

THIS IS A 42-PAGE DOCUMENT. THE FOLLOWING IS A SAMPLE OF THE FORM.

[Name of Franchisor]

and

[Name of Franchisee]

FRANCHISE AGREEMENT

[date]

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FRANCHISE AGREEMENT

THIS AGREEMENT made the ____ day of _____, ____.

BETWEEN:

[NAME OF FRANCHISOR]

a corporation incorporated under the laws of _____,
(hereinafter called the "Franchisor")

- and -

[NAME OF FRANCHISEE]

an individual residing in _____/a corporation incorporated under the laws of _____
(hereinafter called the "Franchisee")

WHEREAS:

- A. Franchisor, through its Affiliates, has acquired unique experience, special skills, methods, techniques, recipes and know-how with respect to the design and operation of fast casual pizza and pasta restaurants specializing in the retail sale (on premises and by take-out, delivery and catering services) of fast casual style products including, in particular, pizzas, calzones, pasta dishes, coffee, milk, juice, soft drinks and bottled water operating under the trademarks of [TRADEMARK], owned by Franchisor's Affiliate, [NAME OF AFFILIATE].
- B. [NAME OF AFFILIATE], an Affiliate of Franchisor, is the owner of the System and has licensed Franchisor the right to use the System and to sublicense to others the right to use such System in association with the operation of fast casual pizza and pasta restaurants.
- C. The Trademark Owner has licensed Franchisor the right to use the [TRADEMARK] Trademarks and to sublicense to others the right to use such trademarks in association with the operation of fast casual pizza and pasta restaurants.
- D. Franchisor grants to qualified persons the right to operate fast casual pizza and pasta restaurants utilizing Franchisor's standards, procedures, methods, techniques, recipes, menu boards, specifications, know-how and the [TRADEMARK] Trademarks.
- E. Franchisee has submitted an application to Franchisor to be granted the right to operate fast casual pizza and pasta restaurants and such application has been approved by Franchisor in reliance upon all of the representations and statements contained in and made in connection with such application including, without limitation, representations with respect to the financial resources and experience of Franchisee.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the parties to this Agreement), the parties covenant and agree each with the other as follows:

ARTICLE I - RECITALS

1.1 Recitals Correct

The parties hereby acknowledge and declare that the foregoing recitals are true and correct in substance and in fact.

ARTICLE 2 - INTERPRETATION

2.1 Definitions

Wherever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings ascribed to them as follows:

“**Accounting Period**” means the period from Monday of one week to and including Sunday of the following week;

“**Advertising Fund**” means the advertising and promotion fund established and administered by Franchisor pursuant to Article 8 of this Agreement;

“**Affiliate**” has the meaning ascribed thereto in the *Business Corporations Act* ([province]) as amended;

“**Agreement**” means this agreement entitled “Franchise Agreement” and all instruments supplemental to this Agreement or in amendment or confirmation of this Agreement;

“**Exclusive Territory**” has the meaning ascribed in Section 3.2 as more particularly described in Schedule “A”;

“**Franchised Business**” means the fast casual pizza and pasta restaurant to be carried on by Franchisee at the Premises in accordance with the System pursuant to this Agreement;

“**Gross Sales**” means the aggregate of all sales and other income of Franchisee from whatever source derived, whether or not collected by Franchisee and whether for cheque, cash, credit or otherwise, arising out of, in connection with or relating to the Franchised Business including, without limitation:

- (a) the sale of any Products or other items;
- (b) the provision of any Services; and
- (c) all proceeds from any business interruption insurance;

but excluding:

- (d) all refunds and discounts made in good faith to arm’s length customers;
- (e) any sales, goods and services and equivalent taxes which are collected by Franchisee for or on behalf of any governmental or other public body and actually remitted to such body; and
- (f) the value of any coupon, voucher or other allowance authorized by Franchisor and issued or granted to arm’s length customers of the Franchised Business which is received or credited by Franchisee in full or partial satisfaction of the price of any Product or Service offered in connection with the Franchised Business;

“**Incapacitated**” and “**Incapacity**” mean, in the reasonable opinion of Franchisor, the inability of Franchisee, by reason of physical or mental illness or disability, to operate the Franchised Business in the ordinary course for a period of thirty (30) days or more in any consecutive ninety (90) day period;

“**Initial Franchise Fee**” has the meaning ascribed in Section 7.1 ;

“**Lease**” has the meaning ascribed in Section 4.1;

“**Manual**” means collectively any operations, administration, accounting or procedures manual and all books, pamphlets, memoranda, directives, instructions and other materials prepared by or on behalf of Franchisor (whether in written, machine readable, electronic or any other form), as

such materials may be amended by Franchisor, from time to time, setting out the standards, methods, procedures, techniques, recipes and specifications of the System;

“**Notice**” has the meaning ascribed in Section 16.5;

“**Offer**” has the meaning ascribed in Section 12.4;

“**Other Channels**” means premises and locations other than [TRADEMARK] Premises and includes sales by or through other channels of trade including, without limitation, Affiliates of Franchisor, kiosks, carts, grocery stores, convenience stores, automotive service stations, department stores, food chains, universities, hospitals, educational facilities and public transportation facilities;

“**Premises**” means the premises for the operation of the Franchised Business selected pursuant to Section 4.1, and, where the context requires, includes any additional premises for the operation of the Franchised Business as approved by Franchisor;

“**Prime Bank Rate**” means the prime commercial lending rate of interest (expressed as an annual rate) which any Canadian bank designated by Franchisor establishes as the reference rate of interest for the purpose of determining, the rate of interest that it will charge to its customers for loans in Canadian funds, as the same is in effect from time to time;

“**Products**” means all menu items, food and beverage products including, without limitation, pizzas, calzones, pasta dishes, coffee, milk, juice, soft drinks and bottled water and any other items approved by Franchisor from time to time for sale at or from [TRADEMARK];

“**Renewal Term**” means the first renewal term as provided for in the Sublease but does not include any new or replacement lease terms negotiated after the first renewal term of the Sublease;

“**Royalty Fee**” has the meaning ascribed in Section 7.2;

“**Services**” means the performance of any services relating to the sale of fast casual pizza and pasta style products, including, without limitation, the Products and other food and beverage items at or from the Premises or for off-Premises consumption by way of take-out, delivery, catering or other similar services;

“**Sublease**” has the meaning ascribed in Section 4.1;

“**System**” means the uniform standards, methods, procedures, recipes, techniques and specifications developed by Franchisor or the System Owner and as may be added to, changed, modified, withdrawn or otherwise revised by Franchisor or the System Owner, in their sole discretion, from time to time, for the operation of a [TRADEMARK] restaurant;

“**Term**” means the initial term of this Agreement as provided for in Section 3.1 and any renewal of this Agreement as provided for in Section 3.4;

“**[TRADEMARK NAME OF RESTAURANT]**” means a fast casual pizza and pasta restaurant specializing in the sale (on premises and by take-out, delivery and catering services) of fast casual pizza and pasta products including pizzas, calzones, pasta dishes, coffee, milk, juice, soft drinks and bottled water in accordance with the System and utilizing the Trademarks in association therewith;

“**Trademarks**” means the trade names, trade-marks, designs, graphics, logos and other commercial symbols as Franchisor may from time to time designate and not thereafter withdraw to be used in connection with the Franchised Business, including, without limitation, the [TRADEMARK NAME OF RESTAURANT] Trademarks; and

“Transfer” has the meaning ascribed in Section 12.2.

2.2 Schedule

The following Schedules are annexed to this Agreement and form part of this Agreement:

Schedule “A” - Exclusive Territory
Schedule “B” - Lease and Premises Location
Schedule “C” - Guarantee
Schedule “D” - Sublease Agreement

2.3 Gender and Number

In this Agreement, words importing the singular include the plural and vice versa, and words importing gender include all genders.

2.4 Currency

All references to money amounts in this Agreement, unless otherwise specified, shall be to Canadian currency.

2.5 Article and Section Headings

The insertion of headings and the division of this Agreement into Articles and Sections are for convenience of reference only and shall not affect the interpretation of this Agreement.

2.6 Entire Agreement

This Agreement, any documents incorporated by reference in this Agreement and the Schedules to this Agreement, constitute the entire agreement between the parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions with respect to the subject matter of this Agreement, whether oral or written. Except as provided in this Agreement, there are no conditions, representations, warranties, undertakings, promises, inducements or agreements whether direct, indirect, collateral, express or implied made by Franchisor or its Affiliates, or its or their respective employees, officers, representatives or agents to Franchisee. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by both parties.

2.7 Applicable Law

This Agreement shall be construed in accordance with the laws of the Province of _____ and the laws of Canada applicable therein.

2.8 Time of the Essence

Time is of the essence in this Agreement.

2.9 Severability of Provisions

Every part of this Agreement is severable and the invalidity or unenforceability of any part of this Agreement shall not affect the validity or enforceability of any other part of this Agreement.

2.10 Non Waiver

The failure of Franchisor to exercise any right, power or option given under this Agreement, or to insist upon strict compliance with the terms and conditions of this Agreement by Franchisee, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach of this Agreement or default under this Agreement, nor a waiver by Franchisor of its right at any time thereafter to require strict compliance with all terms and conditions of this Agreement.

ARTICLE 3 - SCOPE OF LICENCE

3.1 Grant and Term

Subject to the provisions of this Agreement, Franchisor hereby grants to Franchisee the right, license and privilege to operate a [TRADEMARK] restaurant at the Premises for an initial term equal to the initial term of the Sublease less one (1) day and to use the System and the Trade-marks in connection therewith.

3.2 Exclusive Territory

Subject to Section 3.4 during the initial term and any renewal terms of this Agreement, Franchisor shall not itself, or by or through any Affiliate, establish or operate, nor license any other person to establish or operate, another [TRADEMARK] restaurant within the territory described in Schedule "A" (the "Exclusive Territory").

3.3 Acceptance

Franchisee accepts this Franchise Agreement and the license granted herein, and shall proceed diligently to develop and operate the [Trademark] Franchise Business, on the terms and conditions specified herein. Franchisee agrees to follow Franchisor's System requirements relative to facilities, staff, advertising, operations and all other aspects of the [Trademark] Franchise Business and System now in effect and as changed periodically. Franchisee and, if Franchisee is a corporation, the principal shareholder with day-to-day management or operations responsibilities shall attend and complete Franchisor's training program, to Franchisor's satisfaction, within the timeframe established by Franchisor. This training shall take place in _____ or at a location to be decided by Franchisor. Franchisee accepts that this Agreement and the license contained herein have been granted by Franchisor based on Franchisee's current standing and eligibility under Franchisor's current eligibility criteria. Should Franchisee become ineligible to open a [Trademark] Franchise Business for any reason between the time Franchisor accepts this Agreement and when a lease is fully executed for Franchisee's Authorized Location, then Franchisor may, at its sole and absolute option, cancel this Agreement, in which case Franchisor will promptly refund the initial fee without interest, less \$10,000, which shall constitute Franchisor's sole obligation to Franchisee.

3.4 Rights Retained

Franchisee expressly acknowledges and agrees that the rights granted to Franchisee hereunder are non-exclusive, and Franchisor (by itself or through its Affiliates) expressly reserves the following rights (within or outside the Exclusive Territory unless otherwise specifically stated):

- (a) the right to establish, or operate, or license any other person the right to establish or operate a [TRADEMARK] restaurant at any location outside the Exclusive Territory;
- (b) the right to develop, lease and license the use of, at any location outside the Premises, proprietary marks, other than the Trademarks, in connection with the operation of a program or system which offers products or services which are the same as or similar to and which may compete with those offered under the System on any terms or conditions which Franchisor deems advisable;
- (c) the right to develop, market, own, operate or participate in any other business under the Trademarks or any other trademarks;
- (d) the right to acquire and convert to a [TRADEMARK] restaurant any restaurants or cafes located inside or outside the Exclusive Territory which are operated as part of, or in association with, any other system or chain, whether franchised or corporately owned; and
- (e) the right to distribute or sell, or license other persons to distribute or sell, non-System products and System Products through Other Channels.

3.5 Renewal

This Agreement may be renewed by Franchisee provided that upon the expiration of the initial term of this Agreement (as provided for in Section 3.1) the Lease for the Premises shall be renewed or a new Lease for the Premises shall be entered into, as set forth below. Franchisee's right to renew shall be conditional upon the entering into of a new franchise agreement with Franchisor without payment of any further Initial Franchise Fee for a further term commencing on the last day of the current term of the Lease for the Premises and expiring on that date which is one (1) day prior to the date of expiration of the further renewal term of the Lease or of the new Lease term for the Premises upon the terms and conditions set out below. Franchisor will not refuse to enter into a new Franchise Agreement with Franchisee unless Franchisee shall fail to meet Franchisor's terms and conditions for same as set out herein or in the then current franchise agreement between the parties. The terms and conditions for Franchisee having the right to enter into a new franchise agreement with the Franchisor for a further term following the term of this Agreement are as follows:

- (a) Franchisee shall notify Franchisor in writing, at least six (6) months and not more than twelve (12) months prior to the expiration of the initial term (as set forth in Section 3.1 above) of this Agreement, of the exercise of its option to enter into a new franchise agreement;
- (b) Franchisee's option shall be effective only if, at the time of its exercise and at the time of the commencement of the term of the new franchise agreement, Franchisee shall have fully performed and complied with all of its covenants and obligations under this Agreement, the Sublease and all ancillary documents relating hereto, and all other agreements which then may be in effect between Franchisor or its Affiliates and Franchisee, whether relating to the Franchised Premises or any other [TRADEMARK] restaurant;
- (c) Franchisor shall use its reasonable best efforts in good faith to exercise a further renewal option or to negotiate and enter into a further renewal term or a new lease for the Premises on economically feasible terms. If Franchisor and Franchisee, each acting reasonably and in good faith, shall mutually agree that such terms as are finally proposed or agreed to by the landlord of the Premises are not economically feasible, then Franchisor shall not be obligated to proceed with such renewal or new Lease, and unless the Premises can be relocated as provided herein, this Agreement shall expire at the end of its term. If the parties do not agree, and if Franchisee requests by Notice in writing to Franchisor, Franchisor shall use its reasonable best efforts in good faith to assign all of its right, title and interest in and to the Lease for the Premises to Franchisee who shall then, if the landlord of the Premises consents to such assignment, be free to renew the Lease or enter into a new Lease for the Premises. If such assignment occurs and Franchisee renews the Lease or enters into a new Lease for the Premises, then the parties shall proceed with the renewal of this Agreement upon the other terms and conditions contained herein or, at the option of Franchisor, this Agreement shall expire at the end of its term and the provisions of Section 11.2 and Section 13.4 shall apply;
- (d) in the event that Franchisee shall have failed to fully perform and comply with all of its covenants and obligations under this Agreement, the Sublease and all ancillary documents relating thereto, and all other agreements which then may be in effect between Franchisor or its Affiliates and Franchisee, whether relating to the Franchised Business or any other [TRADEMARK] restaurant and as a result thereof Franchisor shall determine not to allow Franchisee the opportunity to renew this Agreement, then Franchisor shall give Notice of such non-renewal to Franchisee setting forth Franchisor's reasons for making such determination, as well as the effective date of such non-renewal. If the Lease for the Premises is not renewed or a new Lease for the Premises is not entered into and their Agreement will expire as aforesaid, then Franchisor shall give written Notice to Franchisee setting forth the reasons for such expiry and the effective date of such expiry. Franchisor shall give such Notice to Franchisee within one (1) month of Franchisor's receipt of Franchisee's Notice exercising the said option, or where Franchisee's failure to fully perform and comply arises after Franchisor's receipt of Franchisee's Notice, or in the event of expiry due to the non-renewal of the Lease or the non-entry into a new Lease for the Premises, then Franchisor shall give as much Notice to Franchisee as is reasonably practicable in the circumstances;

- (e) Franchisee shall, within thirty (30) days following its Notice of exercise of said option, or within five (5) business days following the maximum permissible period of time provided for under applicable law after Franchisee has received a current disclosure document from Franchisor, if then required pursuant to applicable law (whichever is the latter to occur), execute and deliver to Franchisor Franchisor's then current standard form of franchise agreement and ancillary documents incorporating and including without limitation, Franchisor's then current continuing Royalty rate, Advertising Fund payments and other payment amounts and rates then being used by Franchisor in connection with the issuance of franchises. Franchisee shall pay to Franchisor as a condition precedent to such renewal all administrative and other expenses associated with the renewal.
- (f) Franchisee shall have delivered to Franchisor a complete release of all claims against Franchisor, its Affiliates, and its respective directors officers, shareholders, employees, contractors, sub-contractors, agents and representatives in respect of all obligations arising under or pursuant to this Agreement, in a form satisfactory to Franchisor;
- (g) Franchisee shall, at Franchisee's sole cost and expense, carry out Franchisor's recommended upgrading, replacements, renovations, remodeling, redecorating, modernizing, repairs and improvements to the Franchised Business and to the equipment therein in accordance with plans and specifications provided by Franchisor to Franchisee or approved by Franchisor;
- (h) Franchisee and its management personnel shall, if required by Franchisor, attend and satisfactorily complete, as retraining, those portions of Franchisor's then current initial training program which Franchisor may prescribe and Franchisor may charge its standard training fees to Franchisee in connection therewith, and all costs and expenses of Franchisee and its management personnel attending at and satisfactorily completing such retraining shall be borne by Franchisee.

ARTICLE 4 - PREMISES

4.1 Selection of Premises

The Premises for the operation of the Franchised Business shall be understood, by the execution of this Agreement, to have been selected by Franchisee and a binding agreement to lease such Premises (the "Lease") upon terms and conditions acceptable to Franchisor shall be entered into by Franchisor or its Affiliates. If Premises have not been selected at the time of execution of this Agreement, Franchisee shall use best efforts to assist Franchisor in obtaining suitable Premises within the geographic territory outlined or described in Schedule "B" as soon as practicable. If no such Premises are obtained within one hundred and twenty (120) days after the execution of this Agreement, or if Franchisee fails to execute and deliver the Sublease within fifteen (15) days after receipt of the Sublease from Franchisor, Franchisor shall have the right to terminate this Agreement upon five (5) days Notice to Franchisee. In the event of such termination, Franchisor shall refund the Initial Franchise Fee to Franchisee (less Franchisor's reasonable administrative, supervisory, accounting, training, legal costs and fees and any damages arising from such termination, in the case of such failure by Franchisee to execute such Sublease), without interest, and thereafter, Franchisor shall not have any liability or obligation to Franchisee of any nature or kind (including, without limitation, any liability for incidental or consequential damages or damages for loss of opportunity or loss of profits).

4.2 Development of Premises by Franchisor

Franchisor shall, at its option, construct and develop the Premises on a turnkey basis for and on behalf of Franchisee and at Franchisee's sole expense, which may include, but without limitation, a reasonable fee to Franchisor for its services provided in connection therewith. Franchisor shall supply the working drawings and retain a general contractor or subcontractors of Franchisor's choice to develop the Premises for and on behalf of Franchisee, in a good and workmanlike manner and at a total cost which Franchisor determines to be reasonable in the circumstances. Franchisee shall pay the full cost of construction and development (as further provided in this Section 4) of the Premises, including, but not limited to, the cost of such of the following as are applicable: searching for and identifying potential Premises; the cost of any leasing commissions or fees paid to secure the Premises; the cost of preparing the site plan for the

Premises; the cost of negotiating the Offer to Lease and the Lease and preparing the Sublease; the cost of registration of the Lease and, where applicable, the Sublease at the appropriate Land Title or Registry Office or its equivalent, including all taxes that may be payable in connection therewith; the costs of obtaining all required regulatory and other approvals, including but not limited to development permits, building permits, municipal approvals and similar costs.

4.3. Payment for Development

Franchisor shall provide Franchisee with a statement setting out the items required for and estimated costs of developing, constructing and equipping the Premises, together with a schedule for the payment of such costs requiring Franchisee to pay: (a) one-third (1/3) of the total amount of such costs on the date of execution of this Agreement by Franchisee; (b) one-third (1/3) of the total amount of such costs within ten (10) days after Notice from Franchisor that construction of the Premises has commenced; and (c) the remaining of the total amount of such costs within ten (10) days after Notice from Franchisor that construction of the Premises has been substantially completed. Franchisee shall acknowledge receipt of such statement and schedule and confirm acceptance of same. Franchisee hereby acknowledges that such estimate shall in no way be construed as a guarantee of the ultimate cost of developing, constructing and equipping the Premises. Franchisee shall pay Franchisor the cost of developing, constructing and equipping the premises in accordance with the said schedule for payment. To the extent that the costs and expenses from time to time incurred in respect of the development, constructing, and equipping of the Premises exceed the amount or amounts set out in the estimate, Franchisee shall pay to Franchisor an amount equal to such excess within ten (10) days of receipt of a supplemental statement from Franchisor setting forth in reasonable detail the costs and expenses for which such additional funds are required.

4.4. Opening - Turnkey

If Franchisor shall have exercised its option to construct and develop the Premises on a turnkey basis for and on behalf of Franchisee as provided for in Section 4.2, then Franchisee shall promptly complete its work (if any) at the Premises and have all opening inventory and supplies (including approved uniforms) ordered for delivery, business and other permits not already obtained by Franchisor obtained, personnel employed, satisfactorily complete the required Franchisee training, complete Franchisee's own employee training and have all other requirements attended to so that the Premises shall be open for business as expeditiously as is practicable after Franchisor delivers possession of the Premises to Franchisee for such purposes, and in any event wherever practicable the Premises shall be open for business within fifteen (15) days from the date Franchisor delivers possession of the Premises to Franchisee for such purposes. Prior to Franchisee opening the Premises for business, Franchisor and Franchisee shall reasonably agree in writing that Franchisor has substantially fulfilled its pre-opening obligations to Franchisee in accordance with the terms and conditions of this Agreement, and that the Premises are ready to be opened for business. Prior to such opening Franchisor and Franchisee shall also reasonably agree in writing upon what, if any, minor deficiencies remain and upon the program and the responsibility and timing for curing any such minor deficiencies. Franchisor shall use all reasonable best efforts to complete work within the fixturing period allowed in the Offer to Lease or Lease for the Premises and to have the Premises ready for delivery to Franchisee to open for business by the commencement date stipulated in the Offer to Lease or Lease, as the case may be, or such other reasonable date as the landlord of the Premises shall specify, where applicable, and where the same is applicable, and is a requirement contained in the Offer to Lease or Lease for the Premises, then the latter date shall be the date upon which the Premises shall be open for business, notwithstanding the reference above to fifteen (15) days. Any late opening charges assessed by the Landlord of the Premises under the Offer to Lease or Lease shall be paid by Franchisee unless Franchisor shall fail to substantially complete its work within the required time.

4.5 Opening - Non-Turnkey

If Franchisor shall not have exercised its option to fully construct and develop the Premises on a turnkey basis for and on behalf of Franchisee as provided for in Section 4.2, then Franchisee shall promptly complete the construction and development of the Premises and have all design and architectural drawing's and site plans approved by Franchisor, leasehold improvements constructed, fixtures, furnishings, machinery, equipment and signage installed, supplies inventory, small wares and Franchisor approved uniforms ordered for delivery, business and other permits obtained, personnel employed, satisfactorily complete the required Franchisee training, complete Franchisee's own employee training and have all other requirements attended to so that the Premises shall be open for business as

expeditiously as is practicable after the execution of this Agreement. Franchisor, at its discretion shall inspect the Premises (not more than twice) during the construction period at the sole expense of Franchisee including, but not limited to salary, travel and accommodation costs. Prior to Franchisee opening the Premises for business, Franchisor and Franchisee shall reasonably agree in writing that Franchisor has substantially fulfilled its pre-opening obligations to Franchisee and that Franchisee has substantially fulfilled its pre-opening obligations to Franchisor in accordance with the terms and conditions of this Agreement, and that the Premises are ready to be opened for business and prior to such opening Franchisor and Franchisee shall also reasonably agree in writing, upon what, if any, minor deficiencies remain and upon the program, responsibility and timing for curing any such minor deficiencies. Notwithstanding the foregoing, Franchisee shall use all reasonable best efforts to complete Franchisee's work within the fixturing period allowed in the Offer to Lease or Lease for the Premises and to have the Premises ready to open for business by the commencement date stipulated in the Offer to Lease or Lease, as the case may be, or such other reasonable date as the landlord of the Premises shall in writing notify to Franchisee. Any late opening charges assessed by the Landlord of the Premises under the Offer to Lease or Lease shall be paid by Franchisee.

4.6 Agreement of Purchase and Sale

In the event that Franchisor (or an Affiliate) is operating a [TRADEMARK] restaurant at the Premises as at the date of this Agreement, upon execution of this Agreement, or on such other date as the parties may agree, Franchisee and Franchisor shall enter into such agreements (including a bill of sale or general conveyance) as Franchisor may prescribe for the purchase by Franchisee (or a corporation to which this Agreement has been transferred and assigned pursuant to Section 12.3 hereof) from Franchisor of Franchisor's right, title and interest in Franchisor's assets which are used exclusively in connection with such [TRADEMARK] restaurant and located at the Premises, other than accounts receivable and such other assets as Franchisor shall expressly exclude, provided that Franchisor shall sell such assets as Franchisor in its reasonable discretion deems appropriate to permit the use of the Premises on a turnkey basis as the [TRADEMARK] restaurant upon the closing of such purchase and sale. Franchisor and Franchisee agree that the allocation of the purchase price shall be as provided for in the agreement of purchase and sale.

The closing of such purchase and sale shall occur on such date as the parties may agree. If the closing of such purchase and sale does not occur other than by reason of any act or omission of Franchisee, or if this Agreement is terminated pursuant to Section 13.1 hereof, Franchisor shall refund such purchase price, without interest, to Franchisee within thirty (30) days of the day specified by Franchisor for closing such purchase and sale. In such event, this Agreement and all other agreements between the Parties shall terminate without Notice and Franchisor shall have no further liability or obligation of any kind to Franchisee including, without limitation, for indirect or consequential damages or damages for loss of opportunity or loss of profits.

4.7 Renovation of Premises

In the event that the Premises requires renovation, refurbishing, remodeling or redecorating prior to the closing of the purchase and sale pursuant to Section 4.6 hereof in order to reflect the current image of a [TRADEMARK] restaurant, Franchisee hereby retains Franchisor to do, or cause to be done for the sole account of and at the sole cost and expense of Franchisee, all matters and things as Franchisor in its reasonable discretion deems appropriate and necessary. Franchisee shall pay to Franchisor the amount set forth in a schedule provided to Franchisee by Franchisor and agreed to in writing by Franchisee, for the costs of such renovation refurbishing, remodeling or redecorating (the "Renovation Fee"), which amount shall be additional to the amount set forth in the agreement of purchase and sale. One-half (1/2) of such Renovation Fee shall be payable by Franchisee to Franchisor thirty (30) days prior to the closing of the purchase and sale pursuant to Section 4.6 hereof, and the remaining one-half shall be payable on such closing date whether or not the required renovations have been completed by that date. Franchisor shall use its best efforts to have the renovations carried out in a timely manner.

Franchisee further acknowledges that the Renovation Fee represents a reasonable profit to be retained by Franchisor in connection with the services, which Franchisor will be performing for Franchisee in connection with the renovation of the Premises.

4.8 Franchised Business Opening

Franchisee shall open and commence the operation of the Franchised Business within fifteen (15) days after the date scheduled for the opening of the Premises as set forth in a Notice to that effect from Franchisor. Franchisor shall, for such period of time as Franchisor reasonably considers necessary prior to the scheduled opening of the Premises, at Franchisor's discretion, provide on-site guidance, advice and aid in opening the Franchised Business, and, at the sole cost and expense of Franchisee, obtain appropriate services and purchase the necessary materials to assist Franchisee in opening the Franchised Business, including planning and conducting pre-opening and grand opening advertising and marketing. If Franchisor, in the first instance, has paid any such costs, Franchisee shall promptly reimburse Franchisor for such amount on receipt of a written request therefor, together with the appropriate invoices or statements showing the amount of such costs incurred by Franchisor. Franchisor shall, for such period of time as Franchisor reasonably considers necessary after the scheduled opening of the Premises, provide Franchisee with training, personnel to provide on-site guidance, advice and aid in the operation of the Franchised Business. The Franchised Business shall not be opened without the prior written approval of Franchisor, which approval shall not be unreasonably withheld.

4.9 Franchisor Allowances

Franchisee acknowledges that Franchisor may receive landlord inducements or tenant allowances, or supplier rebates or allowances in connection with the construction, fixturing, equipping or renovations of the Premises, which inducements or allowances Franchisor shall be entitled to retain for its own use and credit without accounting to Franchisee in respect thereof.

4.10 Additional Premises and Relocation of Franchised Business

Franchisee shall operate the Franchised Business only at the Premises and shall not relocate or open any additional Premises except with Franchisor's prior written consent. Notwithstanding the foregoing, in the event that the Lease is not renewed by the Landlord or a new lease is not entered into, or if prior to the expiration or termination of this Agreement or Lease terminates without fault of Franchisee, or if Franchisor, in its sole discretion at any time, chooses not to renew the Lease or the Lease cannot be renewed for any reason whatsoever (except for any default or breach caused by Franchisee), or if the Premises are destroyed, condemned, expropriated or otherwise rendered unusable, or, if in the judgment of Franchisor, there is a change in the character of the location of the Premises sufficiently detrimental to its business potential to warrant its relocation, Franchisor shall grant permission for relocation of the Franchised Business for such period of time as may then be remaining in the Term of this Agreement to an alternate location or site acceptable to Franchisor, subject to this Article 4. Any such relocation and the development and opening of alternate Premises shall be at Franchisee's sole cost and expense and Franchisor may, at its option, charge Franchisee for all costs incurred by Franchisor, including a reasonable charge for services rendered by Franchisor, in connection with such relocation, development and opening of such alternate Premises.

4.11 Sublease Arrangements

Franchisee acknowledges that Franchisor may delegate to an Affiliate of Franchisor Franchisor's rights and obligations under this Article 4 to identify and develop the Premises and to enter into the Lease and Sublease. In such case, all references to Franchisor shall be considered as references to such Affiliate of Franchisor without further amendment to this Agreement.

ARTICLE 5 FRANCHISOR'S OBLIGATIONS

5.1 Training Program

Prior to and during the first _____ weeks of the opening of the Franchised Business by Franchisee, Franchisor shall make available an initial training program consisting of a minimum of two (2) weeks training and instruction in the management and operation of a [TRADEMARK] restaurant and in the standards, methods, procedures, recipes, techniques and specifications of the System including [TRADEMARK] accounting systems, which program Franchisee and one other employee of the Franchised Business approved by Franchisor shall have successfully completed to the satisfaction of Franchisor prior to such opening. The two (2) week initial training program shall be held at the head