

**FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (“Agreement”) is effective as of [ ], 2012 (“Effective Date”) by A Big Philly Cheesesteak, Inc., an S corporation organized and existing under the laws of the State of Colorado (“Franchisor”) and [ ], a [ ] organized and existing under the laws of the State of [ ] (“Franchisee”).

**RECITALS**

A. Franchisor and its Affiliates (as defined below) own the System (as defined below) for the Taste of Philly Restaurants (as defined below); and

B. Franchisee is the owner of the Restaurant (as defined below), and Franchisee desires to operate the Restaurant as a Taste of Philly Restaurant and wishes to obtain a license to use the System and the Proprietary Marks (as defined below) for that purpose; and

C. It is the intention of the parties that the Restaurant, together with other Taste of Philly Restaurants will be part of a worldwide chain of restaurants providing distinctive, high-quality restaurant services, and Franchisee agrees that it is important to operate the Restaurant in strict conformity with the System in order to enhance public acceptance of, and demand for, all Taste of Philly Restaurants; and

D. In agreeing to grant the non-exclusive license under this Agreement to Franchisee, Franchisor is relying upon the business skill, financial capacity, and character of Franchisee and its principals.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Franchisee and Franchisor agree as follows:

**SECTION 1 DEFINITIONS**

1.1 Definitions. The following terms when used in this Agreement have the following meanings:

“Accounting Period” means any fiscal accounting and reporting period required by Franchisor.

“Affiliate” means, for any Person, a Person that is related directly (or indirectly through one or more intermediaries) Controlling, Controlled by, or under common Control with such Person.

“Applicable Law” means all laws, regulations, ordinances, rules, orders, decrees, and requirements of any governmental authority having jurisdiction over the Restaurant, Franchisee, or any of the TOP Agreements, or applicable to the filing, registration, or approval of any of the TOP Agreements.

“Approved Location” means the site described in Exhibit A to this Agreement.

“Case Goods” means furniture and fixtures used in the Restaurant, and its Public Facilities, such as chairs, stools, tables, television sets, mirrors, pictures, wall decorations, graphics and all other unspecified items of the same class.

“Competitor” means any Person that: (i) owns, has an interest in, or (ii) is an Affiliate, principal, director, officer, or other individual with management responsibility of a Person that owns or has an interest in a restaurant brand, trade name, trademark, system, or chain (a “Brand”) that is comprised of at least two (2) full-service restaurants; provided, such Person will not be deemed to be a Competitor if such Person has an interest in such Brand merely as a mere passive investor that has no Control or influence over the business decisions concerning the Brand at issue, such as limited partners in a partnership or as a mere non-Controlling stockholder in a corporation.

“Confidential Information” means any or all of the following information: (i) any Standards, documents, or trade secrets approved for use in the System or in the design, construction, renovation or operation of the Restaurant; (ii) any Electronic Systems and accompanying documentation developed for the System or elements thereof; or (iii) any other confidential information, knowledge, trade secrets, business information or know-how obtained (a) through the use of any part of the System or concerning the System or the operation of the Restaurant or (b) under any TOP Agreements.

“Control” (and any form thereof, such as “Controlling” or “Controlled”) means, for any Person, the possession, directly or indirectly (through one or more intermediaries), of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting interests, by contract, or otherwise.

“Data Protection Laws” means data protection and privacy laws and regulations in each relevant jurisdiction.

“Dispute” means any dispute, controversy, or claim arising out of or relating to this Agreement or any other TOP Agreement, or the making, breach, termination, or invalidity of this Agreement or any other TOP Agreement, or the relationship created by those agreements.

“Electronic Systems” means all Software, Hardware and all electronic access to Franchisor’s systems and data, licensed or made available to Franchisee relating to the System, and includes any Software or Hardware that result from modifications to the System pursuant to Section 11.2.

“FF&E” means furniture, furnishings, fixtures, signage, equipment (including telephone systems; facsimile machines; copiers; vending machines; electronic systems); Case Goods and Soft Goods.

“Food and Beverage Operations” means all Restaurant food and beverage services, whether performed inside or outside the Restaurant, including: (i) all restaurant, dining, bar, lounge, and retail food and beverage services; (ii) any other food, beverage, or related services of the Restaurant; and (iii) the amount of all lost revenues and receipts from any of the foregoing upon which proceeds of business interruption, loss of income, or other similar insurance are calculated.

“Franchisor Restaurant Facilities” means all restaurants and eating facilities, chains, brands, or restaurant systems owned, leased, under development, or operated or franchised, now or in the future, by Franchisor or any of its Affiliates, including: (i) Taste of Philly Restaurants; and (ii) any other restaurant product or concept developed or utilized by Franchisor or any of its Affiliates in the future.

“Gross Revenues” means all sales and receipts of every kind and nature from the Food and Beverage Operations, including credit charges, charge backs, service charges (other than tips, service charges, or gratuities to Restaurant employees to the extent actually received by the Restaurant employees), and uncollectible amounts, whether or not collected, and guaranteed no-show revenue that is collected from the Food and Beverage Operations, but does not include any sales, restaurant tax, or similar taxes collected from patrons or guests.

“Guarantor” means individually and collectively any Person(s) who guarantee(s) the performance of Franchisee’s obligations under this Agreement in connection with a Transfer permitted under Section 16 and in accordance with the Guaranty.

“Guaranty” means any guaranty executed by and among the Guarantor and Franchisor.

“Hardware” means all computer hardware and other equipment (including all future upgrades, enhancements, additions, substitutions, and other modifications thereof) required for the operation of and connection to the applicable system by the Standards for Taste of Philly Restaurants.

“Intellectual Property” means all of the following items, regardless of the form or medium involved (e.g., paper, electronic, tape, tangible or intangible): (i) all Software, including the data

and information processed or stored by such Software; (ii) all Proprietary Marks; and (iii) all Confidential Information and all other information, materials, and copyrightable or patentable subject matter developed, acquired, licensed, or used by Franchisor or any of its Affiliates in the operation of the Restaurant or in any other restaurant in the System.

“Interest” means the lesser of eighteen percent (18%) per annum or the maximum interest rate allowable under Applicable Law.

“Inventories” means (i) provisions in storerooms, refrigerators, pantries, and kitchens; (ii) beverages in wine cellars and bars; (iii) other merchandise intended for sale; (iv) fuel; (v) mechanical supplies; (vi) paper items; and (vii) other expensed supplies and similar items.

“Licensed Marks” means one or more of the registered trademarks, registered service marks, and registration applications, and any other Proprietary Mark designated in writing as a Licensed Mark by Franchisor, all as may be changed, deleted, added to or otherwise modified by Franchisor in its sole discretion.

“Marketing Materials” means all advertising, marketing, promotional, sales and public relations concepts; press releases; materials; copy; concepts; plans; programs; brochures; or other information to be released to the public whether in digital, electronic or computerized form, or in any form of media now or hereafter developed.

“Other Mark(s)” means any trademark, trade name, symbol, slogan, design, insignia, emblem, device, or service mark that is not a Proprietary Mark.

“Ownership Interest” means all forms of ownership of legal entities or property, both legal and beneficial, voting and non-voting, including stock interests, partnership interests, limited liability company membership or ownership interests, joint tenancy interests, leasehold interests, proprietorship interests, trust beneficiary interests, proxy interests, power-of-attorney interests, and all options, warrants, and any other forms of interest evidencing ownership or Control.

“Person” means an individual (and the heirs, executors, administrators, or other legal representatives of an individual), a partnership, a corporation, a limited liability company, a government, or any department or agency thereof, a trustee, a trust, an unincorporated organization, or any other entity of any kind.

“Proprietary Marks” means the Licensed Marks, the name “Taste of Philly” in any form, the Taste of Philly logo, and all other trademarks, trade names, trade dress, words, symbols, logos, slogans, designs, insignia, emblems, devices, service marks, and indicia of origin (including restaurant names, lounge names, or other outlet names), or combinations thereof, that are registered by Franchisor or any of its Affiliates, or are used to identify or are otherwise associated by virtue of usage with Taste of Philly Restaurants, all as may be changed, deleted, added to or otherwise modified by Franchisor in its sole discretion. The term applies whether the Proprietary Marks are owned currently by Franchisor or any of its Affiliates, or are later developed or acquired, and whether or not they are registered in any state, foreign country or in the United States Patent and Trademark Office.

“Public Facilities” means any dining facilities, restaurants, bars, lounges, and all other similar public facilities at the Restaurant.

“Reasonable Business Judgment,” means (1) with respect to the System, Franchisor’s action or inaction has a business basis that is intended to: (i) benefit the System or the profitability of the System, including Franchisor, regardless of whether some individual restaurants may be unfavorably affected; (ii) increase the value of the Proprietary Marks; (iii) increase or enhance overall restaurant guest or franchisee or owner satisfaction; or (iv) minimize possible brand inconsistencies or customer confusion, or (2) with respect to everything other than the System, Franchisor’s action or inaction has a business basis and has not acted in bad faith.

“Restaurant” means the restaurant and all land used in connection with the restaurant located or to be located at the Approved Location, including: (i) the freehold or long-term leasehold title to the Approved Location; (ii) all improvements, structures, facilities, entry and exit rights, parking, landscaping, and other appurtenances (including the restaurant building, Public Facilities, and all operating systems) located at the Approved Location; and (iii) all FF&E and Inventories installed or located in such improvements.

“Quality Assurance Program” means the quality assurance program required by Franchisor or its Affiliates for Taste of Philly Restaurants as set forth in the Standards for evaluating or ensuring compliance of Taste of Philly Restaurants with the Standards.

“Soft Goods” means textile, fabric and vinyl and similar products used in finishing and decorating the Restaurant and its Public Facilities, such as vinyl wall and floor coverings, drapes, sheers, cornice coverings, artwork, upholstery and all other unspecified items of the same class.

“Software” means all computer software and accompanying documentation (including all future enhancements, upgrades, additions, substitutions, and other modifications) provided to Franchisee by or through Franchisor and/or third parties designated by Franchisor or its Affiliates required for the operation of and connection to the applicable Electronic System.

“Standards” means Franchisor’s operating rules, manuals, standard operating and other procedures, systems, guides, programs (including the Quality Assurance Program), requirements, directives, standards, specifications, design criteria, and such other information, initiatives and controls that are necessary for planning, constructing, renovating, refurbishing, and operating Taste of Philly Restaurants, as such may be modified, amended or supplemented by Franchisor or its Affiliates. The Standards may be in paper or in electronic form (or with Franchisor’s prior approval take into account specific characteristics and conditions of the local market).

“System” means the Standards, Confidential Information and other distinctive, distinguishing elements or characteristics that Franchisor or its Affiliates have developed, designated or authorized for the operation of Taste of Philly Restaurants, including advertising programs and training.

“Taste of Philly Restaurants” means the group of restaurants serving Philly cheesesteak sandwiches and other food products known, as of the Effective Date, as “Taste of Philly”, which restaurants are operated by any approved party under the System or are designated by Franchisor as “Taste of Philly Restaurants”. Franchisor or its Affiliates may elect to increase or decrease the number of “Taste of Philly Restaurants.”

“Taxes” means all taxes (including any sales, gross receipts, value-added or goods and services taxes), levies, charges, impositions, stamp or other duties, fees, deductions, withholdings or other payments levied or assessed by any competent governmental authority, including by any federal, national, state, provincial, local, or other tax authority.

“TOP Agreement(s)” means, collectively, this Agreement (including any agreement attached to this Agreement as exhibits, attachments or addenda) and any other agreements executed in connection with any of the foregoing, including any other agreement relating to the Restaurant between Franchisor (or its Affiliates on the one hand) and Franchisee or owner(s) of the Restaurant on the other, as any may be amended, modified, supplemented, or restated.

“Transfer” means any sale, conveyance, assignment, exchange, pledge, encumbrance, lease or other transfer or disposition, directly or indirectly, voluntarily or involuntarily, absolutely or conditionally, by operation of law or otherwise. For purposes of determining whether a Transfer or change of Control has occurred, any prior Transfers of an Ownership Interest to the same Person or an Affiliate of such Person may be considered together.

“Travel Expenses” means all reasonable and documented travel, food and lodging, living, and other out-of-pocket costs and expenses.

## SECTION 2 LICENSE

2.1 Limited Grant. Upon the terms and conditions of this Agreement, Franchisor hereby grants to Franchisee the non-exclusive license to use the Licensed Marks and the System and the right to operate the Restaurant as a Taste of Philly Restaurant solely at the Approved Location. Franchisee agrees: (i) to operate the Restaurant as a Taste of Philly Restaurant in accordance with the System and this Agreement as and when authorized by Franchisor under this Agreement; and (ii) to identify or name the Restaurant in accordance with the Standards.

### 2.2 Franchisor’s Reserved Rights.

(a) Franchisee agrees that, except as set forth below in Section 2.3: (i) Franchisor and its Affiliates retain the right to develop, promote, construct, own, lease, acquire and/or operate, or authorize or otherwise license or franchise to other Persons the right to develop, promote, construct, own, lease, acquire and/or operate: (a) Franchisor Restaurant Facilities; (b) restaurants; and (c) other business operations; (ii) Franchisor or its Affiliates may exercise such right without notice to Franchisee and (iii) Franchisee is not entitled to any protected territory, territorial rights or exclusivity. Franchisee covenants that it will not interfere with the exercise of such right by Franchisor or any of its Affiliates.

(b) Franchisee agrees that in the operation or conduct of any Franchisor Restaurant Facilities or any other business activity, Franchisor may use, or benefit from common use of, the System and Standards and other reservations and other systems, communications equipment, services, administrative systems, Electronic Systems, personnel not assigned to work with Franchisee, marketing and advertising programs, central purchasing, approved supplier lists, independent licensed sales representatives, or other independent contractors. Nothing in this Agreement will prevent Franchisor from allowing other Franchisor Restaurant Facilities operated or franchised by Franchisor or its Affiliates to use various components of the System.

2.3 Restricted Territory. Neither Franchisor nor any of its Affiliates shall open for business to the public, grant a franchise or license or otherwise authorize any other Person to open for business to the public, a Taste of Philly Restaurant during the Initial Term and any subsequent Renewal Term, within the area designated on the attached Exhibit B (the “Restricted Territory”). The restrictions set forth in this Section 2.3 shall not apply to (i) any future restaurant product developed by Franchisor or one of its Affiliates that is not included within the System; or (ii) to any restaurants (whether under development or already in operation) included in any restaurant chain acquisition.

## SECTION 3 FEES

3.1 Initial Fee. The initial fee in consideration of Franchisor’s investigation, review and approval process and other administrative functions and undertakings in connection with this Agreement is \$5,000.00 (the “Initial Fee”).

### 3.2 Franchise Fees.

(a) From the opening of the Restaurant for business until the expiration or termination of this Agreement, Franchisee shall pay Franchisor each month a non-refundable amount of \$200.00 per month (hereinafter referred to as the “Monthly Fee”).

(b) In addition to the Monthly Fee, Franchisee shall pay Franchisor a monthly royalty on certain food items that Franchisor has negotiated deviated pricing, with the royalty rate for each food item set opposite the name of such food item in Exhibit C attached hereto (the “Food Royalty Fee”).

(c) In addition to the Monthly Fee and the Food Royalty Fee, Franchisee shall pay Franchisor a monthly royalty on the items set forth in Exhibit D attached hereto (hereinafter referred to as the “Other Royalty Fee”, and with the Monthly Fee and the Food Royalty Fee collectively, the “Franchise Fees”). Currently, the Other Royalty Fee is one percent (1%) on all purchases on the items set forth in Exhibit D.

(d) For 2012, the maximum aggregate amount payable in any month by Franchisee for the Monthly Fee, Food Royalty Fee and Other Royalty Fee shall be capped at \$1,500 per month (the “Monthly Cap”). For each subsequent year, the Franchisor may increase the Monthly Cap by up to 3% or by the consumer price index for the previous year (as published by the Bureau of Labor Statistics of the United States Department of Labor), whichever is the greater.

(e) Franchisor has the right, at its sole discretion, to amend, update or change the items listed in Exhibit C, Exhibit D, and the Taste of Philly order guide, at any time. Franchisee acknowledges Franchisor’s right to collect fees, rebates, and marketing allowances from food distributors, food manufacturers, food brokers, or other vendors or suppliers, as well as from Franchisee. Franchisee shall have no claim for offset or a reduction in fees with respect to any fees Franchisor may negotiate from any other party.

3.3 Making of Payments and Performance of Services. Payments due to Franchisor or its Affiliates will be paid by wire transfer of immediately available funds or such other method as Franchisor approves to the accounts designated by Franchisor. Franchisor has the right to have any service or obligation of Franchisor under this Agreement be performed by an Affiliate of Franchisor. Franchisor also has the right to designate that payment be made to one of its Affiliates instead of Franchisor, and, provided that such designation is in writing, Franchisee must make such payments as designated. All payments will be made subject to applicable withholding and other taxes.

3.4 Late Fee and Interest on Late Payments. If any payment by Franchisee to Franchisor pursuant to this Agreement is not received within seven (7) days following its due date, such payment will be deemed overdue, and Franchisee must pay to Franchisor, in addition to the overdue amount, a late fee equal to ten percent (10%) on such overdue amounts. Furthermore, Franchisee will pay Interest on all such overdue amounts from the date it was due until paid. Franchisor’s entitlement to Interest will be in addition to any other remedies Franchisor may have under Applicable Law.

3.5 Taxes. Franchisee must promptly pay when due all Taxes levied or assessed by any Tax authority relating to the Restaurant, Franchisee, this Agreement, any other TOP Agreement or in connection with operating the Restaurant. If any amount to be paid or reimbursed under this Agreement to Franchisor, or any of its Affiliates, is subject to any deductions or withholdings for any present or future Taxes relating to the Restaurant, and to the extent Applicable Law requires such amounts to be withheld and paid by Franchisee directly to a governmental authority, then Franchisee must account for and pay such deductions or withholdings promptly and will provide to Franchisor receipts or other proof of such payments upon receipt. If there is a bona fide Dispute by Franchisee as to liability for Taxes, Franchisee may contest the validity of the amount of the Tax in accordance with the procedures of Applicable Law, provided that Franchisee will not permit a Tax sale or seizure by levy of execution or similar writ or warrant, or attachment by creditor, to occur against any part of the Restaurant.

## SECTION 4 TERM AND RENEWAL

4.1 Term and Renewal. The term of this Agreement shall begin on the date first set forth above and shall expire on the date that is ten (10) years after the Effective Date (the “Initial Term”). The term will automatically renew for an additional ten (10) year period unless a party chooses not to renew by submitting written notice to the other party at least six (6) months prior to the expiration of the then current term (each such term, a “Renewal Term” and together with the Initial Term, the “Term”).

## SECTION 5 CONSTRUCTION; SOURCING AND DESIGN APPROVALS

5.1 Construction, Conversion, and Renovation of the Restaurant. Franchisee, at its expense, must start and complete in a timely fashion and to Franchisor's satisfaction the construction or renovation, as the case may be, of the Restaurant in accordance with (i) Exhibit A, and (ii) the Standards.

### 5.2 FF&E, Supplies, and Signage.

(a) Franchisee must use only such signs, FF&E, and Inventories that conform to the Standards and are purchased from a vendor, supplier or manufacturer designated as "approved" by Franchisor. Franchisor may designate approved vendors and suppliers, including Franchisor or any of its Affiliates, as the only approved supplier for certain items. The requirements imposed by this Section 5.2 are to insure that the FF&E, Inventories, and other items used by Taste of Philly Restaurants will be uniform and of high-quality, and Franchisee agrees that the restrictions imposed on Franchisee in this Section 5.2 constitute the measures necessary to maintain the identity, integrity and reputation of the System.

(b) Franchisee must prominently display in, on, and around the Restaurant signs using the Licensed Marks and other advertising signs of such nature, form, color, number, location, and size, and containing such material, as Franchisor provides in the Standards or otherwise approves. All signs will comply with all Applicable Law. Franchisee must not display in or upon the Restaurant premises or elsewhere, any sign or Marketing Materials of any kind that does not comply with Section 6 or to which Franchisor objects.

### 5.3 Design Approval.

(a) If Franchisee elects or is required by this Agreement (including, pursuant to Section 10) to perform construction work or significant renovations or refurbishment of the Restaurant affecting the design, character, or appearance of the Restaurant, Franchisee will obtain the prior approval of Franchisor that any such construction work or significant renovations or refurbishment complies with the Standards and the requirements set forth in Section 5. Prior to commencing such construction, renovation, or refurbishment, Franchisee will engage a qualified designer and other qualified consultants and cause them to prepare and submit to Franchisor for its review and approval for compliance with the Standards, complete design drawings and specifications based on the Standards. If such drawings and specifications are not approved by Franchisor, Franchisor will provide recommendations to Franchisee related to the Standards that Franchisee must incorporate into such designs and drawings. Once approved, no changes will be made to any design, drawings, and specifications previously approved by Franchisor without Franchisee re-submitting such changes to Franchisor for its review and approval. Each party will act promptly in the preparation, submission, approval, and revision of all of said design drawings and specifications.

(b) Franchisee agrees that Franchisee, and not Franchisor or its Affiliates, is responsible for: (i) ensuring that any design, working drawings, specifications, construction, renovation, or refurbishment complies with any Applicable Law, including any requirements relating to disabled persons; (ii) any errors or omissions; or (iii) discrepancies (of any nature) in any drawings or specifications. Franchisor's review and approval under this Section 5.3 is limited solely to confirming Franchisee's compliance with the Standards. Except for Franchisee's own uses related to its construction or operation of the Restaurant, Franchisee must not reproduce, use or permit the use of any of the design concepts, drawings, or Standards without the prior approval of Franchisor.

## SECTION 6 ADVERTISING AND MARKETING

6.1 General. Franchisee will prominently use and display, in connection with the Restaurant, (i) Marketing Materials and signs only in the combination, arrangement, and manner approved or required

by Franchisor, and (ii) such other trade names, trademarks, logos, and designs as may be provided, approved, or required by Franchisor.

#### 6.2 Local Advertising Programs.

(a) Franchisee agrees to spend not less than two (2%) percent of the total amount of its Gross Revenues each calendar quarter for local advertising, marketing, promotional, sales and public relations programs and activities for the Restaurant (“Local Advertising Programs”). Franchisor may request that Franchisee prepare and submit a quarterly report to Franchisor which accounts for the use of the Local Advertising no later than ten (10) days following the end of each quarter during the Term of this Agreement.

(b) Local Advertising Programs will be at Franchisee’s expense and will be conducted to the extent that Franchisee deems necessary, but in accordance with the Standards and in a respectable and dignified manner that will not detract from the reputation of Franchisor or the System. Prior to public use of any Marketing Materials for Local Advertising Programs or for other purposes, Franchisee must submit for Franchisor’s approval samples of Marketing Materials that have not been previously approved by Franchisor; provided, however, that such approval or disapproval shall be given in a period that shall not exceed ten (10) business days from receipt of such Marketing Materials. If Franchisor does not respond to Franchisee’s submittal within ten (10) business days of the receipt of such Marketing Materials, such Marketing Materials shall be deemed approved by Franchisor. If Franchisor, subsequent to its approval of such Marketing Materials or Local Advertising Programs, withdraws its approval, Franchisee must immediately cease the use, distribution, and dissemination thereof. Any Marketing Materials developed by Franchisee for the Restaurant, and approved by Franchisor, may be used by other restaurant facilities owned, operated, or franchised by Franchisor or its Affiliates without any compensation to Franchisee.

### SECTION 7 ELECTRONIC SYSTEMS

7.1 Systems Installation. Franchisor will provide to Franchisee the specifications for the Electronic Systems and other systems required to be utilized at the Restaurant. Franchisee must, at its expense: purchase or lease, install, maintain, and use at the Restaurant all Electronic Systems necessary for the proper and efficient utilization and operation of such systems.

7.2 Electronic Systems Provided Under License. The Electronic Systems will remain the sole property of any third party vendors, as applicable. Franchisee will at all times treat the Electronic Systems as confidential. Franchisee acknowledges that the Electronic Systems will be modified, enhanced, replaced, become obsolete, and that new Electronic Systems will be created to meet the needs of the System and restaurants operating in it and the continual changes in technology. Franchisee agrees that Franchisee shall, at its expense, purchase, install, maintain and use the Electronic Systems required by Franchisor during the Term of this Agreement.

### SECTION 8 OPERATIONS

8.1 Operating the Restaurant. Franchisee will operate the Restaurant using the System and in compliance with Standards in such a manner as to provide courteous, uniform, respectable, and high-quality lodging, food and beverage, and other services and conveniences to the public. Franchisee will maintain a high moral and ethical standard and atmosphere at the Restaurant. Franchisee will comply with all of the terms of this Agreement and will:

(a) permit the duly authorized representatives of Franchisor to: (i) enter Franchisee’s facilities and inspect same at all reasonable times to confirm that Franchisee is complying with the terms of this Agreement and the Standards, and operating in compliance with the System; and (ii) test any and all equipment, food products, and supplies located at the Restaurant;



- (b) not sell, display or use in the Restaurant any vending machines, entertainment devices, or similar products that have not been previously approved by Franchisor;
- (c) honor at the Restaurant all credit cards specified in the Standards;
- (d) fully participate in all complaint resolution programs specified in the Standards;
- (e) except as otherwise set forth herein, make when due all payments in accordance with the terms of all contracts, agreements, and invoices, except for payments that are disputed by Franchisee in good faith;
- (f) offering or selling services or products from or through the Restaurant that have not been previously authorized by Franchisor; and
- (g) if Franchisor makes available for Franchisee's use certain of Franchisor's trademarked food and beverage items, Franchisee will prepare such trademarked items strictly in accordance with the specifications, recipes, and formulas supplied by Franchisor (Franchisee's right to use such trademarked food and beverage items may be revoked by Franchisor at any time).

8.2 System Promotion and Diversion to Other Businesses. Franchisee must use all reasonable means to encourage and promote the use of Taste of Philly Restaurants everywhere by the public. If Franchisee receives a request for reservations or restaurant services or use of Public Facilities in any area where a Taste of Philly Restaurant or other suitable Franchisor Restaurant Facility is located, Franchisee must promptly refer such request to Franchisor or such restaurant. Franchisee will not, without obtaining Franchisor's prior consent, associate or affiliate with any other restaurant business organization that requires Franchisee to refer business to other members of that organization. Unless Franchisee obtains Franchisor's prior approval, which approval may be withheld in Franchisor's sole discretion, Franchisee will ensure that no part of the Restaurant or the System is used to further or promote or divert business to:

- (a) any restaurant business (including any other restaurant operated by Franchisee or in which Franchisee or a principal of Franchisee owns or holds an Ownership Interest) not operated under a trade name or trademark owned by Franchisor or any of its Affiliates, including advertising or promotion of restaurants facilities; or
- (b) except as expressly permitted by the Standards or by Franchisor, any other business or concession, and in connection herewith, any such permitted business shall comply with Section 12.3 with respect to Other Marks.

8.3 Employees.

(a) Franchisee must employ suitable individuals as a general manager and other managers and qualified personnel sufficient to staff all positions at the Restaurant as required by the Standards or Franchisor. Franchisee must use its best efforts to ensure that Franchisee's employees: (i) at all times conduct themselves in a competent and courteous manner in accordance with the image and reputation of Franchisor and the System; and (ii) maintain a neat and clean appearance and render competent, sober, and courteous service to all Persons at all times, wearing uniforms designated or approved by Franchisor.

(b) Franchisee agrees that Franchisor has the right to communicate directly with the general manager and the other managers at the Restaurant regarding day-to-day operations of the Restaurant, and such communications will be deemed made to Franchisee, as the agents of Franchisee. Franchisee authorizes Franchisor to rely on the statements of such managers as to matters relating to the operation of the Restaurant.

(c) Unless the employee in question first solicits Franchisee or Franchisor (as applicable), neither Franchisee nor Franchisor will seek to employ or employ any person who is employed by the other without obtaining the other party's prior written consent.

## SECTION 9 TRAINING, COUNSELING, AND ADVISORY SERVICES

### 9.1 Training.

(a) The Restaurant must be managed by a Person or Persons who have successfully completed, within ninety (90) days of employment in such capacity, the training program(s) required by Franchisor. Franchisor will have the right to require the Restaurant's or Franchisee's management personnel attend specific training program(s) before the opening of the Restaurant. Franchisee will advise Franchisor of all newly hired management personnel within thirty (30) days after they commence employment, and such personnel will attend and successfully complete such training program(s) within the time frame Franchisor specifies.

(b) Franchisee must conduct such training for Franchisee's employees as is required for them to properly operate, administer and manage the Restaurant in accordance with the Standards.

(c) Franchisor may offer, and Franchisee may elect to participate in, optional training courses for personnel engaged in operating or managing Taste of Philly Restaurants.

(d) For all activities under Section 9, Franchisee will be responsible for paying all Travel Expenses, and the salary and other compensation for individuals while they attend such training. Franchisor reserves the right to require Franchisee to pay and/or reimburse Travel Expenses of the providers of such training programs and services.

9.2 Counseling and Advisory Services. Franchisor will make its representatives available at Franchisor's designated offices at reasonable hours or to meet in person to consult with and advise (but not provide legal counsel or advice to) Franchisee regarding the design, operation, and management of the Restaurant as a Taste of Philly Restaurant.

## SECTION 10 PHYSICAL FACILITIES

10.1 Repairs and Maintenance. Franchisee will maintain the Restaurant in good repair and condition and in conformity with Applicable Law, and will make or cause to be made such routine maintenance, repairs, and alterations, as Franchisee or Franchisor deems necessary to ensure compliance with the Standards. Franchisee will not make any major repairs, alterations, renewals, replacements, or additions to the Restaurant or carry out any material alterations to the Restaurant (including the design, character, or appearance thereof) without first obtaining the prior consent of Franchisor unless such repairs, alterations, renewals, replacements, or additions are required by any Applicable Law or are otherwise required for the continued safe and orderly operation of the Restaurant. If, after written notification from Franchisee of its plans for major repairs, alterations, renewals, replacements or additions to the Restaurant or material alterations to the Restaurant, Franchisor has not responded to such plans, Franchisor's consent shall be deemed granted forty-five(45) days after the receipt of the written notification from Franchisee.

10.2 Renovation. Franchisee shall complete a significant renovation of dining areas and Public Facilities, including (i) replacement of Soft Goods at least every five (5) years after the date such Soft Goods were installed and (ii) replacement of Case Goods at least every ten (10) years after the date such Case Goods were installed; provided, however, Franchisee acknowledges that earlier or more frequent renovations or replacements may be required to maintain the quality level of the Restaurant and to comply with the Quality Assurance Program. In connection with any replacement required in the immediately preceding sentence, the replacement of all Soft Goods or all Case Goods, as the case may be, shall be done at the same time rather than being done in a piecemeal fashion or in phases. If the date of installation of Soft Goods or Case Goods cannot be demonstrated by Franchisee, Franchisor shall

determine the date of installation for purposes of the first sentence of this Section 10.2 after consultation with Franchisee.

## SECTION 11 SYSTEM AND STANDARDS

### 11.1 Compliance with System and Standards.

(a) Franchisee agrees that conformity with all aspects of the System and the Standards is essential in order to maintain the uniform quality and guest service of Taste of Philly Restaurants and to enhance public acceptance of and demand for Taste of Philly Restaurants. Therefore, Franchisee agrees that it will comply with the Standards in all matters involving the Restaurant, and operate the Restaurant in compliance with the System, this Agreement, and the other TOP Agreements.

(b) Franchisor will provide access to or make the Standards available to Franchisee either as paper copy or in digital, electronic, or computerized form or in some other form now existing or hereafter developed. Franchisee must pay any and all costs to retrieve, review, use, or access the Standards not in paper form. The Standards will at all times remain the sole property of Franchisor and its Affiliates. Franchisee will at all times ensure that Franchisee's copy of the Standards is kept up-to-date, and if there is any dispute as to the contents of the Standards, the Standards then being provided or made available to new franchisees will be controlling.

### 11.2 Modification of the System and Standards.

(a) Franchisor and its Affiliates expressly reserve the right, in their Reasonable Business Judgment, to revise, modify, amend, delete or change the System and Standards or any part of either; provided, however, that any modification of the Proprietary Marks pursuant to Section 12.2(b)(3) may be made in Franchisor's sole discretion. Franchisee agrees that modifications to the System (including the Intellectual Property, Proprietary Marks, the Quality Assurance Program, the Standards, and any and all other aspects of the System) may be made for all Taste of Philly Restaurants. The System and Standards, as so revised, modified, amended, or changed, will for all purposes be deemed to be the System and the Standards referred to in this Agreement and the other TOP Agreements.

(b) Franchisee agrees that certain modifications or additions to the System or the Standards may require Franchisee to contribute to the cost of such modifications or additions on a fair and consistent basis with other participating Taste of Philly Restaurants or other restaurants, as determined by Franchisor.

## SECTION 12 PROPRIETARY MARKS AND INTELLECTUAL PROPERTY

### 12.1 Franchisor's Representations and Responsibility Regarding Ownership and Use.

(a) Franchisor represents with respect to the Licensed Marks that (i) Franchisor and its Affiliates are the owners of all right, title, and interest in and to the Licensed Marks or have the right to grant Franchisee's use thereof in accordance with this Agreement; and (ii) Franchisor will take all steps reasonably necessary to preserve and protect the ownership and validity of the Licensed Marks; provided, however, this provision will not require Franchisor to maintain any registration for the Licensed Marks that Franchisor determines, in its sole discretion, cannot or should not be maintained.

(b) Subject to Franchisee's compliance with the terms of this Agreement, Franchisor will indemnify and hold Franchisee harmless against claims that Franchisee's use of the Licensed Marks, infringes upon the rights of any third party unrelated to Franchisee; so long as, Franchisee gives immediate written notice of any such claim to Franchisor, permits Franchisor to have sole control over the defense or settlement of the claim, and cooperates fully with Franchisor in defending or settling the claim.

12.2 Franchisee's Use of System and Intellectual Property.

(a) With respect to Franchisee's use of the System and Intellectual Property under this Agreement:

(1) Franchisee will use the System and Intellectual Property only for such uses regarding the operation of the Restaurant as are expressly authorized under this Agreement or otherwise authorized by Franchisor and only in the form and manner authorized by Franchisor, and any use thereof not so authorized will constitute an infringement of Franchisor's rights as well as a material default of this Agreement.

(2) Operation of the Restaurant and all marketing materials related to the Restaurant will use the Licensed Marks in substantially the same combination, arrangement, and manner as provided in the Standards so that the Restaurant will be readily recognizable by the general public as an integral part of the chain of Taste of Philly Restaurants. Franchisee will use the symbol "®," "™," "SM," or such symbols or words as Franchisor may designate to protect the Licensed Marks.

(3) Upon Franchisor's request, or as provided in the Standards, Franchisee must identify itself as a franchisee or licensee of Franchisor and the owner and/or operator of the Restaurant in a manner and form designated by Franchisor at conspicuous locations at the Restaurant and with respect to any use of the Licensed Marks (including, on invoices, order forms, receipts, and contracts), and Franchisee will not use the Licensed Marks in any manner that would or could imply that Franchisee has an Ownership Interest in the Licensed Marks, including, on Franchisee's corporate letterhead or business cards, except as set forth in the Standards.

(4) Franchisee does not have any right to and will not Transfer, sublicense, or allow any Person to use any of the Intellectual Property, except as set forth in this Agreement.

(5) Franchisee will not use the Intellectual Property to incur any obligation or indebtedness on behalf of Franchisor or any of its Affiliates.

(6) Franchisee will not use any Proprietary Mark or marks or names that are similar, in Franchisor's sole opinion or the opinion of the applicable governmental authority, as part of Franchisee's corporate or legal name or in connection with any business activity or venture (other than the Restaurant), or apply for trademark or service mark registration of any Proprietary Mark, any variation thereof or any mark similar to any Proprietary Mark, in the United States or any other jurisdiction, whether alone or in combination with other trademarks, trade names, trade dress, symbols, logos, slogans, designs, insignia, emblems, devices, or service marks.

(7) Franchisee must: (i) comply with Franchisor's instructions in filing and maintaining any required business, trade, fictitious, assumed, or similar name registrations; (ii) obtain Franchisor's prior approval of any name to be so registered; and (iii) indicate in the registration documents that Franchisee has the right to use such name only subject to the terms of this Agreement, and Franchisee must also execute any documents and take such other action deemed necessary by Franchisor or its counsel to protect the Proprietary Marks or maintain their validity and enforceability.

(8) If litigation involving the Proprietary Marks is instituted or threatened against Franchisee or any notice of such infringement is received by Franchisee, or if Franchisee becomes aware of any infringement, Franchisee will promptly notify Franchisor in writing and will cooperate fully with Franchisor in Franchisor's defense or settlement of such litigation. Franchisee will not make any demand or serve any notice orally or in writing, or institute any legal action, or negotiate, litigate, compromise or settle any controversy with respect to any such litigation without first obtaining Franchisor's prior consent, which consent may be withheld in Franchisor's sole discretion. Franchisor will have the right to bring such action and to join Franchisee as a party to any action in which Franchisor is or may be a party as to which Franchisee is or would be a necessary or proper party.

(b) Franchisee agrees that:

(1) Franchisor and its Affiliates are, in the aggregate, the owners or licensees of all right, title, and interest in and to the Intellectual Property (other than Electronic Systems provided by or licensed by third parties) and the goodwill associated with and symbolized by the Proprietary Marks.

(2) The Proprietary Marks are valid and serve to identify the System and those who hold rights to operate restaurants under the System.

(3) The Proprietary Marks are subject to replacement, addition, deletion, and other modification by Franchisor (or the Affiliate that owns the Proprietary Marks) in its sole discretion, and if any such action is taken by Franchisor (or the Affiliate that owns the Proprietary Marks), Franchisee will promptly accept and use such replacement, addition, deletion, and other modification, and, in the case of Licensed Marks, display such changed Licensed Marks as if they were part of the System as of the Effective Date (and replace, add, remove or modify the Licensed Mark(s) that have been so changed), and Franchisee will bear the cost of conforming the Restaurant to any such replacement, modification, addition, deletion, or other change.

(4) During the Term and thereafter, Franchisee will not directly or indirectly (i) attack the ownership, title or rights of Franchisor or its Affiliates in and to any part of the System or Intellectual Property, including the Proprietary Marks; (ii) contest the validity of any part of the Intellectual Property, including the Proprietary Marks, or the right of Franchisor to grant to Franchisee the use of the System and Intellectual Property, including the Proprietary Marks (other than Electronic Systems provided by or licensed by third parties) in accordance with this Agreement; (iii) take any action or refrain from taking any action that could impair, jeopardize, violate, or infringe the Intellectual Property, including the Proprietary Marks; (iv) claim adversely to Franchisor or its Affiliates any right, title, or interest in and to the Intellectual Property, including the Proprietary Marks; or (v) misuse or harm or bring into dispute the Intellectual Property, including the Proprietary Marks.

(5) Franchisee has no Ownership Interest in the System or the Intellectual Property, and Franchisee's use of the Intellectual Property and other aspects of the System pursuant to this Agreement (including any addition or other modification to the Intellectual Property or any other aspect of the System proposed by Franchisee and adopted by Franchisor) will not give Franchisee any Ownership Interest or other interest in or to the Intellectual Property or any other aspect of the System, except the nonexclusive license granted by this Agreement.

(6) All goodwill arising from Franchisee's use of the Intellectual Property (other than Electronic Systems provided by or licensed by third parties) and any other aspect of the System will inure solely and exclusively to Franchisor's benefit, and upon expiration or termination of this Agreement, no monetary amount will be assigned as attributable to any goodwill associated with Franchisee's use of the Intellectual Property or any other aspect of the System.

(7) The rights in, and license of, the Intellectual Property granted hereunder to Franchisee are nonexclusive, and thus Franchisor and its Affiliates may (i) use and may grant franchises and/or licenses to others to use the Intellectual Property, and otherwise profit from the Intellectual Property; and (ii) establish, develop, franchise, and license other systems that use the Intellectual Property and other aspects of the System, without offering or providing Franchisee any rights in, to, or under such other systems.

(c) The provisions of this Section 12.2 will survive the expiration or termination of this Agreement.

### 12.3 Franchisee's Use of Other Trademarks

(a) Franchisee will not use in any manner any of the Proprietary Marks in connection with any Other Mark(s), without Franchisor's prior approval, which approval may be granted or withheld in Franchisor's sole discretion.

(b) Franchisee will not use any name or Other Mark in connection with any Public Facilities that may infringe upon or tend to be confused with a third party's trade name, trademark, or other rights in intellectual property.

(c) Franchisee will not use or permit the use of any Other Mark in or at the Restaurant or in any advertising material of, for, relating to or involving the Restaurant or its operation without Franchisor's prior approval, which approval may be granted or withheld in Franchisor's sole discretion.

### 12.4 Internet Website.

(a) With the exception of a website that describes Franchisee's franchise relationship with Franchisor and as set forth in this Section 12.4 or the Standards, Franchisee will not display the Proprietary Marks on or associate the System with (through a link or otherwise) any website, electronic Marketing Materials, domain name, address, designation, or listing on the Internet or other communication system without the express written consent of Franchisor. Franchisee acknowledges that the <http://www.tasteofphilly.biz> domain name is the sole property of Franchisor and its Affiliates. Franchisee will not, directly or indirectly, use, register, obtain or maintain a registration for any Internet domain name, address, or other designation that contains any Proprietary Mark or any mark that is in Franchisor's sole opinion confusingly similar, including misspellings and acronyms. Upon Franchisor's request, Franchisee must, at Franchisor's option, promptly take all steps to cancel or transfer to Franchisor or its designee any such domain name, address, or other designation under its control.

(b) To the extent and for such period that any Applicable Law entitles Franchisee to display or otherwise use the Licensed Marks in connection with its own Internet site, such use will be governed by this Agreement and the Standards, including Section 8.2 and the requirements contained in Section 12.4(b)(1) through Section 12.4(b)(3) below.

(1) Franchisee must obtain Franchisor's prior approval to use any domain name, address, or other designation that contains any Proprietary Mark or a confusingly similar variation thereof, and such domain name, address, or other designation will be registered in Franchisor's name and licensed to Franchisee by Franchisor for the Term. The form, content and appearance of Franchisee's Internet site, and any modifications thereto, must comply with the Standards and be approved by Franchisor before it is posted on the Internet so that Franchisor can maintain the common identity of the Taste of Philly Restaurants and the Proprietary Marks;

(2) Franchisee must obtain independent legal advice concerning the content of Franchisee's Internet website and ensure that at all times it complies with all laws, rules or regulations; and

(3) Franchisee acknowledges that the Internet and e-commerce is a rapidly developing field and agrees that the provisions of this Section 12.4 may need to be modified in the future in the Standards, which will be legally binding on Franchisee to the fullest extent permitted by Applicable Law.

## SECTION 13 CONFIDENTIAL INFORMATION; DATA PROTECTION LAWS

13.1 Confidential Information. Franchisee will not during the Term or thereafter, without Franchisor's prior consent, which consent may be granted or withheld in Franchisor's sole discretion, copy, duplicate, record, reproduce, in whole or in part, or otherwise transmit or make available to any

“unauthorized” Person (see below) any Confidential Information. Franchisee may divulge such Confidential Information only to such of Franchisee’s employees or agents as require access to it in order to operate the Restaurant; provided, that such employees or agents are apprised of the confidential nature of such information before it is divulged to them and agree to comply with confidentiality obligations substantially similar to those listed above. All other Persons are “unauthorized” for purposes of this Agreement. Franchisee agrees that the Confidential Information has commercial value and is not publicly available. Franchisee further agrees that Franchisor and its Affiliates have taken measures to maintain its confidentiality, and, as such, the Confidential Information is proprietary and a trade secret of Franchisor and its Affiliates. Franchisee will be liable to Franchisor for any breaches of the confidentiality obligations in this Section 13.1 by its employees and agents. Franchisee will maintain the Confidential Information in a safe and secure location and will immediately report to Franchisor the theft or loss of all or any part of the Confidential Information.

13.2 Data Protection Laws. During the Term, Franchisee will: (i) comply with all applicable Data Protection Laws; (ii) comply with all of Franchisor’s requirements regarding the Data Protection Laws contained in the Standards or otherwise; (iii) refrain from any action or inaction that could cause Franchisor or its Affiliates to breach any of the Data Protection Laws; (iv) do and execute, or arrange to be done and executed, each act, document and thing necessary or desirable to keep Franchisor and its Affiliates in compliance with any of the Data Protection Laws; and (v) permit Franchisor and its Affiliates to use any data or other information each of them gathers concerning Franchisee and its Affiliates in connection with the establishment and operation of Taste of Philly Restaurants by Franchisor and its Affiliates.

## SECTION 14 ACCOUNTING AND REPORTS

14.1 Books, Records, and Accounts. Franchisee at its expense must maintain and preserve for the Restaurant for at least three (3) years from the dates of their preparation, complete and accurate books, records, and accounts in accordance with generally accepted accounting principles of the United States, consistently applied, Applicable Law and the Standards. Franchisee’s obligation to preserve such books, records and accounts will survive the expiration or termination of this Agreement.

### 14.2 Reports.

(a) Franchisee must, at its expense, submit to Franchisor within fifteen (15) days after the close of each Accounting Period, an operating statement containing such information required by Franchisor. In addition, within ninety (90) days after the close of each calendar or fiscal year, whichever is used by Franchisee for income tax purposes, Franchisee must furnish Franchisor a full and complete statement of income and expense from the operation of the Restaurant for such preceding year, which will be prepared in accordance with generally accepted accounting principles of the United States consistently applied, Applicable Law and the Standards.

(b) Franchisee must, at its expense, submit to Franchisor such other miscellaneous forms, periodic and other reports, records, financial statements, and other information relating to Franchisee, the Restaurant and the Restaurant’s marketing, sales and guests as Franchisor may reasonably request, in the form and at the times and places specified by Franchisor.

### 14.3 Franchisor Examination and Audit of Restaurant Records.

(a) Franchisor and its authorized representatives have the right, at any time during normal business hours, but upon reasonable notice to Franchisee, to: (i) examine and copy, at Franchisee’s expense, all books, records, accounts, and tax returns of Franchisee related to the operation of the Restaurant; and (ii) have an independent audit made of any of such books, records, accounts, and tax returns. Franchisee must provide such other assistance as may be reasonably requested related to the audit. If an examination reveals that Franchisee has made underpayments to Franchisor or any of its

Affiliates, Franchisee must immediately pay to Franchisor or such Affiliate upon demand, the amount underpaid plus Interest thereon from the date such amount was due until paid.

(b) If an inspection discloses an understatement of payments due to Franchisor by Franchisee of five percent (5%) or more for the period being audited, or if the inspection reveals that the accounting procedures employed by Franchisee are insufficient to determine the accuracy of the calculation of any payments due, Franchisee must reimburse Franchisor for all costs and expenses connected with the examination and audit (including reasonable accounting and attorneys' fees). If the inspection establishes a pattern of underreporting, Franchisor has the right to require that the various items due under Section 14.2 be audited by an accounting firm approved by Franchisor. The foregoing remedies are in addition to any other remedies that Franchisor may have under this Agreement, including the right to terminate this Agreement in accordance with Section 17. If an examination or audit reveals that Franchisee has made overpayments to Franchisor or any of its Affiliates, the amount of any such overpayment, without interest, will be promptly credited against future payments due and payable by Franchisee to Franchisor or such Affiliate.

## SECTION 15 INDEMNIFICATION AND INSURANCE

15.1 Indemnification. Franchisee must and hereby does indemnify, defend, and hold harmless Franchisor and its Affiliates, their officers, directors, agents and employees, and their respective successors and assigns, from and against all losses, costs, liabilities, damages, claims, and expenses of every kind and description, including allegations of negligence by Franchisor and its Affiliates and their officers, employees, and agents, to the fullest extent permitted by Applicable Law, and including reasonable attorneys' fees, arising out of or resulting from: (i) the unauthorized use of the Proprietary Marks; (ii) the violation of Applicable Law; or (iii) the construction, renovation, upgrading, alteration, remodeling, repair, operation, or use of the Restaurant or the Approved Location or of any other business conducted on, related to, or in connection with the Restaurant by Franchisee or any Person acting for or on behalf of Franchisee. Franchisee must promptly give notice to Franchisor of any action, suit, proceeding, claim, demand, inquiry, or investigation related to the foregoing. Franchisee shall not be required to indemnify Franchisor for claims in which Franchisor, its Affiliates or their respective officers, employees or agents are found to be solely responsible by final non-appealable judicial decision for such damages or losses based upon such person's or entity's willful misconduct or gross negligence. Franchisor will in any event have the right, through counsel of its choice, at Franchisee's expense, to control the defense or response to any such action to the extent such action affects the interests of Franchisor, and such undertaking by Franchisor will not, in any manner or form, diminish Franchisee's obligations to Franchisor hereunder. Under no circumstances will Franchisor (or any of its Affiliates) be required or obligated to seek recovery from third parties or otherwise mitigate its losses in order to maintain a claim under this indemnification and against Franchisee, and the failure of Franchisor (or any of its Affiliates) to pursue such recovery or mitigate a loss will in no way reduce the amounts recoverable by Franchisor from Franchisee. Franchisee's obligations under this Section 15.1 will survive the termination or expiration of this Agreement.

### 15.2 Insurance Requirements.

(a) Franchisee shall be solely responsible for obtaining and maintaining all insurance necessary to run the Restaurant, including but not limited to, statutory worker's compensation in the minimum amount required by law, comprehensive liability insurance, including products liability coverage, in the minimum amount of \$2,000,000, and business vehicle coverage, including owned vehicle liability and non-owned vehicle liability coverage, in the minimum of \$1,000,000. Franchisee shall maintain all insurance policies in force for the mutual benefit of the parties. All insurance policies must name Franchisor as additional insured and give Franchisor at least thirty (30) days prior written notice of termination, amendment, or cancellation.



(b) Franchisor will have the right to require Franchisee to obtain additional or different types of insurance and/or increase the amount of coverage if, Franchisor determines such type of insurance or an increase is required to comply with the Standards or as otherwise prescribed by Franchisor.

(c) Insurance coverage obtained by Franchisee pursuant to this Agreement will not relieve Franchisee of any liability under any indemnity provisions of this Agreement (including Section 15.1 hereof).

15.3 Blanket Insurance. If Franchisee seeks to comply with the requirements of this Section 15 under policies of insurance that cover other properties of Franchisee and its Affiliates as well as the Restaurant, such other insurance policies must fulfill all the requirements of this Section 15.

15.4 Franchisee's Failure to Procure Insurance. If Franchisee for any reason fails to procure or maintain the insurance required by this Agreement, Franchisor will have the right (but not any obligation) to procure such insurance and to charge Franchisee the costs and premiums, plus a reasonable fee for Franchisor's expense in so acting. Such costs, premiums, and fees will be payable by Franchisee immediately upon Franchisor's demand and will accrue Interest thereon until paid.

## SECTION 16 TRANSFERABILITY OF INTERESTS

### 16.1 Transfers by Franchisee.

(a) Franchisee agrees that Franchisee's rights and duties stated in this Agreement are personal to Franchisee, and that Franchisor has entered into this Agreement in reliance on the business skill, financial capacity, and character of Franchisee and its principals and Affiliates. Accordingly, except as otherwise provided in this Section 16, a Transfer of any Ownership Interest in Franchisee, the Restaurant, or a Transfer of any of Franchisee's rights or obligations under this Agreement, or a Transfer of or change of Control of Franchisee or in any Person that Controls Franchisee, without the prior written approval of Franchisor, which approval may be withheld in Franchisor's sole discretion, is prohibited and shall be a breach of this Agreement.

(b) Notwithstanding any other provision in this Section 16.1 and provided that there is no uncured breach of this Agreement by Franchisee, Franchisee may, with prior written notice to Franchisor, Transfer its Ownership Interests in the Restaurant to an entity in which Franchisee or the Person that Controls Franchisee has a Controlling Ownership Interest provided that (i) Franchisee or another party acceptable to Franchisor in its sole discretion, has executed a Guaranty, (ii) Franchisor receives documents and information with respect to transferee's corporate organization, authority, and ownership as if transferee were submitting a franchise application as set forth in the then current franchise disclosure document for Taste of Philly Restaurants, (iii) such transferee provides to Franchisor documentation evidencing the Transfer by which the transferee expressly assumes the obligations of Franchisee hereunder; (iv) upon Franchisor's request, management for the Restaurant is retained pursuant to, and Franchisee otherwise complies with, Section 8.3.; and (v) all other obligations of Franchisee under this Agreement are satisfied.

### 16.2 Transfer of Controlling Ownership Interests.

(a) If Franchisee or any Person who directly or indirectly Controls Franchisee wishes to engage in a transaction that will result in a Transfer of the Restaurant, Franchisee's Ownership Interest in the Restaurant or a direct or indirect Controlling Ownership Interest in Franchisee (not otherwise meeting the requirements of Section 16.1(b)), Franchisee shall provide or cause to be provided notice of such transaction to Franchisor, stating the full name and identity of all of the parties to the transaction including the owners or holders of the Ownership Interests of such parties, the price or rental and the terms and conditions of such proposed transaction together with all other information with respect thereto that is reasonably requested by Franchisor and reasonably available to Franchisee. Within thirty (30) days

after receipt by Franchisor of such notice and required data, Franchisor shall elect by notice to Franchisee, one of the following alternatives:

(1) In accordance with the provisions of Section 16.2(b), to consent to such Transfer, provided Franchisor may, in its sole discretion, require any or all of the following as a condition of its consent:

(i) Franchisee shall deliver to Franchisor a complete and accurate copy of the sale and purchase agreement or similar document covering the transaction or Transfer.

(ii) Franchisee shall satisfy all of its accrued monetary obligations to Franchisor and its Affiliates and shall execute a general release in a form prescribed by Franchisor of any and all claims against Franchisor and its Affiliates, and their respective officers, directors, agents and employees.

(iii) The proposed transferee shall submit to Franchisor an application, in the form prescribed by Franchisor, for a new franchise together with the then-current Initial Fee being charged Taste of Philly Restaurant franchisees, which fee, in part, is intended to cover Franchisor's costs associated with the Transfer. If, prior to the submission of an application, Franchisee desires Franchisor to review the Restaurant to determine the renovations necessary to bring the Restaurant into good repair and to conform the Restaurant to Franchisor's then current Standards, Franchisor may charge its then current review fee to cover Franchisor's costs associated with such review under this Section 16.2(a)(1)(iii) and Franchisor shall have the right to charge outside counsel costs in connection with any such Transfer; provided, however, that such costs are necessary due to the circumstances surrounding a particular Transfer, as determined by Franchisor in its Reasonable Business Judgment.

(iv) Franchisor and the transferee will, upon approval of transferee's application, enter into a new franchise agreement that shall require transferee to upgrade the Restaurant to conform to Franchisor's then-current Standards, and which new franchise agreement shall contain the standard terms (except for duration which shall be the then unexpired Term of this Agreement) then being issued for newly franchised restaurants under the System.

(v) The transferee will certify in writing that: (x) Franchisor did not endorse, recommend, or otherwise concur with the terms of the Transfer, (y) Franchisor did not comment upon any financial projections submitted by Franchisee to transferee, and (z) Franchisor did not participate in the decision of the price to be paid, which decision was made without any intervention, support or participation by Franchisor.

(2) To refuse consent in accordance with Section 16.2(b), in which event Franchisee shall be in breach of this Agreement if Franchisee were to consummate such Transfer.

(b) In providing its consent or refusing consent to Transfer pursuant to this Section 16, Franchisor shall have the right to withhold its consent to such Transfer if such transferee is, in the sole judgment of Franchisor, not operationally capable of performing the duties and obligations of Franchisee hereunder. Also, Franchisor reserves the right to disapprove (and Franchisee agrees that such disapproval shall be reasonable) such Transfer (i) if Franchisor, in its Reasonable Business Judgment, deems the proposed transferee's debt service or overall financial status to be such as will not permit the Restaurant to be operated pursuant to the Standards, or (ii) if the proposed transferee or any of its Affiliates is a Competitor, or (iii) the Restaurant is not in good standing under the Standards. Notwithstanding the foregoing, Franchisor shall have no obligation to consent or refuse consent, and Franchisee shall have no right to effect a Transfer pursuant to the provisions of Section 16.2(a), if an uncured breach of this Agreement by Franchisee exists.

16.3 Transfers by Franchisor. Franchisor will have the right to Transfer this Agreement to any Person without prior notice to, or consent of, Franchisee, provided the transferee assumes Franchisor's

obligations to Franchisee under this Agreement, is an Affiliate of Franchisor or acquires substantially all of the Taste of Philly Restaurants, and is a Person reasonably capable of performing Franchisor's obligations under this Agreement. Franchisee agrees that any such Transfer will constitute a release and novation of Franchisor with respect to this Agreement. This Agreement will be binding on and inure to the benefit of Franchisor and the successors and assigns of Franchisor.

16.4 Security Interests in the Restaurant or Franchisee. Franchisee may, in connection with any financing benefiting the Restaurant, Transfer the Restaurant, an Ownership Interest in Franchisee, or in a Person Controlling Franchisee solely as a mortgage, pledge, grant of a security interest, or otherwise as collateral, to banks or other bona fide reputable lending institutions that are not Competitors; provided, that: (i) such financing meets the requirements of Section 5.2; (ii) if such lender forecloses on, or otherwise exercises its rights against, the Restaurant or such Ownership Interests, Franchisor will have the rights under Section 18.1; and (iii) this Agreement will not be the subject of a security interest, pledge, or mortgage or assigned as collateral for any financing.

## SECTION 17 DEFAULT AND TERMINATION

17.1 General. Franchisor may terminate this Agreement for any breach of this Agreement by giving Franchisee notice of default and termination as set forth in this Section 17. As set forth in Section 24.2, any notice of default or any decision not to place Franchisee in default at any given time shall not prejudice any rights of Franchisor under this Agreement, and Franchisor may, in its sole discretion, determine when to exercise its rights under this Section 17.

17.2 Immediate Termination. Franchisor may terminate this Agreement and all rights granted to Franchisee under this Agreement without affording Franchisee any opportunity to cure the default, effective immediately upon notice to Franchisee (or upon such notice period or cure period given by Franchisor in its sole discretion or required by Applicable Law), if:

(a) Franchisee or any Guarantor becomes insolvent, generally does not pay its debts as they become due, admits that any of them is unable to pay its debts as they become due, or makes a general assignment for the benefit of creditors; or proceedings for a compromise with creditors are instituted by, against, or consented to by Franchisee or any Guarantor.

(b) Franchisee or any Guarantor files a voluntary petition under any bankruptcy, insolvency, or similar law, or consents to an involuntary petition under any bankruptcy, insolvency, or similar law filed against it, or an order approving an involuntary petition in bankruptcy, insolvency, or similar declaration filed against Franchisee or any Guarantor remains unvacated ninety (90) days after the date of entry thereof.

(c) A court of competent jurisdiction enters an order, judgment, or decree, on the application of a creditor, adjudicating Franchisee or any Guarantor as bankrupt, insolvent, or similar status or approving a petition seeking reorganization or appointing a receiver, trustee, or liquidator of all or a substantial part of Franchisee's or any Guarantor's assets, and such order, judgment, or decree remains unstayed and in effect for a period of ninety (90) days or will be consented to by Franchisee or such Guarantor.

(d) Execution is levied against the Restaurant, Franchisee, or any material real or personal property comprising the Restaurant in connection with a final judgment for the payment of money.

(e) A suit to foreclose any lien, mortgage, or security interest in the Restaurant or any material real or personal property that is a part of the Restaurant, or any security interest in Franchisee is initiated.

(f) A danger to public health or safety results from the construction, renovation, repair, refurbishment, upgrading, remodeling, maintenance, or operation of the Restaurant, and an

immediate closing of the Restaurant (or any part thereof) is determined by Franchisor to be necessary to: (i) avoid substantial liability; or (ii) adversely affecting the Restaurant, other Taste of Philly Restaurants, the System, the Proprietary Marks, or the goodwill associated therewith; provided, however, Franchisee may request that Franchisor reinstate this Agreement if within thirty (30) days after termination under this Section 17.2(f), the threat or danger to public health or safety is eliminated and Franchisor shall reinstate this Agreement if it determines that reopening of Restaurant would not cause substantial liability or loss of good will.

(g) Franchisee or any principal, director, officer, shareholder, or agent of Franchisee contrary to the provisions of this Agreement discloses or causes to be disclosed any Confidential Information provided to Franchisee or fails to exercise reasonable care to prevent such disclosure.

(h) If any of the representations and warranties by Franchisee pursuant to Section 25 fails to be true and correct in any material respect when made, deemed made, furnished or as of the date of this Agreement.

(i) An inspection of Franchisee's books and records pursuant to Section 14.3(b) establishes a pattern of underreporting by Franchisee involving three (3) or more Accounting Periods within any twenty-four (24) month period.

(j) Franchisee or any Person holding or owning a Controlling Ownership Interest in Franchisee is or has been convicted of a felony or other similar crime or offense or has engaged in a pattern or practice of acts or conduct that is likely in Franchisor's judgment to, as a result of the adverse publicity that has occurred in connection with such offense, acts, or conduct, adversely affect the Restaurant, other Taste of Philly Restaurants, the System, the Proprietary Marks, the goodwill associated therewith or Franchisor's interests therein, any Franchisor Restaurant Facility or any other business conducted by Franchisor or any of its Affiliates.

(k) There occurs a Transfer that violates or does not comply with the provisions of Section 16.

(l) The Restaurant ceases to operate as a Taste of Philly Restaurant or Franchisee (i) loses its right to manage or operate the Restaurant, or (ii) loses ownership or the right to possession of the Restaurant or the Approved Location.

**17.3 Termination Upon Notice with Opportunity to Cure.** Franchisor may terminate this Agreement and all rights granted to Franchisee hereunder for the reasons set forth below if (i) Franchisor gives Franchisee notice of default that provides fourteen (14) days for cure of the default (or such greater number of days given by Franchisor in its sole discretion or required by Applicable Law) and identifies the breach or breaches of this Agreement, and (ii) Franchisee fails to cure in the time and manner specified in the notice of default or as specifically provided in this Section 17.3:

(a) Franchisee, as applicable, fails to do any of the following in a timely manner to Franchisor's satisfaction: (i) perform any of the requirements stated in Exhibit A by the dates required for completion of such requirements; or (ii) begin or complete any renovation, repair, refurbishment, upgrading or remodeling of the Restaurant as required by Franchisor pursuant to Section 6 and Section 10 or any Standards for the renovation, repair, refurbishment, upgrading or remodeling of the Restaurant.

(b) Franchisee fails to fully comply with any of Section 15 or 19.

(c) Franchisee and its Affiliates fail to pay any indebtedness to Franchisor or any of its Affiliates when same becomes due and payable.

(d) Franchisee fails to comply with or satisfy the thresholds of performance established by the Quality Assurance Program and such failure has not been cured within the applicable cure period for such failure under the Quality Assurance Program.

(e) Any of the TOP Agreements or other franchise agreements entered into between Franchisor and Franchisee or any of their respective Affiliates is terminated based on default of Franchisee or its Affiliates (and the notice of default of this Agreement may run concurrently with the notice of default of the other TOP Agreement).

(f) Franchisee fails to fully comply with the Standards and such failure has not been cured within the applicable cure period for such failure under the Standards.

## SECTION 18 POST-TERMINATION

### 18.1 Franchisee Obligations.

(a) Upon expiration or other termination of this Agreement, all rights granted under this Agreement to Franchisee will immediately terminate, and Franchisee, at its expense, will comply with each of the following obligations:

(1) Franchisee must immediately cease to operate the Restaurant as a Taste of Philly Restaurant and will not directly or indirectly represent or give the impression that it is a present or former franchisee or licensee of Franchisor or that the Restaurant was previously part of the System.

(2) Franchisee must immediately and permanently cease to use and remove from the Restaurant and any other place of business any Intellectual Property and any other identifying characteristics and marks of the System, including, any Electronic Systems, signs, fixtures, furniture, furnishings, equipment, advertising materials, stationery, supplies, forms, or other articles that display any Proprietary Marks or any trade dress or other distinctive features or designs associated with Franchisor or the System. Any signs containing any Proprietary Marks that Franchisee is unable to remove from the Restaurant despite its best efforts upon termination of this Agreement will be completely covered by Franchisee from view and physically removed within forty-eight (48) hours after termination. Franchisee also will immediately remove all content regarding Franchisor, the System, and the Proprietary Marks from any Internet sites under its control and will take all necessary actions required by Franchisor to disassociate itself from Franchisor on the Internet. Franchisee will, at Franchisor's option and within thirty (30) days, cancel or assign to Franchisor or its designee, any domain name owned by or under the control of Franchisee or its Affiliates that contains any Proprietary Mark, or any mark that is in Franchisor's sole opinion confusingly similar, including misspellings and acronyms.

(3) Franchisee must take such action as may be necessary to cancel any fictitious, trade, or assumed name or equivalent registration that contains the name "Taste of Philly" or any other Proprietary Mark or any variations thereof, and Franchisee must furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination of this Agreement.

(4) Franchisee will immediately turn over to Franchisor the originals and all copies of any Confidential Information, Intellectual Property, and all other System materials relating to the operation of the Restaurant and the System, or such other information generated by Franchisee through its use of the System that is deemed confidential by Franchisor, all of which are acknowledged by Franchisee to be Franchisor's property. Franchisee will retain no copy or record of any of the foregoing, except for Franchisee's copy of this Agreement, any correspondence between the parties, and any other documents that Franchisee reasonably needs for compliance with any provisions of Applicable Law. If Franchisor permits Franchisee to continue to use any Intellectual Property after the termination date (such permission to be explicit and specific), such use by Franchisee will be in accordance with the terms of this Agreement.

(5) Franchisee agrees that it will make no use of any of the Confidential Information or System or disclose or reveal it or any portion thereof to anyone not employed by Franchisor or its franchisees or licensees. Additionally, Franchisee will not assist anyone not franchised

or licensed to use the System in constructing or equipping any restaurant premises incorporating the distinctive features or equipment layout that Franchisor (or any of its Affiliates) owns, has originated, or developed and which are identifying characteristics of businesses using the System.

(6) Franchisee must immediately make such alterations as may be necessary to distinguish the Restaurant clearly from its former appearance and other Taste of Philly Restaurants in order to prevent any possibility of confusion by the public. Franchisee must make such specific additional changes as Franchisor may reasonably request for this purpose. Until all alterations required by this Section 18.1(a) are completed, Franchisee must maintain a conspicuous sign at the registration desk in a form specified by Franchisor, stating that the Restaurant is no longer associated with Taste of Philly Restaurants. Franchisee will advise all customers and prospective customers telephoning the Restaurant that the Restaurant is no longer associated with Taste of Philly Restaurants. Franchisee agrees that its failure to comply with any of the requirements of this Section 18.1(a) will cause irreparable injury to Franchisor.

(b) Upon expiration or other termination of this Agreement, Franchisee must promptly pay: (i) all amounts owing to Franchisor and any of its Affiliates; (ii) any costs and expenses incurred by Franchisor in connection with removing the Restaurant from the System; and (iii) an amount equal to a reasonable estimate of costs and fees not yet accumulated and/or invoiced. Franchisor is entitled to receive Interest on any amount not paid when due hereunder from earlier of the date due or the date on which Franchisee is notified of the amount owed to Franchisor or its Affiliate.

(c) For a period of three (3) years from the date of termination or expiration of this Agreement for any reason, or the date on which Franchisee begins to comply with this Section 18.1(c), whichever is later, Franchisee shall not, and shall cause its Affiliates not to, directly or indirectly engage in, operate, manage, consult with, advise, partner with, lease or license any assets or provide financing to or invest in any Person that engages in a Philly cheesesteak business located or operating within a five (5) mile radius of the former Restricted Territory (including at the former Approved Location) or within a five (5) mile radius of any other Taste of Philly Restaurant existing on the later of the date of termination or expiration of this Agreement or the date on which Franchisee and its Affiliates begin to comply with this Section 18.1(c). Franchisee and its Affiliates expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section 18.1(c) will not deprive them of their personal goodwill or ability to earn a living. Franchisee agrees to pay Franchisor the applicable monthly Franchise Fees for each business Franchisee owns or operates in violation of this Section 18.1(c) during the three (3) year period. Furthermore, in addition to the aforementioned fees, Franchisor reserves the right to enjoin or seek injunctive relief for any Franchisee activities in contravention of this Section 18.1(c).

(d) The provisions of Section 18.1 will survive the expiration or termination (for any reason) of this Agreement.

## 18.2 Franchisor's Termination Rights.

(a) If this Agreement is terminated, Franchisor will be entitled to pursue all remedies whether legal, equitable, or statutory, to compensate Franchisor for the damages it incurs as a result of such termination. In determining damages or compensation to Franchisor, a court, arbitrator, or other trier of fact must consider that Franchisee has agreed to operate the Restaurant as a Taste of Philly Restaurant in compliance with this Agreement for the full Term, and Franchisee acknowledges that should it fail to do so, Franchisor would be damaged in several ways, including: (i) loss of future Franchise Fees and fees used to market the System; (ii) loss of System representation in the area served by the Restaurant; (iii) confusion of customers; (iv) injury to the goodwill in the Proprietary Marks; and (v) lost opportunities to operate or franchise restaurants in the area served by the Restaurant. Franchisee acknowledges that it will be difficult to estimate the revenues of the Restaurant over a period of years, and that elements of Franchisor's damages not directly calculated from the Restaurant's revenues also

will be difficult to calculate, and that such damages are real and meaningful to Franchisor, and the proofs thereof would be burdensome and costly. Franchisor and Franchisee agree that liquidated damages (as calculated below) are not a penalty and represent a reasonable estimate of just and fair compensation of Franchisor for the damages that it would suffer. If this Agreement is terminated, Franchisee must promptly pay to Franchisor, in addition to any amounts otherwise payable to Franchisor, liquidated damages in an amount equal to (a) the sum of the average of the monthly Franchise Fees payable to Franchisor under this Agreement over the immediately preceding two (2) years, multiplied by (b) the lesser of (x) sixty (60) or (y) one-half (1/2) the number of months that would then otherwise remain in the Term of this Agreement. In addition to such damages, Franchisor will have the right to recover reasonable attorneys' fees and court costs incurred in collecting such sums, plus Interest on all amounts due pursuant to this Section 18.2(a) from the date of such termination until paid.

(b) Upon termination or expiration of this Agreement, Franchisor may give notice of the pending expiration or termination of this Agreement to, and take such other action relating to, customers, suppliers and other Persons that might be affected by such expiration or termination.

### 18.3 Franchisor Option to Purchase.

(a) Upon termination or expiration of this Agreement, Franchisor will have the right, but not the duty, to be exercised by notice of intent to do so within thirty (30) days after termination or expiration of this Agreement, to purchase any signs, advertising materials, Inventories, or other items bearing any Proprietary Marks. The purchase price to be paid by Franchisor for any such items will be the fair market value for such items. With respect to any such purchase, Franchisor will have the right to set off all amounts due from Franchisee under this Agreement or any other TOP Agreement.

(b) Upon termination or expiration of this Agreement, Franchisor will have the right, but not the duty, to be exercised by notice of intent to do so within thirty (30) days after termination or expiration of this Agreement, to purchase the Restaurant or a portion of the assets of the Restaurant (including any FF&E or improvements) which may include, at Franchisor's option, all of Franchisee's leasehold interest in and to the real estate upon which the Restaurant is located, but not including any other interest in real property. The purchase price to be paid by Franchisor for any such items will be the fair market value for such items. With respect to any such purchase, Franchisor will have the right to set off all amounts due from Franchisee under this Agreement or any other TOP Agreement. The following additional terms shall apply to Franchisor's exercise of this option:

(1) Franchisor's option shall be exercisable by providing Franchisee with written notice of its intention to exercise the option no later than thirty (30) days after termination of this Agreement, in the case of termination, or at least thirty (30) days prior to the expiration of the Term, in circumstances where no renewal is granted.

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

(3) The closing for the purchase will take place no later than sixty (60) days after delivery to Franchisee of written notice of Franchisor's exercise of its option. Franchisor has the unrestricted right to assign this option to purchase at any time to a third party, who then will have the rights described in this Section 18.3(b). Franchisor will pay the purchase price in full at the closing or, at its option, in twenty-four (24) equal consecutive monthly installments, with interest at a rate equal to the prime lending rate as of the closing at Franchisor's primary bank. Franchisee must sign all documents of transfer reasonably necessary for purchase of the Restaurant by Franchisor or the third party assignee, which documents shall include all customary representations and warranties from Franchisee as to ownership and condition of, and title to, the assets of the Restaurant being transferred. All assets must be

transferred free and clear of all liens and encumbrances, with all sales and transfer taxes paid by Franchisee. Franchisee further agree to sign general releases, in a form satisfactory to Franchisor, of any and all claims against Franchisor and their respective shareholders, officers, directors, employees, agents, successors, and assigns.

(4) Franchisee agrees that it shall be obligated to operate the Restaurant, according to this Agreement's terms, during the period in which Franchisor or the third party assignee is deciding whether to exercise its option to purchase and until the closing takes place, and that a condition to closing is that the Restaurant has remained open during that time period. Franchisor or the third party assignee may decide not to exercise its option to purchase at any time before closing if it determines that any of the conditions noted above have not been or cannot be satisfied.

(c) Should Franchisor or a third party assignee choose to not exercise its right to purchase under Section 18.3(b), the Franchisee will be free, after such termination or expiration, to keep or to sell to any third party all of the physical assets of its Restaurant; provided, however, that all Proprietary Marks are first removed in a manner approved in writing by Franchisor. The provisions of Section 18.3 will survive the expiration or termination (for any reason) of this Agreement.

## SECTION 19 CONDEMNATION AND CASUALTY

19.1 Condemnation. Franchisee will, at the earliest possible time, give Franchisor notice of any proposed taking by nationalization, expropriation, eminent domain, condemnation, compulsory acquisition, or similar proceeding. If such taking is substantial enough in Franchisor's opinion to render impractical the continued operation of the Restaurant in accordance with the System and guest expectations, this Agreement will terminate upon notice by Franchisor to Franchisee, and Franchisor and Franchisee will share equitably in the award; provided, however, Franchisor's portion shall be limited to compensating Franchisor for Franchisor's lost Franchise Fees under this Agreement. If such taking, in Franchisor's opinion, will not render the continued operation of the Restaurant impractical, Franchisee must promptly make whatever repairs and restoration are necessary to make the Restaurant conform substantially to the then-current Standards. Franchisee will take all measures necessary to ensure that the resumption of normal operation of the Restaurant is not unreasonably delayed.

19.2 Casualty. If the Restaurant is damaged by fire or other casualty, this Agreement will not terminate, and Franchisee, at its sole cost and expense will expeditiously repair the damage. If the damage or repair requires closing the Restaurant, Franchisee must, at its sole cost and expense: (i) immediately notify Franchisor; (ii) repair or rebuild the Restaurant in accordance with then-current Standards; (iii) begin reconstruction as soon as practicable; (iv) reopen the Restaurant for continuous business operations as soon as practicable; and (v) give Franchisor ample advance notice of the date of reopening. If the casualty will require the closing of the Restaurant in excess of thirty (30) days, Franchisee must provide Franchisor with a schedule for completing the repairs and re-opening of the Restaurant within thirty (30) days after such closing. If the Restaurant, or a substantial portion thereof, will be closed and cannot be re-opened within one-hundred eighty (180) days, and Franchisee fails to provide evidence that re-opening is possible within a timeframe acceptable to Franchisor beyond such date, Franchisor will have the right to terminate this Agreement and treat it as a default by Franchisee.

## SECTION 20 COMPLIANCE WITH LAWS; LEGAL ACTIONS

### 20.1 Compliance with Laws.

(a) Franchisee must comply with all Applicable Law, and will obtain in a timely manner all permits, certificates, and licenses necessary for the full and proper operation of the Restaurant and compliance with the TOP Agreements. Franchisee must forward to Franchisor within seven (7) days of Franchisee's receipt copies of all inspection reports, warnings, certificates, and ratings issued by any governmental entity related to the Restaurant that indicate a material failure to meet or maintain



governmental standards regarding health or life safety or any other material violation of Applicable Law that may adversely affect the operation or financial condition of the Restaurant or Franchisee.

(b) Franchisee must, if required by Applicable Law, timely file, register, or report this Agreement or the payments to be made hereunder, as applicable, to the appropriate governmental authorities having jurisdiction over the Restaurant or this Agreement. Franchisee must provide a copy of all materials prepared in satisfaction of such Applicable Law to Franchisor for Franchisor's approval prior to furnishing such materials to any governmental authority.

(c) If required by any Applicable Law: (i) the effectiveness of this Agreement will be the date on which all requirements for the effectiveness of this Agreement under such Applicable Law have been met and complied with; and (ii) payment of fees will be deferred until all requirements for the payment of such fees under such Applicable Law have been met and complied with; provided, however, that to the extent not prohibited by Applicable Law, Franchisee will pay, as provided in Section 3, all invoices submitted by Franchisor to Franchisee for costs and expenses incurred by Franchisor or its Affiliates (including Travel Expenses) arising out of or related to its review and investigation of the proposed Restaurant (including, the Initial Fee), any plans, designs, development, or construction related thereto, and Franchisor's negotiation, preparation, and implementation of this Agreement. If Franchisee makes such reimbursement payments, Franchisor will adjust fees so as to avoid a duplication of charges to Franchisee.

20.2 Notice Regarding Legal Actions. Franchisee must notify Franchisor within seven (7) days: (i) after the commencement of any material action, suit, or other proceeding that involves the Restaurant or Franchisee; or (ii) after the commencement of any action, suit, or other proceeding that involves Franchisor or Franchisor's relationship with Franchisee or the Restaurant, and within seven (7) days of the issuance of any judgment, order, writ, injunction, award, or other decree of any court, agency, or other governmental instrumentality that may adversely affect the operation or financial condition of the Restaurant or Franchisee. Nothing in this Section 20.2, however, will abrogate any notice requirement that Franchisee may have under any insurance program or contract.

## SECTION 21 RELATIONSHIP OF PARTIES

21.1 Reasonable Business Judgment. Except where Franchisor has reserved "sole discretion" or as otherwise indicated in this Agreement, Franchisor agrees to use Reasonable Business Judgment when discharging its obligations or exercising its rights or discretion under this Agreement, including with respect to any consents and approvals and the administration of Franchisor's relationship with Franchisee. Franchisee will have the burden of establishing that Franchisor failed to exercise Reasonable Business Judgment, and neither the fact that Franchisor benefited economically from an action nor the existence of other "reasonable" alternatives will, by themselves, establish such failure. To the extent that any implied covenant, such as the implied covenant of good faith and fair dealing, or civil law duty of good faith is applied to this Agreement, Franchisor and Franchisee intend that Franchisor will not have violated such covenant or duty if Franchisor has exercised Reasonable Business Judgment.

21.2 Independent Contractor. This Agreement does not create a fiduciary relationship between Franchisor and Franchisee. Franchisee is an independent contractor, and nothing in this Agreement is intended to constitute either party as an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose. Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on Franchisor's behalf or to incur any debt or other obligation in Franchisor's name.

## SECTION 22 GOVERNING LAW; DISPUTE RESOLUTION

22.1 Governing Law. This Agreement is executed pursuant to, and will be construed under and governed exclusively by, the laws of the State of Colorado, without reference to its conflict of laws.

22.2 Waiver of Jury Trial. Each party hereby waives, without limitation, any right it might otherwise have to trial by jury on any and all claims asserted against the other.

22.3 Injunctive Relief. Franchisor will be entitled to injunctive or other equitable or judicial relief, without the necessity of proving the inadequacy of money damages as a remedy, without the necessity of posting a bond, and without waiving any other rights or remedies at law or in equity, for any actual or threatened material breach or violation of this Agreement or the Standards.

22.4 Costs of Enforcement. If for any reason it becomes necessary for either party to initiate any legal or equitable action to secure or protect its rights under this Agreement, the prevailing party will be entitled to recover all costs incurred by it in successfully enforcing said rights, including reasonable attorneys' fees.

22.5 Arbitration.

(a) Any dispute, controversy, or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration. The arbitration shall be administered by an arbitration agency, such as the American Arbitration Association or the American Dispute Resolution Center, in accordance with the respective administrative rules. Any judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The costs of the arbitration will be borne equally by the parties. The parties agree that Denver, Colorado shall be the site for all hearings held under this Section 22.5, and that such hearings shall be conducted before a single arbitrator, not a panel. Neither party shall pursue class action type claims and/or consolidate the arbitration with any other proceedings to which Franchisor is a party.

(b) Franchisee may only seek damages or any remedy under law or equity for any arbitrable claim against Franchisor or Franchisor's successors or assigns. Franchisee agrees that Franchisor's Affiliates, shareholders, directors, officers, employees, agents, and representatives, and their Affiliates, shall not be liable nor named as a party to this Agreement. Franchisee further agrees that the foregoing parties are intended beneficiaries of the arbitration clause; and that all claims against them that arise out of or relate to this Agreement must be resolved with Franchisor through arbitration. Should Franchisee name a party in any arbitration or litigation proceeding in violation of this Section 22.5, Franchisee will reimburse Franchisor for costs incurred, including but not limited to attorney's fees, arbitration fees, court costs, witness fees, management preparation time, Travel Expenses, and incidental expenses.

(c) Notwithstanding the arbitration clause in Section 22.5(a), Franchisor may bring an action for injunctive relief in any court having jurisdiction to enforce Franchisor's trademarks or proprietary rights, the covenants not to compete, or the restriction on disclosure of Confidential Information in order to avoid irreparable harm to Franchisor, Franchisor's Affiliates, and the System as a whole. Franchisor may, without waiving any rights it has under this Agreement, seek from a court having jurisdiction any interim or provisional relief that may be necessary to protect its rights or property (including any aspect of the System, or any reason concerning the safety of the Restaurant or the health and welfare of any of the Restaurant's guests, invitees or employees).

(d) The provisions of this Section 22.5 will survive the expiration or termination of this Agreement.

22.6 Limitation on Damages.

(a) FRANCHISEE HEREBY WAIVES, WITHOUT LIMITATION, ANY RIGHT IT MIGHT OTHERWISE HAVE TO ASSERT A CLAIM FOR AND/OR TO RECOVER LOST PROFITS AND OTHER FORMS OF CONSEQUENTIAL, INCIDENTAL, CONTINGENT, PUNITIVE, AND EXEMPLARY DAMAGES FROM FRANCHISOR EXCEPT AS PROVIDED HEREIN.

(b) FRANCHISOR'S LIABILITY SHALL BE LIMITED TO THE ACTUAL COMPENSATORY DAMAGES, SUCH DAMAGES BEING THE GREATER OF (1) \$100,000.00 OR (2) AT FRANCHISEE'S SOLE OPTION, ALL AMOUNTS PAID TO FRANCHISOR FOR FRANCHISE FEES FOR THIS AGREEMENT FOR UP TO THREE (3) YEARS PRECEDING THE DATE OF ANY AWARD HEREIN. SHOULD FRANCHISEE ELECT OPTION (2), FRANCHISOR RESERVES THE RIGHT TO REPURCHASE FRANCHISEE'S EQUIPMENT, PURCHASED FROM OR THROUGH FRANCHISOR, AT DEPRECIATED VALUE USING THE FIVE YEAR, STRAIGHT LINE METHOD OF CALCULATION.

#### SECTION 23 NOTICES

23.1 Notices. All notices, requests, demands, statements, and other communications required or permitted to be given under the terms of this Agreement will be in writing, and delivered by hand against receipt or carried by reputable overnight courier service, to the respective party at the following addresses:

To Franchisor: Taste of Philly  
7393 S. Shawnee St.  
Aurora, CO, 80016  
Attn: Legal Department

To Franchisee:   
  
  
Attn:

or at such other address as designated by notice from the respective party to the other party. Any such notice or communication will be deemed to have been given at the date and time of: (i) receipt; or (ii) first refusal of delivery. Franchisee expressly consents to service of process at the above address or at such other address as it may designate pursuant to Section 23.1. Notwithstanding the foregoing, Franchisor may provide Franchisee with routine information, the Standards and other System requirements and programs, such as the Quality Assurance Program, by regular mail or by e-mail, facsimile, or by making such information available to Franchisee on the Internet, an extranet, or other electronic means.

#### SECTION 24 MISCELLANEOUS

##### 24.1 Construction and Severability.

(a) Except as expressly provided to the contrary in this Agreement, each section, part, term and/or provision of this Agreement (including, Section 16), will be considered severable; and if, for any reason any section, part, term, or provision is determined to be invalid, unenforceable or contrary to, or in conflict with, any existing or future Applicable Law or by an arbitral tribunal, court or agency having valid jurisdiction, such will not impair the operation of, or have any other effect upon, such other sections, parts, terms, and provisions of this Agreement as may remain otherwise intelligible, and the latter will continue to be given full force and effect and bind Franchisor and Franchisee; and said invalid or unenforceable sections, parts, terms, or provisions will be deemed to be replaced with a provision that is valid and enforceable and most nearly reflects the original intent of the invalid or unenforceable provision.

(b) Nothing in this Agreement is intended, or will be deemed, to create any third party beneficiary or confer any rights or remedies under or by reason of this Agreement upon any Person other than Franchisor (and its Affiliates) or Franchisee, and their respective permitted successors and assigns.

(c) When this Agreement provides that Franchisor may take or refrain from taking any action or exercise discretion, such as rights of approval, or to modify the System or any part of it, or to make other determinations or modifications under this Agreement, Franchisor may do so from time to time.

(d) Unless otherwise stated, references to Sections are to Sections of this Agreement. Unless otherwise stated, references to exhibits, attachments or addenda are to exhibits, attachments and addenda to this Agreement, and all of such are incorporated by reference into this Agreement.

(e) Words importing the singular include the plural and vice versa as the context may imply. Words importing a gender include every gender as the context may imply. References to days, months, and years are to calendar days, calendar months, and calendar years, respectively.

(f) The words “include,” “included” and “including” will be terms of enlargement or example (meaning that, for instance, “including” will be read as “including but not limited to”) and will not imply any restriction or limitation unless the context clearly requires otherwise. Captions and section headings are used for convenience only. They are not part of this Agreement and will not be used in construing it.

24.2 Approvals and Waivers. Approvals, designations, and consents required under this Agreement will not be effective unless evidenced by a writing signed by the duly authorized officer or agent of the party giving such approval or consent. No waiver, delay, omission, or forbearance on the part of Franchisor or Franchisee to exercise any right, option or power arising from any default or breach by the other party will affect or impair the rights of Franchisor or Franchisee, respectively, with respect to any such default or breach or subsequent default or breach of the same or of a different kind. Any delay or omission of either party to exercise any right arising from any such default or breach will not affect or impair such party’s rights with respect to such default or breach or any future default or breach. Franchisor shall not be liable to Franchisee for providing (or denying) any waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement or by reason of any delay or denial of any request.

24.3 Entire Agreement. This Agreement, including, all exhibits, attachments, and addenda, and the TOP Agreements, and any execution copies executed simultaneously or in connection with, this Agreement, contain the entire agreement between the parties as it relates to the Restaurant and the Approved Location as of the date of this Agreement. This is a fully integrated agreement. No agreement of any kind relating to the matters covered by this Agreement will be binding upon either party unless and until the same has been made in a written, non-electronic instrument that has been duly executed by the non-electronic signature of all interested parties. This Agreement may not be amended or modified by conduct manifesting assent, or by electronic signature, and each party is hereby put on notice that any individual purporting to amend or modify this Agreement by conduct manifesting assent or by electronic signature is not authorized to do so. In entering this Agreement, Franchisee represents and warrants that it did not rely on in entering this Agreement or otherwise, and Franchisor and Franchisor’s representatives have not made, any promises, representations or agreements relating to franchising the Restaurant or Approved Location, except as expressly contained in this Agreement.

24.4 Confidentiality. The terms of this Agreement and all exhibits, attachments or addenda or other agreements ancillary to, or executed in connection with this Agreement, that have been negotiated (“Negotiated Terms”) from the standard form of Agreements are strictly confidential. Except as otherwise required by Applicable Law, or as may be necessary to enforce this Agreement in any legal proceedings, those Negotiated Terms will be disclosed only to those of Franchisee’s managers, members, officers, directors, employees, attorneys, accountants, agents or lenders as is necessary for the operation or financing of the Restaurant. Franchisee agrees that it will be a material default hereunder if Franchisee, its managers, members, officers, directors, employees, attorneys, accountants, agents or

lenders disclose the Negotiated Terms to any unauthorized Person without the prior consent of Franchisor.

24.5 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes and all of which will constitute, collectively, one agreement. Delivery of an executed signature page to this Agreement by facsimile transmission will be effective as delivery of a manually signed counterpart of this Agreement.

## SECTION 25 REPRESENTATIONS, WARRANTIES AND COVENANTS

25.1 Existence and Power. Franchisee represents, warrants and covenants that: (i) it is a legal entity duly formed, validly existing, and in good standing under the laws of the jurisdiction of its formation; (ii) it and its Affiliates have and will continue to have throughout the Term hereof the ability to perform its obligations under this Agreement; and (iii) it has and will continue to have throughout the Term hereof all necessary power and authority to execute and deliver this Agreement.

25.2 Authorization. Franchisee represents, warrants and covenants that the execution and delivery of this Agreement and the performance by Franchisee of its obligations hereunder: (i) have been duly authorized by all necessary action; (ii) do not require the consent, vote, or approval of any third parties (including lenders) except for such consents as have been properly obtained; and (iii) do not and will not contravene, violate, result in a breach of, or constitute a default under (a) its certificate of formation, operating agreement, articles of incorporation, by-laws, or other governing documents, (b) any Applicable Law; or (c) any agreement, indenture, contract, commitment, restriction or other instrument to which it or any of its Affiliates is a party or by which it or any of its Affiliates is bound.

25.3 Contravention. Franchisee represents and warrants that all of the representations and warranties in the application, and any information provided in addition to the application in connection with this Agreement, is true, correct and complete as of the time made and as of the date hereof, regardless of whether such was provided by Franchisee, one of its Affiliates, or by a third party on behalf of Franchisee, unless Franchisee has notified Franchisor of a change in the representations and warranties or the information and Franchisor has approved the change.

25.4 Ownership of the Restaurant. Franchisee hereby represents, warrants and covenants to Franchisor that (i) Franchisee is the sole owner of the Restaurant and (ii) Franchisee holds good and marketable fee title to the Approved Location.

### 25.5 Additional Franchisee Acknowledgments and Representations.

(a) FRANCHISEE AGREES THAT THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT INVOLVES SUBSTANTIAL BUSINESS RISKS, AND ITS SUCCESS WILL BE LARGELY DEPENDENT UPON THE ABILITY OF FRANCHISEE AS AN INDEPENDENT BUSINESS. FRANCHISOR EXPRESSLY DISCLAIMS THE MAKING OF, AND FRANCHISEE AGREES FRANCHISEE HAS NOT RECEIVED, ANY WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO THE POTENTIAL VOLUME, PROFITS, OR SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT. IF FRANCHISOR FURNISHES ADVICE, CONSULTATION, TRAINING, OR OTHER FORMS OF ASSISTANCE IN CONNECTION WITH THE RESTAURANT WITH REGARD TO MATTERS SUCH AS FINANCING, DESIGN, CONSTRUCTION, RENOVATION, MENU PLANNING, OPERATION AND MANAGEMENT OF THE RESTAURANT, FRANCHISOR DOES NOT GUARANTEE OR ASSURE THE SUCCESS OR SATISFACTORY RESULT OF SUCH MATTERS AND FRANCHISOR WILL NOT THEREBY INCUR ANY LIABILITY OR BE RESPONSIBLE IN ANY WAY FOR ANY ERROR, OMISSION OR FAILURE OF WHATEVER NATURE IN SUCH FINANCING, DESIGN, CONSTRUCTION, RENOVATION, MENU PLANNING, OPERATION OR MANAGEMENT OF THE RESTAURANT.

(b) FRANCHISEE AGREES THAT IT HAS READ AND UNDERSTOOD THE DISCLOSURE DOCUMENT PROVIDED TO FRANCHISEE, THIS AGREEMENT, INCLUDING ALL EXHIBITS, ATTACHMENTS AND ADDENDA, AND RELATED AGREEMENTS, IF ANY, AND FRANCHISEE HAS HAD AMPLE TIME AND OPPORTUNITY TO CONSULT WITH ADVISORS AND LEGAL COUNSEL OF FRANCHISEE'S OWN CHOOSING ABOUT THE POTENTIAL BENEFITS AND RISKS OF ENTERING INTO THIS AGREEMENT. FRANCHISEE AGREES THAT FRANCHISEE HAS HAD AN OPPORTUNITY TO NEGOTIATE, AND HAS FULLY NEGOTIATED, THE ESSENTIAL STIPULATIONS OF THIS AGREEMENT AND THAT SUCH STIPULATIONS WERE NOT UNILATERALLY IMPOSED ON IT BY FRANCHISOR.

*(Signatures on following page)*

TASTE OF PHILLY FORM

CONFIDENTIAL

FEBRUARY 6, 2012

IN WITNESS WHEREOF, Franchisee and Franchisor have duly executed and delivered this Agreement, as of the Effective Date.

FRANCHISOR:

**A BIG PHILLY CHEESESTEAK, INC.,**

a Colorado S corporation

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

Name: Ken Brown

Title: President

FRANCHISEE:

[ ],

a [ ]

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

Name:

Title: