits granted to Master in this Agreement may only be exercised and enjoyed jointly; and Master's obligations, liabilities and responsibilities under this Agreement will be joint and several obligations of each such person.

18. **NOTICES.** All notices permitted or required to be delivered under this Agreement will be in writing and will be deemed delivered by private messenger or by registered or certified mail, postage

prepaid when: (a) in the case of private messenger, one (1) day after placement with an independent carrier service for next day delivery; or (b) in the case of registered or certified mail, three (3) days after mailing. All notices will be addressed to the party to be notified at its most current principal business address of which the notifying party has been notified. All reports and written communications required by this Agreement will be directed as follows:

To Figaro's: Ron Berger, President & CEO  
Figaro's Italian Pizza, Inc.  
1500 Liberty Street SE, Suite 160  
P.O. Box 12575  
Salem, OR 97305-0575

To Master: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. **AUTHORITY.** Each party represents that the officer or officers who will execute this Agreement on their behalf are duly authorized to do so. Each party further represents and warrants that it has the full right, power, legal capacity and authority to enter into and perform its obligations hereunder and that such obligations will be binding without the approval or consent of any other person or entity.
20. **CONFIDENTIALITY.** All terms of this Agreement are confidential and neither party will disclose the contents of this Agreement, except as required by law. A breach of this section is a material breach of this Agreement.
21. **LEGAL REPRESENTATION.** Master and Figaro's have been afforded the opportunity to select and receive independent counsel.
22. **COSTS AND ATTORNEYS' FEES.** The prevailing party in any arbitration, insolvency proceeding, bankruptcy proceeding, suit, or action to enforce this Agreement will recover its arbitration, proceeding, and court costs and reasonable attorney fees. These will be set by the arbitration, proceeding or court, including costs and attorney fees on appeal or review from the arbitration, proceeding, suit, or action, including previously incurred mediation fees. "Prevailing party" means the party who recovers the greater relief in the proceeding.
23. **COOPERATION.** The parties agree to fully cooperate in carrying out this Agreement, including the execution of all documents reasonably necessary to effectuate the intention of the parties.
24. **SUCCESSORS.** This Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
25. **ASSIGNMENT.** Figaro's may assign this Agreement. Master may only transfer this Agreement, without the consent of Figaro's, to any entity in which Master or a controlling shareholder of Master has and maintains a controlling interest. If Master assigns this Agreement to an entity in which Master or Master's controlling shareholder maintains a controlling interest, Master shall submit to Figaro's a copy of the written agreement executing that assignment. The Territory may not be subdivided or sold or transferred in portions.

Except as stated above, Master shall not sell, assign, sub-license, mortgage, encumber, transfer by operation of law or by any other means, or otherwise dispose of or fractionalize the whole or any part of:

- this Agreement,

- substantial assets of Master's franchise business, or
- ownership or control of Master
- any of the rights or interest granted to Master pursuant to this Agreement including any assets of the business,

(herein collectively referred to as a "Transfer") without the prior written consent of Figaro's. Figaro's consent may not be unreasonably withheld or delayed. Providing the following conditions are met, Figaro's shall provide its written consent to any Transfer:

- A. The proposed transferee must meet Figaro's then current standards for Masters. Master shall have fully paid and satisfied all of Master's obligations to Figaro's. The transferee or Master shall have fully paid to Figaro's a transfer fee of the greater of \$10,000 or two percent of the gross proceeds from the sale. In addition, Master will pay Figaro's an 8 percent commission on the gross transfer price (excluding the price of real property), if Figaro's obtains the transferee for Master. If the transfer is an assignment of interest to a legal entity owned by Master or a transfer of less than a majority share of ownership in such an entity, the transfer fee is \$3,000.
- B. There shall be no existing default by Master under this Agreement.
- C. The proposed transferee and any proposed manager of the proposed transferee shall have successfully completed, prior to such Transfer, Figaro's training program for master franchisees at transferee's and/or manager's expense and shall pay Figaro's reasonable costs of such training.
- D. The proposed transferee(s) including all shareholders, owners, officers, directors, and parties of the transferee(s) shall jointly and severally execute any or all of the following, at Figaro's sole discretion and as Figaro's shall direct:
  1. A master franchisee agreement and other standard ancillary agreements with Figaro's on the then current standard forms being used by Figaro's, except that an additional Master Franchisee fee shall not be charged; and
  2. A written agreement in form and or terms reasonably prescribed by Figaro's, assuming and agreeing to discharge Master's obligations under this Agreement including simultaneous acquisition (if necessary) and ongoing operation of the number of Stores then required in Section 3.8, above.
- E. Because Figaro's will have a strong and vested interest in the financial viability and ongoing management abilities of the transferee, Figaro's may require a review of transferee's operational and business plans demonstrating that the transferee's business operations will work on a cash flow and financial basis in light of Master's operational history. The required transfer procedures and policies to affect the transfer are contained in the Operations Manual. Figaro's need not consent to a transfer to a competitor of Figaro's. The transferee(s) shall be of good moral character and reputation and shall have a good credit rating and competent business qualifications reasonably acceptable to Figaro's. Master shall provide Figaro's with such information as Figaro's may require to make such determination concerning each such proposed transferee(s).
- F. Master and Figaro's, prior to the transfer, shall execute a mutual general release, in a form prescribed by Figaro's, of any and all claims against each other and their subsidiaries and affiliates, and their respective officers, Masters, agents and employees, except any future claims against Master for violation of post-termination covenants.

Approval by Figaro's of any transfer by Master of the franchise granted or any of Master's rights under this Agreement shall in no way be deemed a release by Figaro's of Master's obligations pursuant to this Agreement. Consent by Figaro's to a transfer shall not constitute or be interpreted as consent for any future transfer.

Notwithstanding anything herein contained to the contrary, Master shall be entitled to grant a security interest or pledge interest in this Agreement or in any rights hereunder to a lending institution for the purpose of obtaining financing of the Master's master franchisee business.

26. **DEATH OR INCAPACITY.**

In the event of the death or incapacity of an individual Master, or any partner of a Master which is a partnership or any shareholder owning 50% or more of the capital stock of a Master which is a legal entity, the heirs, beneficiaries, devisee, or legal representatives of said individual, partner or shareholders, shall, within 180 days of such event:

- A. Apply to Figaro's for the right to continue to operate under this Agreement for the duration of the term of this Agreement and any renewals, which right shall be granted upon the fulfillment of all of the conditions set forth in Section 25, above, (except that no transfer fee shall be required); or
- B. Sell, assign, transfer, or convey Master's interest in compliance with the provisions of Section 25, above, provided, however, in the event a proper and timely application for the right to continue to operate has been made and rejected, the 180 days to sell, assign, transfer or convey shall be computed from the date of said rejection. For purposes of this Paragraph, Figaro's silence on an application through the 180 days following the event of death or incapacity shall be deemed a rejection made on the last day of such period.
- C. In the event of the death or incapacity of an individual Master, or any owner of a Master which is a legal entity, where the aforesaid provisions have not been fulfilled within the time provided, all rights licensed to Master under this Agreement shall, at the option of Figaro's terminate forthwith and automatically revert to Figaro's.

27. **SEVERABILITY.** Except as expressly provided to the contrary herein, each section, subsection, paragraph, term and provision of this Agreement will be considered severable if, for any reason, any such provision of this Agreement is held to be invalid, contrary to or in conflict with any applicable present or future law or regulation.

28. **SURVIVAL.** Notwithstanding any other terms or conditions of this Agreement, any provision that could reasonably survive termination will remain in full force and effect thereafter.

29. **FINANCIAL CONDITION.** Master has reviewed Figaro's offering circular and attached audited financial statement. Master represents that it: (i) is not contemplating the filing of a proceeding in bankruptcy, (ii) has sufficient financial assets to meet its current obligations, and (iii) is not subject to a material civil or criminal claim or liability that has not been disclosed in writing to Figaro's.

30. **ACKNOWLEDGEMENTS.** Master acknowledges that neither Master, nor Master's spouse, nor Master's children, nor Master's parents, nor anyone who has an interest in or who will manage the franchise, nor any of Master's partners or affiliates:

1. supports terrorism,
2. provides money or financial services to terrorists,
3. receives money or financial services from terrorists or institutions that support terrorists
4. is engaged in terrorism, or
5. is on the current U.S. government lists of persons and organizations that support terrorism as provided for by law, such as the list of "Specially Designated Nationals" and "Blocked Persons" under the "USA Patriot Act" 18 USC Section 1900 et seq.

Neither Master's nor any of these persons has engaged in or been convicted of fraud, corruption, bribery, money laundering, narcotics trafficking or other crimes, and each is eligible under applicable U.S. immigration laws to communicate with and travel to the United States to fulfill Master's obligations under Master's agreements with Figaro's.

The parties hereto have executed and delivered this Agreement on the date first mentioned above.

FIGARO'S ITALIAN PIZZA, INC.

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

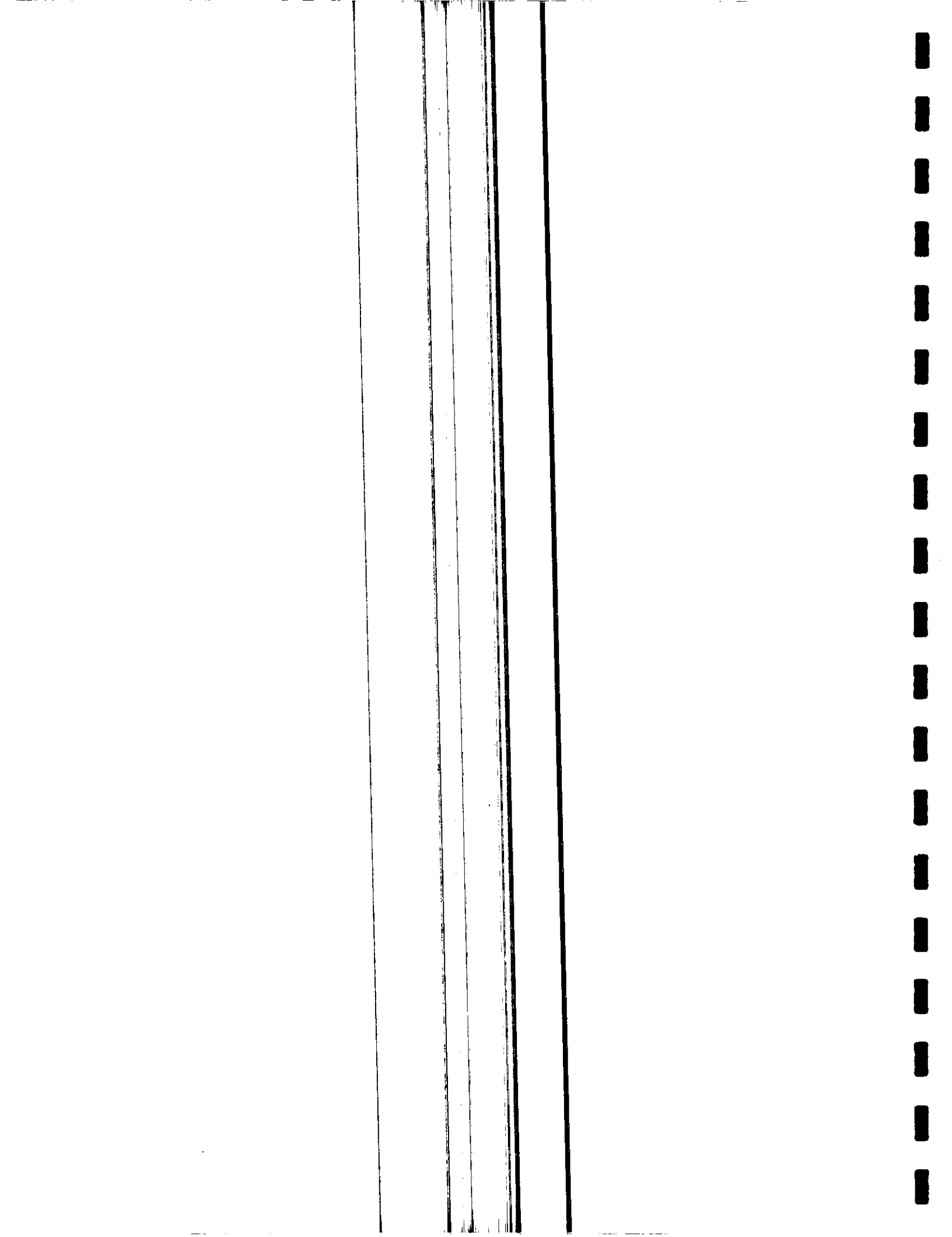
Title: \_\_\_\_\_

All owners of an entity Master must sign here.  
MASTER:

\_\_\_\_\_

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

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



**FIGARO'S ITALIAN PIZZA, INC.**

**EXHIBIT 1**

**TO THE MASTER FRANCHISEE AGREEMENT**

**TERRITORY**

**Territory:** All of \_\_\_\_\_

**Exceptions:** Figaro's may franchise or license retail chains having one hundred or more total operating or franchised units in their system within the territory.

**FIGARO'S INITIALS:** \_\_\_\_\_

**MASTER'S INITIALS:** \_\_\_\_\_

FIGARO'S ITALIAN PIZZA, INC.

EXHIBIT 2

TO MASTER FRANCHISEE AGREEMENT

Development Schedule

Minimum Performance Requirement

(one million persons)

Date Franchises Sold	Total Sold Per Year	Cumulative Total Sold
Agreement Year 1	2	2
Agreement Year 2	3	5
Agreement Year 3	3	8
Agreement Year 4	3	11
Agreement Year 5	3	14
Agreement Year 6	3	17

FIGARO'S INITIALS:

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MASTER'S INITIALS:

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