

**EXHIBIT D-2:**

FRANCHISE AGREEMENT – SMALL-TOWN NON-TRADITIONAL RESTAURANT

PAPA **JOHN'S** JOHNS

**FRANCHISE**

**AGREEMENT**

**SMALL TOWN**

**NON-TRADITIONAL RESTAURANT**

Franchisee:

Address:

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Store No. \_\_\_\_\_

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**PAPA JOHN'S JOHNS**

**FRANCHISE AGREEMENT**

**SMALL TOWN**

**NON-TRADITIONAL RESTAURANT**

**THIS FRANCHISE AGREEMENT** ("Agreement") is made as of the "Effective Date" (as defined in Section 25.(j)), by and between **PAPA JOHN'S FRANCHISING, LLC.**, a Kentucky limited liability company ("we", "us" or "Papa **John's Johns**"), and \_\_\_\_\_, a \_\_\_\_\_ ("you"). If you are a corporation, limited liability company, partnership or other business entity, certain provisions of the Agreement also apply to your owners and will be noted.

**RECITALS:**

**A.** We and our Affiliates have expended time, money and effort to develop a unique system for operating retail restaurants devoted primarily to carry-out and delivery of pizza and other food items. The chain of current and future Papa **John's Johns** restaurants is referred to as the "Papa **John's Johns** Chain" or the "Chain."

**B.** The Chain is characterized by a distinctive system which includes: special recipes and menu items; distinctive design, decor, color scheme and furnishings; software and programs; standards, specifications and procedures for operations; procedures for quality control; training assistance; and advertising and promotional programs; all of which we may improve, amend and further develop from time to time (the "System").

**C.** We identify our goods and services with certain service marks, trade names and trademarks, including "Papa John's," "Papa John's Pizza" and "Pizza Papa John's and Design" (the Papa **John's Johns** Logo) as well as certain other trademarks, service marks, slogans, logos and emblems that have been or may be designated for use in connection with the System from time to time (the "Marks").

**D.** Papa **John's Johns** offers a program (the "Small Town Non-Traditional Program") that allows for development and operation of non-traditional Papa **John's Johns** restaurants in cities, towns and areas with lower household counts than areas where traditional Papa **John's Johns** restaurants are located.

**E.** You now desire to enter into this Agreement regarding the operation of one Papa **John's Johns** restaurant under the System and the Marks at the location listed below (the "Restaurant") under the Papa **John's Johns** Small Town Non-Traditional Program.

F. We have agreed to grant you a franchise for the Restaurant on the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **Grant.** Subject to the terms and conditions of this Agreement and your continuing faithful performance, we hereby grant to you the non-exclusive right and franchise (the "Franchise") to operate a Small Town Non-Traditional Restaurant under the System and the Marks to be located at:

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(the "Location")

Pursuant to this grant, you will, at your own expense, construct or remodel, and equip, staff, open and operate the Restaurant at the Location on or before \_\_\_\_\_. Unless otherwise agreed in writing by us, you must commence operating the Restaurant within 60 days after the Effective Date and operate such business in accordance with this Agreement for the Term (defined below). Approval of the Location by us does not constitute an assurance, representation or warranty of any kind, expressed or implied, as to: (i) the suitability of the Location for a Papa ~~John's~~Johns restaurant;

(ii) the successful operation of the Restaurant; or (iii) for any other purpose. Our approval of the Location indicates only that we believe it complies with acceptable minimum criteria that we establish solely for our purposes at the time of the evaluation. Unless we otherwise approve, the Franchise applies only to the Location and the operations of the Restaurant may be carried on only from the Location.

2. **Term, Renewal, Expiration and Reclassification.**

(a) **Initial Term; Term.** The Franchise is granted for an initial term of 5 years from the Effective Date of this Agreement, unless terminated or reclassified earlier as provided in this Agreement (the "Initial Term"). Unless terminated or reclassified as provided in this agreement, you have the option to renew this Agreement for one additional 5-year term (the "Renewal Term") subject to the provisions of Section 2.(b). As used in this Agreement, "Term" means the Initial Term, the Renewal Term or any extension of either of them, as the case may be.

(b) **Renewal of Franchise.** This Agreement does not automatically renew upon the expiration of the Initial Term. You have an option to renew the Franchise upon the expiration of the Initial Term. You may renew the Franchise for one additional 5-year term (the "Renewal Term") if, and only if, each and every one of the following conditions has been satisfied:

(i) You give us written notice of your desire to renew the Franchise not less than 3 months nor more than 6 months before the end of the Initial Term, provided that if we

have not received notice from you of your desire to renew within such period, we will notify you and you will have a period of 30 days thereafter within which to submit the renewal notice.

(ii) You are in full compliance with this Agreement and there is no uncured default by you under this Agreement; there has been no series of defaults by you during the Initial Term (i.e., an abnormal frequency of defaults or a default that has occurred repeatedly, or a combination thereof), whether or not such defaults were cured; all your debts and obligations to us and our Affiliates under this Agreement or otherwise are current; and your obligations to the Marketing Fund and each Cooperative (defined below) of which you are a member are current.

(iii) You secure the right to continue possession of the Premises for a period at least equal to the Renewal Term or, alternatively, you secure premises at another location that we approve for the same period.

(iv) Your Principal Operator (defined below) and manager attends and successfully completes our training program for new franchisees.

(v) We are then continuing to offer Papa ~~John's~~Johns Pizza franchises in the state in which the Restaurant is located and have all required documents filed and all necessary approvals to offer Papa ~~John's~~Johns franchises in that state.

(vi) You pay us a renewal fee of \$1,000.

(vii) You execute and deliver to us a general release, in the form we prescribe, releasing, to the fullest extent permitted under the laws of the state where the Restaurant is located, all claims that you may have against us and our Affiliates and subsidiaries, and their respective officers, directors, shareholders and employees in both their corporate and individual capacities.

(viii) You make, or provide for in a manner and timeframe reasonably satisfactory to us, such renovation and re-equipping of the Restaurant as may be necessary or appropriate to reflect the then-current standards and image of the System, including renovation or replacement of signs, equipment, furnishings, fixtures and decor; provided that substantial renovation and re-equipping will not be required if you have substantially renovated the Restaurant within the 3-year period immediately preceding the end of the Initial Term..

(ix) You and your applicable employees must complete or comply with, or agree to complete and comply within a timeframe reasonably satisfactory to us, the then current qualification and training requirements we reasonably require.

This option to renew may not be exercised unless all of the preceding conditions are fully satisfied.

(c) **Second Renewal Option.** In addition to the renewal option under Section 2.(b), you shall have a second option to renew the Franchise for the Restaurant subject to the same conditions set forth in subparagraphs (i) through (ix) in Section 2.(b), plus the following additional condition: you execute and deliver to us, within 10 days after delivery to you, the applicable form of Papa ~~John's~~Johns Franchise Agreement being offered to new franchisees on the date you give the notice under this Section for restaurants similar to your Restaurant, including all exhibits and our other then- current ancillary agreements, which agreements shall supersede this Agreement and all

ancillary agreements in all respects, and the terms and conditions of which may differ substantially from this Agreement; provided that such Franchise Agreement will provide for a term of 5 years, and will provide that we may raise the Royalty (as defined in Section 3.(a)(i)) to 8% during any second renewal of the Franchise pursuant to this Section 2.(c).

(d) **Expiration.** Renewal of the Franchise after the Renewal Term does not constitute a renewal or extension of this Agreement, but is conditioned upon satisfaction of the above provisions. Upon expiration of the Renewal Term, further renewal rights will be governed by the Franchise Agreement executed by you upon expiration of the Initial Term. If you fail to meet any of the conditions under Section 2.(b) above with respect to the renewal of the Franchise, the Franchise automatically expire at the end of the Initial Term.

(e) **Reclassification.** After the Restaurant has been open for a minimum of two years, we may at any time evaluate the sales levels of the Restaurant on a trailing 12-months basis. If the weekly gross sales average ("PSA") reaches 90% or greater of the system average on a trailing 12-month basis, we have the right to reclassify the store as a traditional Restaurant and require you to execute and deliver a standard Papa [John's Johns](#) Franchise Agreement for the Restaurant for the remainder of the Term, which Franchise Agreement shall supersede this Agreement and all ancillary agreements in all respects. Under the standard Franchise Agreement, you would be required to pay the standard royalty rate and to make your own full contributions to the Marketing Fund and the Cooperative (if any). You would also be required to offer delivery service and to offer the full range of menu items required for a traditional Papa [John's Johns](#) restaurant, including but not limited to, all sizes and types of pizza crusts, all side items and dessert items.

### 3. **Franchise Fees and Payments.**

(a) **Initial Franchise Fee and Royalties.** In consideration of the grant of the Franchise, you must pay us the following fees:

(i) an Initial Franchise Fee of \$5,000, which must be paid upon the execution of this Agreement. The Initial Franchise Fee will be deemed fully earned and non-refundable;

(ii) a continuing royalty (the "Royalty") of 6% of Net Sales, provided we have the right to raise the Royalty to 8% during the Renewal Term. Net Sales means the gross revenues of the Restaurant from sales of approved products and provision of approved services (including revenues from special or promotional sales efforts such as Groupon, Living Social or other discounted sales programs), delivery services or any other revenue-generating activity carried on at, from or in connection with operation of the Restaurant and regardless of whether such sales are evidenced by cash, check, credit, charge account, gift card or otherwise, less: (a) sales tax, use tax or similar tax collected from customers in conjunction with such sales and paid in full to the state or other local taxing authority; (b) any documented refunds actually paid to customers (if such amounts were originally included in calculating Net Sales); and (c) proceeds from sales of used furniture and fixtures and similar sales not in the ordinary course of business. The Royalty is due on the 10th day of the month following each Period; and

(iii) a continuing internet and digital ordering system transaction fee ("Digital Fee") in an amount determined by a board consisting of the same members of the Board

of the Marketing Fund as a percentage of each Period's Net Sales of the Restaurant that arise from customer orders received via the internet through our internet/digital ordering system ("Digital Orders"). The fee generally will be set high enough to cover our ongoing costs plus new capital expenditures each year in maintaining and operating the on-line/digital ordering system, including costs of integration of aggregator or other third-party platforms, provided: (A) we will contribute any revenue in excess of these costs to the Marketing Fund; and (B) any shortfall of revenue will be carried forward as a deficit and retired from future Digital Fee revenues. The Digital Fee is due on the 20th day of the month following each Period.

(b) **Alternative Ordering.** We reserve the right to develop or contract with third parties to develop centralized or technology-based methods of taking, processing, routing, and delivering orders in addition to the online and digital system that we currently use or authorize (collectively "Alternative Ordering Systems"). These may become mandatory at any time during the Term of this Agreement and may require you to spend money to add or replace equipment, wiring, hardware and software, and to pay licensing fees, support and maintenance fees, fees paid to third parties; to incur other costs, and to sign agreements with third parties. To the extent that these products and services are owned by us or provided to you by us, we may charge up front and/or ongoing fees. However, to the extent that all the direct and indirect costs to develop, test and implement an Alternative Ordering System are paid from the Digital Fee, then such up-front and ongoing fees charged by us would be intended only to cover our ongoing expenses, including direct costs and reasonable allocations. Regardless of the sources of funds to develop any Alternative Ordering System, as between you and us we are and will be the owner of all direct and related rights and assets, including software and hardware, intellectual property and all data generated by the Alternative Ordering Systems or as a result of their use, but excluding hardware or equipment that you purchase directly for the purpose of gaining access to the Alternative Ordering System (including computers and kiosks).

(c) **Intentionally Omitted.**

(d) **Taxes.** If the state in which the Restaurant is located (or a local taxing authority within the state) imposes a sales tax, use tax, gross receipts compensating tax or similar tax on the Initial Franchise Fee, the Royalty or the Digital Fee, we will collect such tax from you in addition to the amount set forth or determined as provided herein and remit the amount of the tax directly to the taxing authority. This does not include income taxes imposed on us, for which we are solely responsible. If the state in which the Restaurant is located (or a local taxing authority within the state) requires you to withhold tax on any payment that you are obligated to make to us or our Affiliates, you must timely pay such withheld amounts to the appropriate taxing authority and promptly deliver to us receipts of applicable governmental authorities for all such taxes withheld or paid. We have no obligation to recognize or give credit for any amounts so withheld until you provide to us receipts or other evidence acceptable to us that such amounts have been duly remitted to the appropriate taxing authority. We have no obligation to recognize or give credit for any such receipts provided more than three (3) years after the associated tax year. You are responsible for and undertake to indemnify us and our Affiliates against and hold us and our Affiliates harmless from any penalties, interest and expenses incurred by or assessed against us or any of our Affiliates as a result of your failure to withhold such taxes or to timely remit them to the appropriate taxing authority.

(e) **Payments.**

(i) At least 10 days before opening the Restaurant (and thereafter as requested by us), you must execute and deliver to us, our bank(s) and your bank, as necessary, all forms and documents that we may request to permit us to debit your bank account, either by check, via electronic funds transfer or other means utilizing the "Information System" (as defined in Section 10.(c)(i)(B)) or by such alternative methods as we may designate ("Payment Methods"). You must comply with all procedures specified by us from time to time, and take such reasonable actions as we may request to assist in any of the Payment Methods. We may use the Payment Methods to collect the amount of each Period's Royalty, Digital Fee, and any other amounts due to us, our Affiliates, or the 'Marketing Fund under this Agreement or otherwise, including amounts owed to us and/or our Affiliates in connection with: (A) Marketing Fund contributions; and (B) purchases from "PJFS" (as defined in Section 12.(b)) and all of our other Affiliates; (C) transfer fees; and (D) renewal fees. You must complete and provide to us any tax forms or other instruments or documents necessary or appropriate to give effect to the terms and provisions of this Agreement, including an IRS Form W-9.

(ii) We will determine your Net Sales for each Period via the Information System, or if we are unable to do so, you must report your Net Sales in writing on or before the 7th day of the month following each Period. Such reporting is in addition to all other reporting requirements under Section 13. If you fail to report Net Sales on a timely basis, we may estimate the Net Sales of the Restaurant for such Period and debit your bank account the amount of the Royalty and Marketing Fund contribution based on such estimate. If an estimate results in an overpayment, we will deduct the amount of the overpayment from the next Period's Royalty and Marketing Fund contribution. Any deficiency resulting from such estimate may be added to the next Royalty and/or Marketing Fund contribution payment(s) due and debited against your bank account. If, at any time, we determine that you have underreported the Restaurant's Net Sales, or underpaid any Period's Royalty, Marketing Fund contributions or payments to any of our Affiliates, we are authorized to immediately debit your account for these amounts by any of the Payment Methods.

(iii) You must notify us at least 30 days before closing or making any change to the account against which such debits are to be made. If such account is closed or ceases to be used, you must immediately provide all documents and information necessary to permit us to debit the amounts due from an alternative account. You acknowledge that these requirements are only a method to facilitate prompt and timely payment of amounts due and do not affect any obligation or liability for amounts owed. If for any reason your account cannot be electronically debited, you must submit payments by wire transfer or check (certified or cashier's check if requested by us) on or before the dates when due. You will indemnify and hold us harmless from and against all damages, losses, costs and expenses resulting from any dishonored debit against your account, regardless whether resulting from the act or omission of you or your bank; provided that you are not obligated to indemnify us for any dishonored debit caused by our negligence or mistake.

**4. Franchisor Services.** During the Term, we will provide to you the following services:

(a) specifications for the design of the Restaurant and related facilities to be used in the operation of the Restaurant;

(b) specifications for fixtures, furnishings, decor, communications and computer hardware and software, signs and equipment;

(c) the names and addresses of designated and approved suppliers, and standards and specifications for (i) all food products, beverages, ingredients and cooking materials sold from or used in the operation of the Restaurant, and (ii) all containers, boxes, cups, packaging, menus, uniforms and other products and materials used in connection with the operation of the Restaurant;

(d) our supervision and periodic inspections and evaluations of your operation, as described more fully in Section 11.(m), which supervision, inspections and evaluations will be conducted at such times and in such manner as we reasonably determine;

(e) communication to you of information relating to the operation of a Papa ~~John's~~Johns restaurant to the extent we deem it necessary or pertinent; and

(f) operation of the online and digital ordering system, including integrated aggregator or other third-party platforms, which enables customers to place orders online via internet and mobile applications with access to our website, provided:

(i) we do not represent or warrant to you, and expressly disclaim any warranty that the online and digital ordering system (or any other Alternative Ordering System that may be developed by us) will be error-free or that the operation and use of the online and digital ordering system or any such other Alternative Ordering System will be uninterrupted or error-free; and

(ii) we have no obligation or liability for any expense or loss incurred by you (including lost sales or profits) arising from operation (including failure of operations) or use of the online and digital ordering system or any other Alternative Ordering System that may be developed by us.

## 5. Territorial Provisions.

(a) **Territory.** Subject to the provisions of this Section 5, during the Term we will not locate nor license another to locate a Papa ~~John's~~Johns restaurant at within a one and one-half mile radius of the Location (the "Territory").

(b) **Non-Traditional Exclusion.** Venues and locations that we determine are suitable for non-traditional Papa ~~John's~~Johns operations (collectively "Non-Traditional Locations"), are excluded from protection within the Territory, except as set forth in this Section 5.(b). Such Non- Traditional Locations include, but are not limited to, enclosed malls, institutions (such as hospitals, colleges, universities or other schools), airports, parks (including theme parks), military bases, sports arenas or stadiums, train stations, travel plazas, and entertainment venues, as well as any other location that you are unable to operate the Restaurant, including locations and venues: that are subject to exclusive food vending rights of third parties; or at which you are precluded from obtaining operating or vending rights due to certain conditions or requirements that you do not meet (including, by way of example, due to financial or net worth requirements of the landlord or site operator; or due to laws, rules or regulations applicable to the location, including regulatory or licensing schemes applicable to casino or gaming operations or Indian tribal laws ). We may open non-traditional Papa ~~John's~~Johns restaurants, or franchise or

license the right to open non-traditional Papa [John'sJohns](#) restaurants to other persons at any Non-Traditional Location, including Non- Traditional Locations in the Territory. Notwithstanding the foregoing, no delivery services will be permitted from non-traditional restaurants located within the Territory (including from your Restaurant and including from Non-Traditional Locations), except as otherwise agreed by you and us.

(c) **Development Area Limitation.** Notwithstanding identification of the Territory above, if this Agreement is signed pursuant to a Development Agreement between you and us, in no event will the Territory extend outside the boundaries of the "Development Area" as defined in the Development Agreement and neither termination nor expiration of the Development Agreement will alter this limitation.

(d) **No Exclusive Trade Area for Sales or Delivery.** We do not warrant or represent that no other Papa [John'sJohns](#) restaurant will solicit or make any sales within the Territory, and you expressly acknowledge that such solicitations or sales may occur within the Territory. We have no duty to protect you from any such sales, solicitations, or attempted sales. You recognize and acknowledge that: (i) you will compete with other Papa [John'sJohns](#) restaurants that are now, or that may in the future be, located near or adjacent to your Territory; and (ii) that such Papa [John'sJohns](#) restaurants may be owned by us, our Affiliates or third parties. If you relocate the Restaurant, the Territory in our sole discretion may be reduced, changed, altered or restricted. We make no assurance that the Territory specified herein will be applicable to the new location, even if we have approved the new location.

(e) **Alternative Ordering Systems Area.** We will of necessity define the trade area for the Restaurant for Alternative Ordering Systems ("Alternative Order Area") and such trade area may be significantly different than the Territory and may change from time to time. You must use reasonable efforts not to solicit sales within the defined Alternative Ordering trade area of another Papa [John'sJohns](#) restaurant. However, you acknowledge that such solicitations and sales may occur in your trade area, including advertising spillover, directories, electronic media, direct mail drops by sector or ZIP code and other advertising and that we have no duty to monitor, control or stop such advertising, solicitations or sales. In determining which Papa [John'sJohns](#) restaurant an online, digital or other Alternative Ordering System order will be routed to, we will consider such matters as we reasonably deem material, including: existing trade or delivery areas of Papa [John'sJohns](#) restaurants in geographic proximity to the address or customer placing the order; demographic characteristics of the location of such proximate Papa [John'sJohns](#) restaurants; traffic patterns and similar factors affecting delivery efficiency; the opening or closing of other Papa [John'sJohns](#) restaurants; and other commercial characteristics of geographically proximate Papa [John'sJohns](#) restaurants (collectively, the "Commercial Considerations"). You acknowledge that such Commercial Considerations may result in changes that remove particular addresses or groups of addresses or particular customers or groups of customers from routing to your Restaurant and that online, digital or other systematized orders from such addresses, groups of addresses, customers, or groups of customers may be re- routed to other Papa [John'sJohns](#) restaurants that are now, or that may in the future be, located near or adjacent to your Restaurant, and that such Papa [John'sJohns](#) restaurants may be owned by us, our Affiliates or third parties. You acknowledge that if you relocate the Restaurant, the routing of online, digital or systematized orders to your Restaurant may, in our sole discretion, be reduced, changed, altered or restricted, even though we have approved the new location for the Restaurant.

(f) **Other Businesses.** We reserve the right to operate, directly and/or through

Affiliates, franchise, or license others to operate or franchise, restaurants or other food related establishments or businesses other than Papa ~~John's~~Johns restaurants and we and our Affiliates may do so within the Territory, provided, that such restaurants or food establishments or businesses do not sell pizza on a delivery basis, or primarily on a carry-out basis. We also reserve the right to develop, market and conduct any other business under the Marks or any other trademark.

(g) **Other Methods of Distribution.** We reserve the right to manufacture or sell, directly or through third parties, or both, within and outside your Territory, pizza and other products that are the same as or similar to those sold in Papa ~~John's~~Johns restaurants using brand names that are the same as or similar to the Marks, through any channel of distribution, provided that such items are not sold through restaurants or on a ready-to-eat basis.

## 6. **Premises.**

(a) **Leased Premises.** If you intend to lease the premises where the Restaurant will be operated (the "Premises"), you must submit to us copies of the executed signature pages of all such leases immediately after signing and copies of the full leases and any exhibits and addendum at such other times as we may request.

(b) **Owned Premises.** If you own the Premises, you must submit to us proof of ownership. If you decide to sell the Premises together with the Restaurant at any time before the expiration or termination of the Franchise, you must notify us of your intention. We have a right of first refusal to purchase the Premises on the same terms and conditions as set forth in Section 14.(c)(ii). If the sale will also involve a relocation of the Restaurant, you must submit to us for our approval your proposed plans (including copies of any proposed lease or contract of purchase) for an alternative location.

(c) **Premises Identification.** Regardless of whether you own or lease the Premises, you must, within ten days after the expiration or termination of the Franchise Agreement, remove all signs and other items and indicia that serve, directly or indirectly, to identify the Premises as a Papa ~~John's~~Johns restaurant and make such other modifications as are reasonably necessary to protect the Marks and the Papa ~~John's~~Johns System, and to distinguish the Premises from Papa ~~John's~~Johns restaurants. To enforce this provision, we may pursue any or all remedies available to us under applicable law and in equity, including injunctive relief. Your obligation will be conditioned upon our giving you prior notice of the modifications to be made and the items removed.

(d) **Suitability of Premises.** Regardless of whether the Premises are owned or leased, it is your responsibility to determine that the Premises can be used, under all applicable laws and ordinances, for the purposes provided herein and that the Premises can be constructed or remodeled in accordance with the terms of this Agreement and you must obtain all permits and licenses that may be required to construct, remodel and operate the Restaurant. The Premises may not be used for any purpose other than the operation of the Restaurant in compliance with this Agreement.

(e) **Relocation; Assignments.** You will not, without first obtaining our written consent: (i) relocate the Restaurant; or (ii) renew or materially alter, amend or modify any lease, or

make or allow any transfer, sublease or assignment of your rights under any lease or owned location pertaining to the Premises. Such consent may not be unreasonably withheld. You must give us notice not less than 30 days before any of the foregoing. We may require you to relocate the Restaurant to another location upon: (A) expiration of the original term or any extension or renewal of your lease; or (B) any significant damage to the Premises or surrounding areas, or other event that would provide you with an option or right to terminate the lease. We will not require relocation if you prefer to remain at the same location and you demonstrate to our reasonable satisfaction that:

(i) the trade area and location meet our then-current criteria for new restaurants; and (ii) you can restore or renovate the Premises to our then-current standards and agree in writing to do so if approved. You must give us notice not less than 60 days before the expiration of your lease, and you must give us written notice within five days after the occurrence of any event covered by (B) above. Our right to require you to relocate is conditioned upon: (1) the availability of a location approved by us for such relocation; (2) our offering to extend the Term of this Agreement for not less than five years, or at our option, offering to enter into our then-current form of franchise agreement (which will include an initial term of 5 years); and (3) the Territory (as measured from the new location) not extending into the "Territory" of any other Papa ~~John's~~Johns Pizza franchisee. YOU ACKNOWLEDGE THAT SUCH RELOCATION, IF REQUIRED, WOULD INVOLVE SUBSTANTIAL ADDITIONAL INVESTMENT BY YOU DURING THE TERM OF THIS AGREEMENT, AND MAY INCLUDE AN OBLIGATION TO LEASE OR BUY LAND, CONSTRUCT A FREE-STANDING BUILDING, INSTALL LEASEHOLD IMPROVEMENTS AND/OR PURCHASE NEW EQUIPMENT AND SIGNAGE.

## **7. Proprietary Marks; Copyright.**

(a) **Ownership of Copyrights.** You acknowledge that: (i) we may authorize you to use certain copyrighted or copyrightable works (the "Copyrighted Works"), including the Manuals; (ii) the Copyrighted Works are the valuable property of us; and (iii) your rights to use the Copyrighted Works are granted to you solely on the condition that you comply with the terms of this Agreement. You acknowledge that we will further create, acquire or obtain licenses for certain copyrights in various works of authorship used in connection with the operation of the Restaurant, all of which shall be deemed to be Copyrighted Works under this Agreement. Copyrighting of any material by us will not be construed as causing the material to be public information. All data provided by you, uploaded to our computer system from your computer system, and/or downloaded from your computer system to our computer system is and will be owned exclusively by us, and we will have the right to use that data in any manner that we deem appropriate without compensation to you.

(b) **Ownership; Use by Others.** You acknowledge that we are the sole and exclusive owner of: (i) the Marks and all goodwill associated with or generated by use of the Marks; (ii) the Copyrighted Works; and (iii) any and all data generated by use of the Copyrighted Works. You acknowledge that all works of authorship related to the System that are created in the future will be owned by, or licensed to, us or our Affiliates. Your use of the Copyrighted Works and the Marks does not vest you with any interest therein other than the non-exclusive license to use the Copyrighted Works and Marks granted in this Agreement. You will execute any documents that we or our counsel deem necessary for the protection of the Copyrighted Works or the Marks or to maintain their validity or enforceability, or to aid us in acquiring rights in or in registering any of the Marks or any trademarks, trade names, service marks, slogans,

logos or emblems that we subsequently adopt. You will give notice to us of any knowledge that you acquire concerning any actual or threatened infringement of the Copyrighted Works or the Marks, or the use by others of names, marks or logos that are the same as or similar to the Marks. You will cooperate with us in any suit, claim or proceeding involving the Marks or the Copyrighted Works or their use to protect our rights and interests in the Marks or the Copyrighted Works. We, in our sole discretion, control all decisions concerning the Marks or the Copyrighted Works.

(c) **Use of Marks.** You have the right to use the Marks only in connection with the promotion and operation of the Restaurant or the Chain, and only in the manner that we authorize. Your right to use the Marks is limited to use during the Term of this Agreement and in compliance with specifications, procedures and standards prescribed by us from time to time. You will prominently display the Marks in the manner that we prescribe on all signs, plastic and paper products, and other supplies and packaging materials that we designate. You will not fail to perform any act required under this Agreement, or commit any act, that would impair the value of the Marks or the goodwill associated with the Marks. You will not at any time engage in any business or market any product or service under any name or mark that is confusingly or deceptively similar to any of our Marks. You will not use any of the Marks as part of your corporate or trade name, or as part of any e-mail address, web-site address, domain name, or other identification of your business in any electronic medium without our express written consent. You will not use any trademark, trade name, service mark, logo, slogan or emblem that we have not authorized for use in connection with the Restaurant, including any co-branding or cross-promotional efforts containing the name, trademark, service mark, logo or emblem of any third party without our approval. You will obtain such fictitious or assumed name registrations as required by applicable state law and forward to us copies of the same upon request.

(d) **Designation as You.** You will identify yourself as the owner of the Franchise in conjunction with the use of the Marks, including on checks, invoices, receipts, letterhead and contracts, as well as at conspicuous locations on the Premises in a form that specifies your name, followed by the phrase "an independently owned and operated franchise" or such other phrase as we direct.

(e) **Discontinuance of Use; Additional Marks and/or Copyrights.** You must modify or discontinue use of any Mark or Copyrighted Work if a court of competent jurisdiction or other governing body orders it and do so within the timeframe required by such court or governing body, or if we in our sole discretion deem it necessary or advisable. You will comply with our directions regarding any such Mark or Copyrighted Work within 30 days after receipt of notice from us. You will also use such additional or substitute Marks or Copyrighted Works as we direct. We will not be obligated to compensate you for any costs or expenses incurred by you to modify or discontinue using any Mark or Copyrighted Work or to adopt additional or substitute Copyrighted Works or Marks.

**8. Advertising.**

(a) **Contributions and Expenditures.** Recognizing the value of advertising and the importance of the standardization of advertising to the furtherance of the goodwill and public image of the System, each month during the Term, you will make the following contributions and expenditures for advertising, marketing and promotion of the Papa ~~John's~~Johns brand:

(i) To the extent you are not obligated to perform grand opening marketing pursuant to a development agreement, you must submit to us proof at least four (4) weeks prior to opening of the Restaurant that you have a grand opening marketing budget of Five Thousand Dollars (\$5,000.00) to be used to support pre-opening and for use within the first ninety (90) days of the opening of the Restaurant. You must provide us receipts and invoices evidencing the expenditure of such funds within 120 days after the opening of the Restaurant. The sufficiency of such receipts and invoices will be in our reasonable discretion. If you do not provide reasonable evidence of the required grand opening marketing budget as outlined herein, we may require that you place the grand opening marketing funds into an escrow account.

(ii) In addition to the Grand Opening expenditures required under subsection (i) above, you shall expend, at a minimum, an aggregate amount equal to 2% of the annual Net Sales of the Restaurant on local promotion, marketing and advertising efforts.

(b) **Marketing Fund.** Papa John's Marketing Fund, Inc., a Kentucky nonstock, nonprofit corporation (the "Marketing Fund"), has been organized for the purposes set forth in the Articles of Incorporation and By-Laws of the Marketing Fund, as they may be amended from time to time. You will automatically become a non-voting member of the Marketing Fund upon the execution of this Agreement. We will contribute a portion of the Royalty to the Marketing Fund on your behalf. The portion so contributed will equal 25% of such amount as designated from time to time as the contribution rate for traditional Papa ~~John's~~Johns restaurants.

(i) You acknowledge that the Marketing Fund is intended to increase recognition of the Marks and to further the public image and acceptance of the System and that we, the Marketing Fund and the directors of the Marketing Fund do not undertake any obligation to ensure that expenditures by the Marketing Fund in or affecting any geographic area are proportionate or equivalent to contributions to the Marketing Fund by Papa ~~John's~~Johns restaurants operating in such geographic area or that you or the Restaurant will benefit directly or in proportion to your contribution to the Marketing Fund. We (including our officers, directors, agents and employees) are not a fiduciary or trustee of the contributions to, or the assets of, the Marketing Fund. We, the Marketing Fund and our respective officers, directors, agents and employees will not be liable to you with respect to the maintenance, direction or administration of the Marketing Fund, including with respect to contributions, expenditures, investments and borrowings, except for acts constituting willful misconduct.

(ii) We and our Affiliates will make contributions to the Marketing Fund for each Papa ~~John's~~Johns restaurant that we own on the same basis as required of comparable franchisees within the System.

(iii) The funds collected by the Marketing Fund, and any earnings thereon, are not and will not be our asset or the asset of any franchisee.

(iv) Although the Marketing Fund is intended to be of perpetual duration, the Board has the right to terminate the Marketing Fund. However, the Marketing Fund may not be terminated until all monies held by it have been expended for the purposes set forth in its Articles of Incorporation and By-Laws or distributed as permitted by law.

(c) **Regional Cooperative Advertising.** We have the right, in our sole discretion, to designate from time to time a geographical area in which the Restaurant is located for the purpose of establishing an advertising cooperative (the "Cooperative"). If a Cooperative has been established applicable to the Restaurant at the time you commence operations, you immediately become a non-voting member of such Cooperative. If a Cooperative applicable to the Restaurant is established at any later time during the Term, you will become a non-voting member of such Cooperative no later than 30 days after the date on which the Cooperative commences operation. In no event will the Restaurant be required to contribute to more than one Cooperative. We may designate, from time to time, a formula for calculating a proration or reduction of the contribution rate for Papa ~~John's~~Johns restaurants in a Cooperative based on media coverage, demographics or other factors. We will contribute a portion of the Royalty to the Cooperative on your behalf. The portion so contributed will equal 25% of such amount as designated from time to time as the contribution rate for traditional Papa ~~John's~~Johns restaurants. The following provisions apply to each Cooperative:

(i) Each Cooperative must be organized and governed in a form and manner conforming to applicable state law, but your obligation hereunder to participate in and make monetary contributions to a Cooperative is not dependent on any organizational formalities. Each Cooperative will commence operation on a date that we approve or designate, which will, for purposes of this Agreement, constitute the date that the Cooperative is "established." Your contribution obligation will commence on that date (or on the date of this Agreement, if a Cooperative applicable to the Restaurant has already been established at that time). On all matters to be voted on by the Cooperative's membership, each voting member has one vote for each standard Papa ~~John's~~Johns restaurant it owns.

(ii) Each Cooperative is organized for the purposes of producing and conducting general advertising, marketing and promotional programs and activities, including both print and electronic media, for use in and around the applicable geographic area and developing standardized promotional materials for use by the members and neither you nor the Cooperative may use member contributions for any other purpose.

(iii) We will make contributions to each Cooperative of which we are a member on the same basis as required of comparable Papa ~~John's~~Johns restaurant franchisees within the System.

(iv) No advertising, marketing or promotional programs or materials may be used by the Cooperative or furnished to its members, and no advertising, marketing or promotional activities may be conducted by the Cooperative, without our prior written approval. All such programs, materials and planned activities must be submitted to us for approval in accordance with the procedure set forth below. Advertising agencies employed by a Cooperative must be approved by us.

(v) We will make your contributions to the Cooperative on the date and in the manner designated by the Cooperative. You must also submit such statements and reports as may be designated from time to time by us or the Cooperative.

(vi) Notwithstanding the foregoing, we, in our sole discretion, may, upon written request of a franchisee stating reasons supporting such request, grant to any

franchisee an exemption from the requirement of membership in a Cooperative. Such an exemption may be for any length of time and may apply to one or more Papa ~~John's~~Johns restaurants owned by such franchisee. We may also exempt one or more restaurants owned or controlled by us from the requirement of membership in a Cooperative for such periods as we reasonably deem appropriate. Our decision concerning an exemption is final.

(d) **Supplemental Advertising.** You have the right to conduct, at your separate expense, supplemental advertising, marketing or promotional programs or activities in addition to the expenditures specified herein. All such supplemental advertising, marketing or promotional programs or activities and all materials to be used in connection therewith must be either prepared or previously approved by us within the 90-day period preceding their intended use, or approved by us as provided below.

(e) **National Promotions.** We may require you to participate in national promotions that we believe are of value to the System and for which domestic systemwide participation is essential to, or a significant element in, the value or success of the promotion. These promotions may include (by way of example and not of limitation or exclusion): (i) offering of premium or other specialty promotional products which may require you to purchase non-standard inventory items; (ii) customer service incentives; and (iii) sponsorships or association with selected promotional associates.

(f) **Our Approval.** Before their use by the Cooperative or by you, samples of all advertising, marketing and promotional materials not prepared or previously approved by us within the 90-day period preceding their intended use, including co-branding or cross-promotional efforts containing the name, trademark, service mark, logo or emblem or any third party, must be submitted to us (to the attention of your designated Papa ~~John's~~Johns Marketing team contact unless otherwise directed by us) for our approval, to ensure consistency with the then-current standards and image of the System and protection of the Marks and the goodwill associated therewith. If disapproval is not received within 20 days from the date of receipt by us of such materials, we will be deemed to have given the required approval. To be considered pre-approved, advertising, marketing, and promotional materials must be identical to what was previously submitted and approved, except for non-substantive changes such as changes to dates and store addresses. The Cooperative and you may not use, and must cease using, any advertising or promotional materials that we may at any time disapprove, regardless whether we have previously approved any such items.

(g) **Our Advertising.** We may from time to time expend our own funds to produce marketing or promotional materials and conduct advertising as we deem necessary or desirable. In any advertising, marketing or promotional efforts conducted solely by or for us, we have the sole discretion to determine the products and geographical markets to be included, and the medium employed and we have no duty or obligation to supply you with any advertising, marketing or promotional materials produced by or for us at our sole expense.

(h) **Ownership of Advertising.** We are the sole and exclusive owner of all materials and rights that result from advertising and marketing programs produced and conducted, whether by you, us, the Cooperative or the Marketing Fund. Any participation by you in any advertising, whether by monetary contribution or otherwise, does not vest you with any rights in the Marks employed in such advertising or in any tangible or intangible materials or rights, including copyrights, generated by such advertising. You will assign to us any contractual

rights or copyright that you acquire in any advertising and execute such documents or instruments as we may reasonably require in order to implement the terms of this Section 8.(h).

**(i) Internet Website, Social Media and Other Digital or Electronic Marketing.** You specifically acknowledge that any internet website, social media site or channel (such as, but not limited to, Facebook and Twitter accounts or sites) and other digital or electronic marketing channels or media, whether now existing or hereafter created (collectively "Electronic Channels") are deemed "advertising" under this Agreement and will be subject to, among other things, Sections 8.(f) and 8.(h) above. In connection with any Electronic Channel:

**(i)** If required by us, you will establish a separate Electronic Channel, but will only have one or more Electronic Channel page(s), as designated by us, within our Electronic Channel;

**(ii)** If we approve, in writing, a separate Electronic Channel for you, then each of the following provisions apply:

**(A)** You will not establish or use the Electronic Channel without our prior written approval.

**(B)** Before establishing the Electronic Channel, you must submit to us (to the attention of your designated Papa ~~John's~~ Johns Marketing team contact unless otherwise directed by us), for our prior written approval, a sample of the proposed Electronic Channel domain name, format, visible content (including proposed screen shots), and non-visible content (including meta tags) in the form and manner we may reasonably require; and you will not use or modify such Electronic Channel without our prior written approval as to such proposed use or modification.

**(C)** In addition to any other applicable requirements, you will comply with our standards and specifications for websites as prescribed by us from time to time in the Manuals or otherwise in writing.

**(D)** If required by us, you will establish such hyperlinks or other link or connection to our Electronic Channel and others as we may request in writing.

**(E)** Upon expiration or termination of the Franchise, you must cease use of any Electronic Channel associated with the Restaurant and assign to us or, at our election, delete any domain name, or other Electronic Channel page, name or site containing any of the Marks or any words or combinations of words, letters or symbols that are confusingly or deceptively similar to any of the Marks.

The provisions of this Section 8.(i) also apply to Cooperatives.

**9. Telephone Number.** The only customer ordering telephone number assigned to the Restaurant is \_\_\_\_\_ (the "Telephone Number"). You must not use the Telephone Number for any other business. If you obtain any additional or substitute telephone service or tele- phone number at the Restaurant, you must promptly notify us and such additional or substitute number will be subject to this Agreement. You acknowledge that, as between us and you,

we have the sole right to and interest in all telephone numbers and directory listings associated with the Restaurants or the Marks.

Upon termination or expiration of the Franchise or transfer of the Restaurant:

- (i) you must cease using the Telephone Number;
- (ii) you must immediately take any and all actions as may be necessary to transfer the Telephone Number, any other telephone number publicized to customers and any telephone directory listings associated with the Restaurant or the Marks to us or our designee (or to a transferee, if applicable);
- (iii) you will have no further right, title or interest in the telephone numbers and listings but you remain liable to the telephone company for all charges and fees owing to the telephone company on or before the effective date of the assignment hereunder;
- (iv) as between us and you, we have the sole right to and interest in and to all telephone numbers and listings, including listing in online, digital or other electronic directories, associated with the Restaurant or the Marks;
- (v) you appoint us as your true and lawful attorney-in-fact to direct the telephone company or other directory provider to assign same to us, and execute such documents and take such actions as may be necessary to effectuate the assignment; and
- (vi) you must immediately notify the telephone company or other directory provider to assign the telephone numbers and listings to us. If you fail to promptly direct the telephone company or other directory provider to assign the telephone numbers and listings to us, we have the right to direct the telephone company or other directory provider to effectuate the Telephone Number Assignment. The telephone company or other directory provider may accept our written direction or this Agreement as conclusive proof of our exclusive rights in and to the telephone numbers and listings upon termination, expiration or transfer of the franchise and that such assignment will be automatically and immediately effective upon the telephone company's or other directory provider's receipt of such notice from us or you. If the telephone company or other directory provider requires that the parties execute the telephone company's or other directory provider's assignment forms or other documentation at the time of termination or expiration of the Franchise, our execution of such forms or documentation on your behalf constitutes your consent and agreement to the assignment. You will perform any and all acts and execute and deliver any and all documents as necessary to assist in or accomplish the assignment described herein and the Telephone Number Assignment.

#### **10. Construction, Design and Appearance; Equipment.**

(a) **Construction.** You will construct or remodel the Premises at the Location in accordance with our construction or remodeling plans and design, layout and decor specifications. You will purchase or lease the pizza preparation, beverage storage or dispensing, storage and other equipment, displays, fixtures, and furnishings that we designate. You will make no changes to any building plan, design, layout or decor, or any equipment or signage without our prior written consent, and you will maintain the interior and exterior decor in such manner as may be reasonably prescribed from time to time by us.

(b) **Signs.** You will prominently display, at your expense, both on the interior and exterior of the Premises, advertising signs in the form, color, number, location and size, and containing the Marks, logos and designs as we designate. Such signs must be obtained from a source designated or approved by us. You must obtain all permits and licenses required for such signs and you also are responsible for ensuring that all signs comply with all laws and ordinances. You will not display in or upon the Premises any sign or advertising of any kind to which we object.

(c) **Information System.** You must: (1) acquire, maintain and use in the operation of the Restaurant the "Information System" (as defined below) for the Restaurant and the right to use, for the Term, the "Designated Software" (as defined below) in the manner specified by us; (2) obtain any and all hardware, peripheral equipment and accessories, arrange for any and all support services and take all other actions that may be necessary to prepare or enable the Information System and the Designated Software to operate as specified by us (including installation of electrical wiring and data cabling, and temperature and humidity controls); and (3) install and use the Designated Software on the Information System, and use such items solely in the operation of the Restaurant in the manner specified by us. You are responsible for all costs associated with the foregoing, including but not limited to transportation, installation, sales, use, excise and similar taxes, site preparation and disposal of retired hardware. You must operate only Designated Software on the Information System. The Designated Software, and all additions, modifications and enhancements thereto, constitute "confidential information," and are subject to the provisions of Section 17 of this Agreement.

(i) **Definitions.** For purposes of this Agreement, the terms listed below have the meanings that follow them.

(A) **"Designated Software"** - The software, programming and services as we specify or require from time to time for use by you in the Restaurant. The Designated Software may consist of and/or contain either or both of the following:

(1) **Packaged Software.** Software purchased and licensed from us or a third party and/or third-party subcomponents that we have the authority to license or sell to you ("Packaged Software") pursuant to and in accordance with agreements that we enter into with such third-party vendors (collectively, the "Packaged Software Agreements").

(2) **Proprietary Programs.** Proprietary computer software programs that we develop or cause to be developed and that are owned by us or licensed exclusively to us and that we designate for use on the Information System in the operation of a Restaurant, including any modifications, additions or enhancements to such software programs ("Proprietary Programs").

(B) **"Information System"** The Designated Software and those brands, types, makes, and/or models of communications and computer systems, hardware, network devices, security systems and internet access platforms specified and required by us for: (i) use in the Restaurant; (ii) between or among Papa ~~John's~~Johns Restaurants and/or us; or (iii) between customers, vendors or suppliers and the Restaurant. The Information System may include, but is

not necessarily limited to, hardware and point of sale systems, back-office systems, information storage, retrieval, data transmission systems, third party integrations, inventory management, software maintenance, reporting and analytics, research and development system, high speed broadband connectivity and monitoring, methods and means of encryption, internet and intranet access, and security systems.

(ii) **Use of Information System.** You will record and store all customer transactions on the Information System and in so doing comply with the provisions of any applicable laws and regulations related to data protection and not use the data and information for any purpose other than in the operation of the Restaurant.

(iii) **Grant of Software License.** We will grant to you, and cause our Packaged Software vendors to grant to you, a nonexclusive, nontransferable, nonassignable license to use the Designated Software, subject to the same terms and conditions under which the Designated Software is licensed to our other franchisees in general. You are bound by the terms of each Packaged Software Agreement. The Designated Software and any data generated by the use of the Designated Software are the valuable, proprietary property and trade secret of us and/or our Packaged Software vendors, and you must use the utmost care to safeguard the Designated Software and any data generated by the use of the Designated Software and to maintain the copyright protection and the secrecy and confidentiality thereof. We have the right to use the data as we determine appropriate, provided, we will: (i) not use or sell the data to any "Competitive Business" (as defined in Section 16.(f)); and (ii) consult with the FAC regarding any sale to or use by a third party of data generated by franchisees (limited to phone numbers, names, street addresses, email addresses and purchase history).

(iv) **Access; Enhancements and Changes.**

(A) **Access to System.** We have the right at all times to access the Information System and to retrieve, analyze, download and use the Designated Software and all software, data and files stored or used on the Information System. We may access the Information System in the Restaurant or from other locations, including our headquarters and regional offices. You must store all data and information that we designate from time to time on the Information System. No unauthorized data or information may be stored on the Information System.

(B) **Enhancements and Changes.** We will notify you of, and you must promptly implement, all upgrades, modifications, enhancements, extensions, error corrections and other changes to Designated Software and the other components of the Information System developed or adopted by us for use in the operation of the Restaurant.

(C) **Information Systems Maintenance.** You must maintain the Information System in accordance with our published maintenance program, as amended from time to time (which will also be adhered to by our Papa ~~John's~~[Johns](#) restaurants). If you fail to maintain the Information System in accordance with our published maintenance program, you must reimburse any costs that we or our agents incur to bring your Information System up to our standards. The published maintenance program may include a hardware spares program and a preventive maintenance program. Such maintenance is necessary to help ensure the proper functioning of the Information System. You will not attach any device to the Information System without our prior written approval. If any component of the Information System reaches its end of

useful life, and the ongoing use of such component would, in our discretion, result in an unreasonable security risk, then you must immediately replace such components with approved replacements. Any installation of hardware for the Information System must be performed securely according to the terms and conditions outlined herein and as such terms and conditions may be updated by us at our discretion. We reserve the right to disable the Information System at the Restaurant if we deem reasonably necessary for security purposes due to your utilization of such non-secure end-of-life components or non-secure installation of hardware. You agree to dispose of non-secure end-of-life hardware in accordance with PCI standards.

**(D) Ideas and Suggestions.** You must promptly disclose to us all ideas and suggestions for modifications or enhancements of the Information System or any component thereof that are conceived or developed by or for you, and we and our Affiliates have the right to use and license such ideas and suggestions without compensation to you therefor. All modifications and enhancements made to the Information System, together with the copyright therein, are our property (or of the appropriate Packaged Software vendor if we so designate), without regard to the source of the modification or enhancement, and you hereby assign all of your right, title, and interest in any ideas, modifications, and enhancements to us (or the appropriate Packaged Software vendor if we so designate). You must execute any documents, in the form provided by us, that we determine necessary to reflect such ownership.

**(E) Removal.** Upon expiration or termination of this Agreement, you must: (1) allow our employees or agents to remove the Designated Software from the Information System; (2) immediately return to us the Designated Software, each component thereof, any data generated by the use thereof, all documentation for the Designated Software and other materials or information that relate to or reveal the Designated Software and its operation; and (3) immediately destroy any and all back-up or other copies of the Designated Software or parts thereof, and any data generated by the use of the Designated Software (other than financial information relating solely to you). Any destruction of hardware must be completed in accordance with PCI standards and requirements.

**(v) On-Site Installation Fee.** Our Affiliate, Papa John's USA, Inc. ("PJUSA"), offers installation services for the Designated Software. You are not obligated to use PJUSA's services but installation must be performed by a qualified provider approved by us. If PJUSA installs the Designated Software on your Information System, you must pay to PJUSA upon installation an on-site installation fee (the "On-Site Installation Fee") at its then-current rates, plus all reasonable travel, lodging and other expenses that PJUSA incurred in connection with the installation. In exchange for this On-Site Installation Fee, PJUSA will install the Designated Software on the Information System and provide one or more system installers/trainers at the Restaurant, generally, for a two day install, one day before the Restaurant opens for installation and training and the day the Restaurant opens, for support. This installer/trainer will assist with the configuration and testing of the Information System. If you are opening your first Restaurant, a four-day install will generally be required, unless we approve reduction to a 2 day install. The first 3 days will include installation, testing, configuration and training of your employees in the use of the Information System. The 4th day will be the opening day of the Restaurant and the installer/trainer will remain on site at the Restaurant opening for support. PJUSA may also charge additional On-Site Installation Fees, at its then-current rate, each time a modification of additional days or services to the agreed upon installation is performed at the Location. The On-Site Installation Fees does not include any hardware, supplies, data cabling, electrical wiring, or shelving installation or other site work necessary to prepare the

Restaurant of the Information System. These are your sole responsibility. However, some or all of these materials and services may be offered by PJUSA or its agent for an additional fee.

(vi) **On-Site Support Fee.** You must pay a fee to PJUSA each time on-site support is required for enhancements, modifications or maintenance to the Information System a fee for such on-site support (the "On-Site Support Fee") at its then-current rate. Generally, enhancements and upgrades are accomplished electronically through direct access to the Information System, in which case no on-site support or fee payment is required.

(vii) **Help Desk Service Fee.** PJUSA may offer software support services for the Information System. If you choose to use these services, you must pay to PJUSA a recurring software support service fee ("Help Desk Service Fee") equal to PJUSA's then-current fee and on a timeframe determined by PJUSA. In exchange for this fee, PJUSA will provide general assistance and support for your Information System.

(viii) **Software Maintenance Fee.** You must pay to PJUSA a monthly software maintenance fee ("Software Maintenance Fee") at its then-current rate. This Software Maintenance Fee covers PJUSA's continuing efforts to enhance, develop and upgrade the Information System, including: functionality for point-of-sale; back office; makeline; inventory management; information storage, data transmission systems, retrieval systems, third party integrations, high speed broadband connectivity and monitoring, methods and means of encryption, internet and intranet access, reporting and analytics; software maintenance; research and development; upgrades and enhancements to installation media; if any, that we adopt, require or provide. Installation on the Information System, if required, will be charged as described in Section 10.(c)(v).

(ix) **Changes in Fees.** The On-Site Installation Fee, the On-Site Support Fee, Help Desk Fee, the Software Maintenance Fee and/or per diem charges may be changed by PJUSA from time to time; provided that the Help Desk and Software Enhancement Fees are intended to cover PJUSA's actual costs, including reasonable allocations of direct, actual overhead, any associated taxes, and other expenses related to the Information System and the services that PJUSA provides.

(x) We may require you to modify, enhance and/or replace all or any part of the Information System and/or the Designated Software at your expense, and you must, within 120 days of receipt of written notice from us, acquire, or acquire the right to use for the remainder of the Term, the modified, enhanced or replacement version of the Information System and/or Designated Software specified by us. Such written notice may be in the form of a physical or electronic (email or other software-based messaging) communication. You must take all other actions necessary to enable the modified, enhanced or replacement Information System and Designated Software to operate as specified by us. Any such modifications, enhancements, and replacements may require you to incur costs to purchase, lease and/or license new or modified computer hardware and/or software or other equipment and to obtain different and/or additional service and support services. You acknowledge that changes or advancements in technology are likely to occur and that the timing and pace of such changes or advancements are not predictable. We have the right to establish reasonable new standards for implementation of new technology as part of the System and you will promptly adopt and implement such new standards as if this Agreement were periodically revised for that purpose. Such new standards may apply to the

Information System or the Alternative Ordering Systems or may consist of entirely new technologies that we, in our discretion, determine are valuable enhancements or additions to the System.

(xi) **Warranties and Limitation of Liability.** We represent and warrant to you that if we sell or license the Proprietary Programs to you: (A) we will have all rights, licenses and authorizations necessary to license the Proprietary Programs to you, subject only to non-exclusive licenses granted to others; and (B) the Proprietary Programs will not, and as a result of any enhancements, improvements or modifications provided by us will not, to the best of our knowledge, infringe upon any United States patent, copyright or other proprietary right of any third party. If your use of the Proprietary Programs as provided by us is enjoined as a result of a claim by a third party of patent or copyright infringement or other violation of proprietary rights, we will, in our sole discretion, either: (1) procure for you the right to continue use of the Proprietary Programs as contemplated hereunder; or (2) replace the Proprietary Programs or modify it such that there is no infringement of the third party's rights; and such action by us will be your sole and exclusive remedy against us in such event. We do not represent or warrant to you, and expressly disclaim, any warranty that the Proprietary Programs are error-free or that the operation and use of the Proprietary Programs by you will be uninterrupted or error-free. We have no obligation or liability for any expense or loss incurred by you arising from use of the Proprietary Programs in conjunction with any other computer program. Without limiting the generality of the foregoing, you are solely responsible for inputting into and configuring the Information System to accommodate information of local applicability, including state and local taxability of goods and services sold or provided in the Restaurants and state and local sales tax rates.

**EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE DESIGNATED SOFTWARE OR ANY PORTION THEREOF, INCLUDING ANY PROGRAM DOCUMENTATION OR OTHER MATERIAL FURNISHED HEREUNDER, OR ANY COMPONENT THEREOF, AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT THERETO ARE EXPRESSLY EXCLUDED. WE HAVE NO LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES.**

(d) **Maintenance, Remodeling, Re-equipping, Enhancements and Replacements.** You must at all times to maintain the Restaurant in accordance with our standards, and, within 90 days from the date of written notice from us, remodel or re-equip or perform such maintenance at the Restaurant in accordance with the specifications we provide. Such maintenance, remodeling and re-equipping may include: replacing worn out, obsolete, or dated equipment, fixtures, furnishings and signs; structural modifications; painting and redecorating; and purchasing more efficient or improved equipment. We may require you to perform maintenance and remodeling and to purchase equipment at such times as we deem necessary and reasonable; provided, that we may not require any significant remodeling of the Restaurant during the first two years of the Term (this restriction is not applicable to any Renewal Term even if a new Franchise Agreement is executed in connection with the renewal of the Franchise). You acknowledge that we cannot estimate the costs of future maintenance, enhancements, modifications, and replacements to the Restaurant, equipment, signage, the Information System or other items. YOU ACKNOWLEDGE THAT EQUIPMENT,

ADDITIONS, ENHANCEMENTS, ALTERATIONS, MAINTENANCE AND RENOVATIONS REQUIRED BY US MAY INVOLVE SUBSTANTIAL ADDITIONAL INVESTMENT BY YOU DURING THE TERM.

**11. Operations; Standards of Quality; Inspections.**

(a) **Principal Operator.** You must designate an individual to serve as the "Principal Operator" of the Restaurant, provided, if you are developing and operating multiple Restaurants pursuant to a Development Agreement, you need designate only one Principal Operator for your operation, not one for each Restaurant. The Principal Operator must meet the following qualifications:

(i) The Principal Operator must own at least a 5% equity interest in you; provided that you will not be in default of this requirement if the Principal Operator is entitled to a bonus of not less than 5% of the net profits of the Restaurant, payable after the end of each Period, and also has the right to acquire not less than a 5% equity interest in you within 12 months of his or her hire date, which rights are evidenced by a written agreement between the Principal Operator and you. You must provide us with a copy of any such agreement upon request. Once the Principal Operator has acquired an equity interest in you, he or she must continue to own that interest (or a greater interest) during the entire period he or she serves as the Principal Operator.

(ii) The Principal Operator must devote full time and best efforts to the supervision and conduct of the development and operation of the Restaurant and, as required in this Agreement, must agree to be bound by the confidentiality and non-competition provisions of the Owner Agreement. At such time as the Principal Operator becomes an owner of an interest in you, he or she must agree to be bound by all the provisions of the Owner Agreement.

(iii) The Principal Operator must be a person approved by us who completes our initial training requirements and who must participate in and successfully complete all additional training as we may reasonably designate.

(iv) The Principal Operator must be proficient in writing and speaking English, to ensure compliance with our operational standards and to ensure efficient communications with customers and us.

If, at any time for any reason, the Principal Operator no longer qualifies to act as such, you must promptly designate another Principal Operator subject to the same qualifications listed above. Any sale or transfer of any portion of the Principal Operator's interest in you, if any, that would reduce the Principal Operator's equity interest or voting rights in you to less than 5% of the total is deemed a transfer of an interest and is subject to the terms and conditions of Section 14 hereof; and any failure to comply with such terms and conditions is a default by you under this Agreement. However, if the Principal Operator owns 5% or less of you, then a transfer of the Principal Operator's interest to you, another shareholder, member or partner of you or to a successor Principal Operator does not require our consent, is not be subject to our right of first refusal and no transfer fee will be required. You must promptly notify us in writing of any such transfer and provide all information about the transferee and the terms of the transfer as we may reasonable request. If it is determined that you have designated an unapproved Principal Operator, you will be considered in default of this Agreement and we may terminate this

Agreement subject to any cure periods outlined herein. Such unapproved Principal Operator must be removed immediately regardless of any cure periods.

(b) **Management of the Restaurant.** The Principal Operator must personally devote his/her full time and best efforts to the management and operation of the Restaurant in order to ensure compliance with this Agreement and to maintain our high standards. Management responsibility includes: presence of the Principal Operator or a designated manager at the Restaurant during all business hours; maintaining the highest standards of product quality and consistency; maintaining the Restaurant in the highest condition of sanitation, cleanliness and appearance; and supervising employees to ensure that the highest standard of service is maintained and to ensure that your employees deal with customers, suppliers, us, and all other persons in a courteous and polite manner.

(c) **Compliance with Our Standards.** You have full responsibility for the conduct and terms of employment for your employees and the day-to-day operation of your business, including hiring, termination, pay practices and any other employment practices. However, in order to ensure compliance with the quality standards and other requirements of the System, you must operate the Restaurant through strict adherence to the standards, specifications and policies of the System as they now exist, and as they may from time to time be modified. Such standards and policies include: (i) specifications and preparation methods for food and beverages; (ii) days and hours of operation; (iii) menu items and services offered; (iv) requirements and specifications for uniforms and/or attire of Restaurant personnel; (v) use of specified emblems and Marks on containers, bags, boxes, napkins; and (vi) methods of payment accepted from customers; (vii) data privacy and security (viii) cleanliness, sanitation and public health precautions and procedures; and (ix) handling of customer complaints; and (x) specifications and approval or disapproval of certain furnishings or equipment. You acknowledge that our specifications and standards with respect to public health or safety, or the health or safety of employees and data privacy and security may be stricter or more rigorous than the requirements of applicable laws and that you must in all cases adhere to our standards and specifications.

(d) **Training.** You will, at your own expense, conduct at the Restaurant such training and instruction, using such materials, equipment and supplies, as we may reasonably require from time to time. Should any employee or prospective employee of yours perform work that in our reasonable judgment requires additional operational training, skills or knowledge, such employee must take part in such additional training and instruction. You are solely responsible for all wages, travel and living expenses, and all other costs incurred by you and your employees in connection with any training or instruction that we provide or require.

(e) **Manuals.** We will lend to you one or more manuals that contain: (i) the mandatory and suggested specifications, standards and operating procedures prescribed from time to time by us; and (ii) information relative to other obligations hereunder and the operation of the Restaurant (the "Manuals"). The Manuals at all times remain our sole property. We may, from time to time, revise the contents of the Manuals. To the extent that we deem it necessary or appropriate, we will provide you with policy and procedure statements or other written notice of specifications, standards and procedures. You will promptly adopt and use the formulas, methods, procedures, policies, menus, recipes, food products and other standards and specifications

contained in the Manuals, policy and procedure statements and other written notices as issued and/or as modified from time to time by us. You acknowledge that all information in the Manuals, policy and procedure statements and other notices constitute confidential information and trade secrets, and may not be disclosed at any time by you. You will not copy any part of the Manuals or any other communication or information provided by us.

**(f) Variations in Standards.** You may not implement any change to the System without our prior written consent. However, because complete and detailed uniformity under varying conditions may not be possible or practical, we specifically reserve the right, in our sole discretion and as we may deem in the best interests of you or the Chain, to vary the System, including specific standards, policies and/or procedures, within the Restaurant or any other restaurant(s) in the Chain based upon peculiarities of a particular location or circumstances, including: density of population and other demographic factors; size of the Territory; business practices or customs; and any other condition that we deem to be of importance to the operation of such restaurant(s) or the Chain. You acknowledge that because of these factors and others, there may be variations from standard specifications and practices in the Chain and that you are entitled to require us to grant like or similar variations or privileges to you.

**(g) Your Developments.** We have the right to use and incorporate into the System for the benefit of other franchisees and us any modifications, ideas or improvements, in whole or in part, developed or discovered by you or your employees or agents, without any liability or obligation to you or the developer thereof.

**(h) Compliance with Laws and Other Business Practices.** You will ensure that your operation of the Restaurant is at all times in compliance with all applicable laws, ordinances, rules and regulations of all governmental bodies, including, without limitation; all federal and state wage and hour laws and regulations; all laws and regulations relating to antitrust, restraint of trade, unfair competition or unfair or deceptive trade practices; all applicable tax laws, including sales tax, payroll tax and income tax laws and regulations; workers compensation and other insurance laws and regulations; and all laws and regulations relating to public health or safety or health or safety of employees. As part of your responsibility to comply with all applicable tax laws, you must collect, at the applicable time of sale, all sales and use tax exemption certificates and documentation (which must be properly completed) that you are required to collect in connection with sales that are exempt from sales and use taxes, and you must retain all such exemption certificates until the applicable statute of limitations has expired. It is your sole responsibility to determine the provisions and requirements of applicable law and to ensure your compliance. We do not represent that we have detailed knowledge of the laws and regulations of the state, locality or other legal jurisdiction in which the Restaurant is located. In any case, we do not dispense legal advice to you and therefore we do not undertake to evaluate or make any judgment with respect to your compliance with applicable law. However, under Sections 19.(b) and 19.(c), we reserve the right to invoke our contractual remedies if you are found to be in violation of any law or regulation by the legal authority charged with enforcement of such law or regulation or via a civil proceeding, or if any such violation otherwise comes to our attention. You agree to secure and maintain in force all required licenses, permits and certificates. You shall file all tax returns and pay all taxes before they become delinquent. Furthermore, if you are subject to any withholding taxes on royalty fees or other payments due, you shall provide us with quarterly evidence that such tax has been remitted to the appropriate governmental agency on a quarterly basis. Additionally, if requested, you shall provide us with

quarterly evidence of proper sales tax exemption certificates for any sales to tax exempt groups (i.e. schools, churches, and other non- profits).

(i) **PCI Compliance.** You agree to abide by the Payment Card Industry Data Security Standards enacted by the applicable Card Associations, applicable to your business. If you know or suspect a security breach, you shall immediately notify us. You shall promptly identify and remediate the source of the compromise. You assume all responsibility for providing all notices of breach or compromise and all duties to monitor credit histories and transactions concerning your customers. We will use commercially reasonable efforts to ensure that any required technology complies with applicable law, assuming you properly operate and maintain the technology.

(j) **Anti-Terrorism Measures.** You and your owners acknowledge that Executive Order 13224 (the “Executive Order”) prohibits transactions with terrorists and terrorist organizations and that the government of the United States has adopted and may in the future adopt other anti-terrorism measures (the “Anti- Terrorism Measures”). You certify that neither you or your owners nor any of your employees, affiliates or any other person or entity associated with the Store is: (1) a person or entity listed in the Annex to the Executive Order; (2) a person or entity otherwise determined pursuant to the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism (such a person or entity and those persons and entities listed in the Annex to the Executive Order are referred to herein as “Terrorists”); (3) a person or entity who assists, sponsors or who supports Terrorists or acts of Terrorism (“Sponsors of Terrorism”); or (4) owned or controlled by Terrorists or Sponsors of Terrorism. Furthermore, you covenant that neither you or your owners, nor any of your employees, affiliates or any other person or entity associated with the Store shall, during the term of this Agreement, become a person or entity described in clause (1), (2) or (3) above, or shall otherwise become a target of any Anti-Terrorism Measures. Should you or any of your owners, employees, affiliates, or any person or entity associated with the Store, violate the provisions of this paragraph, we will have the right to immediately terminate this Agreement.

(k) **Privacy and Data Protection.** You will: (i) comply with all applicable international, national, federal, provincial, state, or local laws, codes or regulations that regulate the processing of information that can be used (alone or when used in combination with other information within your control) to identify, locate or contact an individual or pertains in any way to an identified or identifiable individual (“Personal Information”) in any way, including, but not limited to, national and state data protection laws, laws regulating marketing communications and/or electronic communications, information security regulations and security breach notification rules (“Privacy Laws”); (ii) employ administrative, physical, technical and organizational safeguards that:

(a) are designed to prevent the unauthorized collection, access, use and disclosure of Personal Information (“Safeguards”); and (b) meet or exceed industry standards regarding Safeguards, including payment card industry (“PCI”) standards, norms, requirements and protocols to the extent applicable; (iv) comply with all Safeguards that have been and are in the future developed and compiled by us that relate to Privacy Laws and the privacy and security of Personal Information; (v) refrain from any action or inaction that could cause us to breach any Privacy Laws; (vi) do and execute, or arrange to be done and executed, each act, document and thing we deem necessary in our business judgment to keep us in compliance with the Privacy Laws. You will be fully responsible for any unauthorized collection, access, use and/or disclosure of Personal Information arising from your action or inaction. You will immediately notify us in writing of any breaches or

suspected breaches of security (either electronic or physical) that may result in the unauthorized collection, access, use or disclosure of Personal Information or (ii) if you receive any oral or written notice of inquiry, investigation or review from any individual or administrative agency (such as the Federal Trade Commission or State Attorney Generals' offices or other similar agency in countries outside of the U.S.) that arises out of, relates to or affects Personal Information within your control. You will comply with our requests and make all reasonable efforts to assist us in relation to the investigation and remedy of any such breach of security and any claim, allegation, action, suit, proceeding or litigation with respect to the unauthorized access, use or disclosure of the Personal Information. We will use commercially reasonable efforts to ensure that any required technology complies with applicable law, assuming you properly operate and maintain the technology.

(l) **Courtesy; Cooperation.** At all times and under all circumstances, you and your employees will treat all customers and other persons, including our agents, officers, and employees, with the utmost respect and courtesy and fully cooperate with us and our agents, officers and employees in all aspects of the franchise relationship.

(m) **Inspections.** An agent, officer or employee of ours may make inspections of the Restaurant to ensure compliance with all required standards, specifications and procedures. Our representative will be allowed to inspect the condition and operation of the Restaurant and all areas of the Restaurant at any time during normal business hours. Such inspections may include:

(i) reviewing sales and order forms; (ii) observing the Principal Operator and all managers and your other employees; (iii) interviewing any such persons; (iv) interviewing customers of the Restaurant in order to evaluate your performance and to ensure that the Restaurant is being operated in accordance with the requirements of this Agreement and the Manuals; and (v) conducting any type of audit or review necessary to evaluate your compliance with all required standards, specifications or procedures. We may, from time to time, make suggestions and give mandatory instructions with respect to your operation of the Restaurant, as we consider necessary or appropriate to ensure compliance with the then-current quality standards and other requirements of the System and to protect the goodwill and image of the System.

(n) **Guidance.** You acknowledge and understand that it is not our responsibility or duty to operate the Store and we do not have the legal right to direct your employees in the operation of the Restaurant. Those functions remain your sole responsibility and duty. Further, you understand that the assistance provided to you under this Section 11 does not obligate us to provide the accounting, bookkeeping, administrative, inventory control or marketing services required for the operation of the Restaurant or to otherwise operate the Store. By providing advice or suggestions, we do not assume any of your responsibilities or duties.

## 12. **Products; OCC's; Menu.**

(a) **Products.** You will use only those food items, ingredients, beverages, cooking materials, containers, boxes, cups, packaging, menus, uniforms, and other products and materials in the operation of the Restaurant as we specifically designate or approve. You may be required to purchase from us certain products that involve trade secrets or that have been specially prepared by us or at our direction or that we consider to be integral to the System. We may require that certain products be purchased from one or more designated suppliers. Products other than those required to be obtained from us or a designated supplier may be purchased from any source, provided that the particular supplier and products have been approved by us. We

may, from time to time, amend the list of approved products and suppliers. You acknowledge that we, our Affiliates or the Marketing Fund may, from time to time, derive revenue from designated or approved suppliers based on the sale of products to you and our other franchisees. We will disclose all such revenues and the identity of the suppliers to you, but we are entitled to retain such revenues for our or our Affiliates' own use and credit without obligation to you.

(b) **Quality Control Centers.** PJ Food Service, Inc. ("PJFS") currently supplies designated and approved products to Papa [John's](#)[Johns](#) restaurants owned by us or our Affiliates and those of our franchisees from quality control centers that are owned and operated by either PJFS or us (the "QCCs"). PJFS is currently the only designated supplier of dough and Papa [John's](#)[Johns](#) proprietary pizza sauce for use by Papa [John's](#)[Johns](#) restaurants and you must purchase dough and pizza sauce from PJFS or a designated representative unless and until such time as a successor supplier of dough and/or pizza sauce is designated. PJFS has no obligation to continue supplying you or to continue to operate a QCC. If PJFS ceases operating a QCC capable of supplying the Restaurant or terminates service to you (other than as a result of the termination or expiration of the Franchise), we will provide you with the name, address and phone number of an alternative approved supplier(s) and the products to be purchased from such supplier(s). All purchases by you from the QCCs are on the terms and reasonable delivery policies and procedures specified from time to time by PJFS, including your provision of safe and unobstructed access to the Restaurant for the purpose of effecting both attended and unattended deliveries, including dates and times which may be designated by PJFS, which may include times when the Restaurant is closed. PJFS, through us, hereby reserves the right to specify different terms for different franchisees. We make no representations or warranties about any of the services performed by or any of the products produced or sold by or through PJFS or any other designated supplier.

(c) **Alternative Suppliers.** If you desire to: (i) use any equipment, supplies or other products not previously designated and approved by us; (ii) obtain designated products from a source of supply not previously approved by us; or (iii) offer any non-standard menu item or service in the Restaurant, you must furnish to us for our prior approval, free of cost, samples of such products (or a description and demonstration of any such service) in reasonable quantities, its cartons, containers and packaging and wrapping material, the quality and style of which are subject to our approval. Such distributor, supplier, products or services will be approved for use in the Restaurant only upon your receipt of written approval from us. We may withdraw our approval of any previously approved supplier, products or services and you must cease using such products, supplier and/or services upon receipt of written notice from us. In connection with our qualification of any alternative supplier identified and submitted for approval by you (including re-qualification of any supplier that, after our initial qualification and approval, fails to adhere to or maintain our quality standards or specifications) or approval of any non-standard menu item that you desire to offer, you must reimburse to us all of our reasonable expenses incurred in investigating such alternative supplier or establishing standards for, and approving the offering of such non-standard menu item or service and the supplier(s) thereof (or ingredients therefor, as the case may be), in each case including all travel, lodging and meal expenses of our employees or agents. We will not unreasonably withhold or revoke approval of any qualified third party product or supplier.

(d) **Commercial Terms.** We will have no responsibility for the commercial terms of transactions between you and your distributors and suppliers. The terms and conditions

of your purchase of goods from suppliers (including our Affiliates) will be upon the terms and conditions established by such suppliers from time to time, or through your independent bargaining with such distributors or suppliers. This Agreement does not establish the commercial terms of any purchase and sale transaction between you and any supplier (including our Affiliates). To protect the business reputation, image and goodwill of the System and the Chain, you will promptly and within the due time allowed, make payment to all suppliers of goods and services sold or provided to you in connection with the construction, equipping and operation of the Restaurant, including us, our Affiliates, and our designated suppliers, excepting only non-payment resulting from a bona fide dispute with a vendor. You will disclose to us the terms of purchases from approved suppliers, including all revenues, rebates, and discounts that you or your affiliates receive from any supplier.

(e) **Menu Items.** You will: (i) offer for retail sale, and carry on your menu, only those types, sizes, styles and brands of pizza, pizza dough, pizza sauce, toppings, beverages, and other products as we specify from time to time; and (ii) offer the menu items and services that we specify or designate from time to time as mandatory for the Restaurant, including (A) items that are temporary promotion items, and (B) non-food items that are integral to systemwide or national promotional programs. You will not sell or carry on your menu any food items or other products, or provide any services, that we have not specified or approved for the Restaurant. You acknowledge that as long as the Restaurant is classified as a Non-Traditional Restaurant, you will not be required (or permitted) to offer the full range of menu items offered by a typical traditional Papa ~~John's~~[Johns](#) restaurant. The menu offerings will be determined in consultation with our operations team. We reserve the right to disapprove any menu item.

(f) **Pricing.** You have the sole responsibility for establishing your prices, provided however: (i) we may set mandatory maximum price points for national promotions to the extent permitted by law; (ii) you will not make or collect any delivery charge or other separate charge for delivered products, regardless of how named or characterized, without our reasonable approval; and (iii) you will not enter into any agreement, arrangement or concerted practice with any other person whatsoever, in violation of any applicable law relating to antitrust, restraint of trade, unfair competition or unfair or deceptive trade practices.

(g) **Service.** You may sell any items on a delivery basis and provide delivery service from the Restaurant, provided, that this Agreement does not require you to do so.

### 13. **Accounting and Reports.**

(a) **Accounting.** We may lend to you and/or the person(s) who will be preparing your reports and financial statements for each Period or year-end one or more manuals, which manual(s) may contain mandatory and/or optional accounting procedures, forms, chart of accounts and other items deemed relevant or necessary by us. You must direct your bookkeeper/accountant to follow all mandatory policies, procedures, forms, formats and other items set forth in such manuals. The accounting manual(s) constitute part of the "Manuals" as defined in this Agreement.

(b) **Recordkeeping.** You must: (i) establish and maintain accounting and record keeping systems substantially in accordance with the specifications and procedures provided by us and as amended from time to time, including maintaining accounting records on a basis enabling or facilitating reporting to us according to monthly or multi-week periods

designated by us (each such accounting period is referred to as "Period"); (ii) make all such records available to us upon request; and (iii) maintain and preserve, for at least five years from the date of preparation, full, complete and accurate books, records and accounts.

(c) **Periodic Reports.** Upon our request, you will deliver to us complete copies of: (i) a statement, in the form prescribed by us, of the revenues and expenses of the Restaurant for the immediately preceding Period; and (ii) such other records and reports as are requested by us, including bank statements, sales and expense forms and reports, and a current balance sheet in the form reasonably required by us or our Affiliates. Any such reports should clearly identify revenue, expenses, and other data requested of the Restaurant, and such information shall not be combined with information for any other business you may operate, including any other Papa Johns restaurants.

(d) **Year-End Reports.** Within 120 days following your fiscal year end, you will provide us with copies of your financial statements relating to operation of the Restaurant, including an income statement for the fiscal year just ended and a balance sheet as of the end of such fiscal year, which financial statements must be prepared in accordance with generally accepted accounting principles applied on a consistent basis. You must: (i) furnish us with copies of all state sales tax returns as we request from time to time; and (ii) promptly notify us if any such return is not timely filed, or if any extension is filed, and the reasons therefor.

(e) **Examinations and Audits.** We or our designated agents have the right, at all times and upon reasonable notice, to review all your sales and expense records and reports that relate to the Restaurant, as well as all sales and use tax exemption certificates that you are required to collect and retain, and to examine or audit your books and records and to make copies of all such items. If any such examination or audit discloses any underpayment of the Royalty, Marketing Fund payments, or any other sums or fees owed to us and/or any of our Affiliates, you must immediately pay the deficient amount plus interest thereon from the date due until paid, at a rate equal to the lesser of 12% per annum or the maximum amount permitted by applicable law. All payments received will first be credited against interest due and then against other payments due. If such an examination or audit discloses an understatement in any statement or report of 5% or more, you must, in addition to the above provision, reimburse us for the cost of having your books examined or audited. The foregoing are in addition to any other rights or remedies we may have, including the termination of the Franchise granted herein.

#### 14. **Transfers.**

(a) **Transfer Defined.** For purposes of this Agreement, "transfer" means any issuance, sale, assignment, gift, grant, transfer by bankruptcy, transfer by judicial order, merger, consolidation, share exchange, or transfer in substance of a beneficial interest in the Restaurant or all or a substantial part of its assets (including transfer of an interest in or right to receive the profits of the Restaurant or the obligation to bear the risk of loss incurred in the operation of the Restaurant) even if not formally styled as a transfer of ownership of the Restaurant, and any ownership or structural changes in you or any beneficial owner in you, including any merger, reorganization, issuance of additional shares or classes of stock or additional membership or partnership interests.

(b) **Assignment by Us.** We may assign this Agreement or any or all of the rights, interests, benefits or obligations arising hereunder without restriction. Upon any

assignment of this Agreement by us, we will be automatically released from all obligations and liabilities arising or accruing in connection with this Agreement after the date of such transfer or assignment.

(c) **Transfers by You.** Your rights and interests under this Agreement are and remain personal to you. You recognize that we have granted the Franchise in reliance on your business and financial capacity and other attributes, and in reliance upon the Owner Agreement. Accordingly, neither you nor any beneficial holder of any capital stock or other ownership interest in you (if you are a corporation or other entity) may, without obtaining our prior written consent, transfer: (i) any interest in the Franchise or this Agreement (including any security interest); (ii) any material portion of your assets or the assets of the Restaurant; or (iii) any stock or other ownership interest in you or any owner of you; except as provided in this Section 14.(c). We have the right to communicate with both you, your counsel, if any, and the proposed transferee on any aspect of such proposed transfer. Our consent to a particular transfer does not constitute consent to any subsequent, modified, or different transfer and does not constitute a waiver of any claims that we have against you. Any attempted transfer not in accordance with this Agreement shall have no effect and shall constitute a breach of this Agreement. If you grant a security interest in your assets to secure a loan for purchase of the Premises or construction, leasehold or equipment costs, you will ensure that the secured party agrees in writing that: (A) upon default by you, it will notify us and we will have the right, but not the obligation, to be substituted as the debtor and to cure the default; and (B) any acceleration of indebtedness provisions of the loan documents will not be exercisable if we cure the default and assume the indebtedness. Upon the occurrence of a default and our election to assume the indebtedness, the Franchise and this Agreement automatically terminate and we have the right under Section 20 to purchase the assets used in the Restaurant. The purchase price as determined under Section 20 will be reduced by the amount of the debt that we assumed.

(i) **Restricted Transfers.** Except for Permitted Transfers as described in subsection 14.(c)(vii) below, you must give us at least 45 days prior written notice of any intended transfer of any of your rights or interest under this Agreement or of the proposed transfer of any interest in you, the Restaurant, or any material portion of your assets or the assets of the Restaurant. Subject to the conditions set forth in Section 14.(c)(vi) below, we will not unreasonably withhold our consent to a proposed transfer.

(ii) **Right of First Refusal.** Irrespective of the qualifications or acceptability of any prospective transferee, we have the first right and option to purchase the interest intended or proposed to be transferred at the same price and on the same terms between you and the prospective transferee contained in the notice, except that:

(A) any proposed closing date or other deadlines or dates certain contained in the notice may be postponed as reasonably necessary or appropriate to accommodate our 45-day evaluation period as described below;

(B) our right of first refusal applies to transfer of the real property of the Location only if the proposed transfer includes, or is part of a series of separate transfers that include, transfer of the Restaurant and/or the Franchise;

(C) we will not be bound by any term or condition in the notice

that purports to waive, nullify or alter our right of first refusal or condition or restrict our exercise thereof, that purports to bind or place an obligation on us rather than on you or your proposed transferee, that purports to trigger a termination of the transaction or give you the right to withdraw from the transaction if we exercise our right of first refusal or that purports to be or would in effect constitute an amendment to this Agreement;

(D) if the Restaurant or interest therein or in you is being transferred together with other assets or interests not directly related to the Restaurant or its operations, we may exercise our right of first refusal with respect to the Restaurant or interest therein or in you separate and apart from such other assets or interests and we will not be obligated to purchase any other assets or interests in order to exercise our right of first refusal with respect to the Restaurant, interest therein or in you;

(E) we will not be bound by any allocation of purchase price between the Restaurant, interest therein or in you and other assets or interests that we are not obligated to purchase; and

(F) our purchase option does not apply to Permitted Transfers.

(iii) **Review Period; Exercise.** Our right commences and is exercisable for a period of 45 days from the date we receive written notice of the proposed transfer, provided, if you are transferring the Restaurant as part of a single transaction or a series of related or substantially contemporaneous transactions involving 50 or more Papa ~~John's~~Johns restaurants, we may, at our option, extend the exercise period for an additional 15 days, upon written notice to you. To be effective, the notice of proposed transfer must include, at a minimum:

(A) the name of the proposed transferee and the name and address of each proposed owner thereof;

(B) a fully executed Letter of Intent in substantially the form attached as Exhibit C or a fully executed sales agreement containing the material terms of the proposed transfer;

(C) copies of all leases (and deeds for the Restaurant(s) if real property is included in the sale);

(D) an income statement for each Restaurant for the full prior year and year-to-date for the current year, unless the notice of transfer is delivered during the first fiscal quarter of a year, in which case income statements for the previous two years must be submitted; and

(E) a listing of the material assets to be conveyed.

The 45-day period will not begin until you have provided written notice of the transfer and all the foregoing information, including any additional information reasonably related to the foregoing, has been provided to us. During this 45-day period (or, if extended, 60-day period), you must give us or our designated representatives or agents access to the Restaurant(s) to inspect facilities, signage and equipment and we may contact landlords as necessary. If we exercise our right of first

refusal and no form of purchase agreement is provided with your notice, the transfer to us must be completed pursuant to our then standard transfer agreements, including, but not limited to, our standard Asset Purchase Agreement, Bill of Sale, and Assignment of Lease. If we exercise our right of first refusal you agree to take all reasonable action necessary to assign the lease with the lessor of the Restaurant to us. We may assign our first right and option to an Affiliate at any time during our 45-day (or, if extended, 60-day) evaluation period.

(iv) **Valuation.** Should the proposed transfer not involve payment of any consideration or involve the payment of any non-cash consideration, we have the option to purchase the interest at a price equal to the fair market value of such interest. We may determine the fair market value using fair and reasonable methods. We will make such determination as promptly as practicable, but in no event later than 45 days (or 60 days, if extended as provided herein) after we have received fully complete notice of the intended transfer, including all items specified above. If you disagree with the value as we determine, then you and Papa ~~John's~~Johns must each hire an appraiser (or a single appraiser, if you and Papa ~~John's~~Johns so agree) to value the interest. If the appraisals are within 10% of each other (measured from the higher of the two appraisals), then the difference between the two will be equally divided to establish the price at which we may exercise our first right and option. If the difference between the appraisals is greater than 10%, then the issue of the fair market value of the interest will be determined by a third appraiser selected by the other two appraisers and whose decision will be final and binding, except that it may not be lower or higher than the lowest appraisal and highest appraisal, respectively, determined by the first two appraisers.

(v) **Approved Transfers.** If we decide not to exercise our right of first refusal, and if we approve the transfer in writing, you (or the transferor of an interest in you) may make the proposed transfer on the exact terms and conditions specified in your notice to us, within 60 days after the expiration of our first right and option. If there is any change of the proposed transferee or material change in the terms of the transfer or the assets or interest(s) to be transferred, or if the transfer is not consummated within such 60-day period, you may not thereafter may any transfer without against complying with this Section 14.(c). You must keep the bank account designated for the Payment Methods (as provided in Section 3.(e)(i)) open for a minimum of 30 days after the transfer and to fund such account in sufficient amounts to permit us to use the Payment Methods to collect amounts owed to us and/or any of our Affiliates in connection with your operation of the Restaurant. In the case of an approved transfer of this Agreement and/or the assets of the Restaurant, the transferee has the option of assuming this Agreement for its then remaining term or executing a new agreement in the form of the then current Franchise Agreement being offered to Papa ~~John's~~Johns franchisees with a term equal to the remaining Term hereof (except that no Initial Fee will be due); provided that the transferee must make the same election for all Restaurants it is acquiring from you.

(vi) **Conditions on Transfer.** We will not unreasonably withhold our consent to a proposed transfer if all of the following conditions are satisfied:

(A) we have decided not to exercise our right of first refusal as provided above;

(B) you are then in full compliance with this Agreement and there are no uncured defaults by you hereunder or we have given you notice of default and you cure it within the earlier of the proposed transfer date or the time specified in Section 19, and all

your debts and financial obligations to us and our Affiliates under this Agreement or otherwise are current and your obligations to the Marketing Fund and, if applicable, each Cooperative of which you are a member are current;

(C) you and the proposed transferee execute and we receive fully executed copies of such documents as we reasonably require to evidence the transfer including documents evidencing that such transferee has assumed your obligations under this Agreement and that you will remain liable to us for all obligations in connection with this Agreement prior to the transfer, and if required by us, the proposed transferee executes, and in appropriate circumstances causes such other parties as we require to execute, our then-current form of Owner Agreement, and other then-current ancillary agreements, which documents may be substantially different than those you entered into in connection with this Agreement;

(D) the proposed transferee enters into an Advertising Agreement with the Marketing Fund and also becomes a member of the Cooperative to which the Restaurant is required to contribute;

(E) before the date of the proposed transfer, the proposed transferee's Principal Operator and managers undertake and successfully complete, to our satisfaction, such training and instruction as we deem necessary;

(F) we are satisfied that the proposed transferee (and if the proposed transferee is an entity, each owner of any interest in such entity) meets all of the requirements for our new franchisees applicable on the date that we receive notice of the proposed transfer, including, but not limited to, good reputation and character, business experience, restaurant management experience, evidence of compliance with non-competition requirements, and financial strength and liquidity;

(G) you and any owner transferring an interest in you acknowledge and agree in writing that you and they are bound by the non-competition and confidentiality provisions set forth in this Agreement and in the Owner Agreement (and any similar provision in any other document that either you or they have executed) to the maximum extent allowed under applicable law;

(H) you and all owners of an interest in you execute a general release, in the form prescribed by us, releasing, to the fullest extent permitted by applicable state law, all claims that you or any of them may have against us or our Affiliates, including our and their respective shareholders, officers, directors and employees, in both their individual and corporate capacities, and, if you are the transferor, you acknowledge in writing that your interest under this Agreement is terminated;

(I) you pay to us a transfer fee of \$4,000, provided that, if the proposed transfer is of the Restaurant together with one or more other Papa ~~John's~~Johns restaurants owned by you to more than one transferee not under common ownership, then the total transfer fee will be an amount equal to \$4,000 per transferee, and provided further that if such multiple transferees are under common ownership you shall be charged a total transfer fee of \$8,000;

(J) you perform, or the proposed transferee agrees in writing to

perform, such maintenance, remodeling and re-equipping of the Restaurant as we specify in writing, which may include: replacing worn out, obsolete, or dated equipment, fixtures, furnishings and signs; structural modifications; painting and redecorating; and purchasing more efficient or improved equipment;

(K) the proposed transferee and all owners of any interest in a transferee that is an entity provide to us, at least 45 days before the proposed transfer date, copies of financial statements for the preceding three years, and where applicable, its certificate of incorporation and bylaws, articles of organization and operating agreement (if an LLC) or agreement and certificate of partnership (and any amendments or modifications thereof), minutes and resolutions and all other documents, records and information pertaining to the transferee's existence and ownership as we may reasonably request; and

(L) you or the proposed transferee provides written evidence that the proposed transferee has obtained any required consents from the lessor of the Restaurant or any federal, state, or local authorities

(vii) **Permitted Transfers.** You must provide us at least thirty (30) days prior written notice of a Permitted Transfer. The following transfers are "Permitted Transfers":

(A) **No Change of Control.** A member, partner or shareholder of you may transfer all or a portion of such stock or other ownership interest in you to another member, partner or shareholder or to you in a transaction that does not effect a change of control of you and such transfer will not be subject to our consent or right of first refusal and no transfer fee will be required. You must promptly notify us of any such transfer as outlined herein.

(B) **Transfers to Descendants or Family Trusts.** anything to the contrary in this Section, we will not withhold our consent to a proposed transfer of the ownership interests of any owner (the "Owner") of an interest in the Franchisee, either *inter vivos* or upon the death of such Owner, to his or her spouse, immediate family members, direct descendants or a family trust or limited partnership in which the Owner's spouse, another Owner or a state or national bank is the sole trustee or the sole general partner (collectively, a "Trust," and the proposed transfer is referred to as a "Pre-Approved Trust Transfer"); provided, that the Franchisee, the Owner and the Trust agree to:

(1) furnish to us such documents and information concerning the proposed transferee as we may request, including copies of the Trust document, a list of direct and indirect beneficiaries of the Trust (which must be the Owner's spouse, immediate family members or direct descendants via birth or adoption), and an undertaking: (a) by the beneficiaries not to transfer their interests in the Trust without our prior written approval; and (b) by the Trust that the Trust acknowledges and agrees that ownership interests in you that are held by the Trust remain subject to the transfer provisions of the Franchise Agreements and the Owner Agreement; and

(2) enter into such transfer agreements with us as we may reasonably specify, which agreements may require a transfer of the Agreements to the Trust, a general release by Owner or his/her Authorized Representative, and new personal guarantees from the Trust and/or the beneficiaries of the Trust.

If these conditions are fully satisfied, we will not charge a transfer fee as provided herein; provided, however, that Franchisee or the transferring Owner must instead reimburse us for the out-of-pocket costs (including reasonable attorneys fees), if any, that we incur in connection with a Pre-Approved Trust Transfer effected pursuant to this Section.

**15. Death, Incapacity or Dissolution.**

(a) **Transfer Upon Death, Etc.** Upon your death or permanent incapacity; or, if you are a corporation, limited liability company, partnership or other entity, upon the death, incapacity or dissolution of any owner of any interest in you; the executor, administrator, conservator, trustee or other representative of such person or entity must assign such interest in the

Franchise, or such interest in you, to us or a third party approved by us; provided, that if the transferee is a Permitted Transferee, our right of first refusal does not apply and no transfer fee will be payable. Further, if an approved transfer involves less than 25% of the ownership of you, no transfer fee will be payable. If you are one or more individuals and any of you dies or becomes permanently incapacitated, and if the law of the jurisdiction where the Restaurant is located so provides, nothing contained in this Section will deny your spouse, heir(s) or personal representative the opportunity to participate in the ownership of the Franchise for a reasonable time after your death or incapacity, provided that: (i) this Agreement is valid and in effect; (ii) the spouse, heir(s) or representative meets all conditions and qualifications otherwise required of transferees; and (iii) such spouse, heir(s) or representative maintains and complies with all standards and obligations contained in this Agreement. An assignment under this Section 15 must be completed within a reasonable time, not to exceed 9 months from the date of death, permanent incapacity or dissolution and is (except as otherwise provided above) be subject to the terms and conditions applicable to lifetime transfers contained in Section 14, including our right of first refusal.

(b) **Management by Us.** Pending assignment, if the Principal Operator ceases managing the Restaurant and another shareholder, member, partner or employee of you that qualifies as the Principal Operator does not assume such obligations, we may, at our sole option, appoint a manager to operate the Restaurant for your account. All expenses of the Restaurant, including compensation, travel and living expenses, and other costs of the appointed manager, and a reasonable per diem fee for our administrative expenses, will be charged to you. Operation of the Restaurant during any such period will be for and on your behalf. The appointed manager will have a duty only to utilize his or her best efforts in the management of the Restaurant and neither we nor the appointed manager will be liable to you or your owners for any debts, losses, liabilities or obligations incurred by the Restaurant, or to any of your creditors for any merchandise, materials, supplies or services purchased by the Restaurant during any period in which it is managed by our appointed manager.

**16. Your Additional Covenants.**

(a) **Limitations on Activities.** If you are a corporation, limited liability company, partnership or other entity, you will not at any time during the Term of this Agreement own, operate or have any interest in any other business or business activity other than the operation of Papa ~~John's~~ [Johns](#) restaurants pursuant to agreements with us. If you are an individual and are also the Principal Operator, you have disclosed to us all businesses in which you have an

interest, or are engaged in, and covenant that you will notify us of any intention to participate or engage, directly or indirectly, in any other business activity at least 30 days before undertaking such activity or becoming a party to any agreement or understanding relating to such activity. You will provide us with such information in regard thereto as we may reasonably request and will not engage or participate in any such activity unless you receive our written consent.

(b) **Execution of Ancillary Documents.** Simultaneously with the execution of this Agreement, you will cause each person or entity owning any beneficial interest in you to execute an Owner Agreement in the form provided by us.

(c) **Your Non-Compete.** You covenant that during the Term of this Agreement (including the Renewal Term, if applicable) you will not engage in any of the following activities:

(i) directly or indirectly, and irrespective of whether compensation is provided, enter into the employ of, render any service to or act in concert with any person, partnership, limited liability company, corporation or other entity that owns, operates, manages, franchises or licenses any business that (A) sells pizza or other non-pizza products (excluding soft drinks) that are the same as those sold by Papa ~~John's~~Johns restaurants on a delivery or carry-out basis, including business formats such as Domino's, Pizza Hut, Mr. Gatti's, Sbarro and Little Caesars, or

(B) derives 20% or more of its gross revenues, at the retail level, from the sale of pre-cooked, ready- to-eat food products on a delivery basis (a "Competitive Business"); or

(ii) directly or indirectly, and irrespective of whether compensation is provided, engage in any such Competitive Business on your own account; or

(iii) become interested in any such Competitive Business, directly or indirectly and irrespective of whether compensation is provided, as an individual, partner, member, shareholder, director, officer, principal, agent, employee, consultant or in any other relationship or capacity; provided, that the purchase of a publicly traded security of a corporation engaged in such business or service will not in itself be deemed violative of this Section so long as you do not own, directly or indirectly, more than 1% of the securities of such corporation; or

(iv) divert or attempt to divert any business or any customers of the Papa ~~John's~~Johns chain to any Competitive Business.

To the extent required by the laws of the state in which the Restaurant is located, the duration or the geographic areas included within the foregoing covenants, or both, will be deemed amended in accordance with Section 25.(a).

(d) **Managerial and Supervisory Employees.** You covenant that you will use reasonable efforts to cause all persons who are involved in managerial or supervisory positions to be trained and instructed to observe your covenants in this Section 16 and Section 17 as if they were personally and individually bound thereby.

(e) **Copying.** You will not copy or duplicate our System or any aspect thereof, or any of our trade secrets, recipes, methods of operation, processes, formulas, advertising, marketing, designs, trade dress, plans, software, programs, know-how or other proprietary ideas

or information nor will you convey, divulge, make available or communicate any such information to any third party or assist others in doing so (except as permitted or required by this Agreement).

(f) **Validity of Marks and Copyrights; Registrations.** You will not, either during the Term or any time thereafter, directly or indirectly challenge or contest the validity of, or take any action to jeopardize our rights in or ownership of, any of the Marks or any registration of a Mark or any Copyrighted Work. If you violate this provision, we will be entitled to equitable, monetary and punitive remedies and any other relief that may be available under applicable law, as well as the recovery of all costs, expenses and attorneys' fees incurred by us as a result of such violation.

(g) **Reasonableness of Scope and Duration.** The covenants and agreements contained herein are, taken as a whole, reasonable with respect to the activities covered and their geographic scope and duration, and you will not raise any issue of the reasonableness of the areas, activities or duration of any such covenants in any proceeding to enforce any such covenants. You acknowledge that you have other skills and resources and that the restrictions contained in this Section 16 will not hinder your activities or ability to make a living either under this Agreement or in general.

(h) **Enforceability.** We may not be adequately compensated by damages for a breach by you of any of the covenants and agreements contained in this Section, and that we will, in addition to all other remedies, be entitled to injunctive relief and specific performance. The covenants and agreements contained in this Section will be construed as separate covenants and agreements, and if any court or arbitrator makes a final determination that the restraints provided for in any such covenants and agreements are too broad as to the area, activity or time covered, said area, activity or time covered may be reduced to whatever extent the court or arbitrator deems reasonable, and such covenants and agreements may be enforced as to such reduced area, activity or time.

17. **Trade Secrets and Confidential Information.** You understand that we have disclosed or will disclose to you certain confidential or proprietary information and trade secrets. Except as necessary in connection with the operation of the Restaurant and as approved by us, you may not, during the Term or at any time after the expiration or termination of the Franchise, regardless of the cause of termination, directly or indirectly, use for your own benefit or communicate or divulge to, or use for the benefit of any other person or entity, any trade secrets, confidential information, knowledge or know-how concerning the recipes, food products, advertising, marketing, designs, plans, software, programs or methods of operation of the Restaurant or the System. You will disclose to your employees only such confidential, proprietary or trade secret information as is necessary to operate your business hereunder and then only while this Agreement is in effect. Any and all information, knowledge, or know-how, including drawings, materials, equipment, marketing, recipes, and other data, that we designate as secret or confidential is deemed secret and confidential for purposes of this Agreement. Confidential and proprietary information does not include information that: (i) at the time disclosed to or obtained by you is in the public domain; (ii) after being disclosed or obtained becomes part of the public domain other than through your breach of this agreement; (iii) before disclosure was already in your possession, as evidenced by written records kept in the ordinary course of business or by proof of actual use;

(iv) was received by you from a third party (other than our Affiliate) and which the third party had a bona fide right to possess and disclose without breaching any duty, obligation or restriction imposed by agreement, operation of law or otherwise; or (v) is independently developed by you without reference to information disclosed to you by us or our Affiliate. Disclosure of information in compliance with lawful legal process will not constitute a breach of this Agreement, provided, that you give us notice of such process and a reasonable opportunity to oppose the disclosure or seek other protective orders or remedies.

## **18. Insurance.**

(a) **Types and Extent of Coverage.** You must obtain and maintain throughout the Term such insurance coverages with such limits as specified below (or such greater amounts of insurance as may be required by the terms of any lease or mortgage relating to the Premises) under policies issued by carriers rated "B+" or better by A.M. Best Company:

(i) fire, extended coverage, vandalism, malicious mischief and special extended peril insurance at no less than the actual replacement value of the building (if owned), the contents, and improvements of the Restaurant;

(ii) workers' compensation and other insurance required by law;

(iii) commercial general liability insurance on an "occurrence" form covering all operations by or on behalf of you, providing insurance for bodily injury liability, property damage liability and personal injury liability for the limits of liability indicated below and including coverage for:

(A) Premises and Operations Liability;

(B) Products and Completed Operations Liability;

(C) Independent Contractors Protective Liability;

(D) Blanket Contractual Liability insuring the obligations assumed by you under this Agreement; and

(E) Incidental Medical Malpractice;

(iv) fire legal liability, with a minimum coverage limit of \$500,000, unless you own the Premises or have a cross-waiver of subrogation with your landlord.

The limits of liability required for the policies specified in (iii) above are: \$1,000,000 each occurrence (combined single limit for bodily injury and property damage); \$1,000,000 personal injury liability; \$1,000,000 aggregate for products - completed operations; and \$2,000,000 general aggregate. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit must apply separately to each location if you operate at more than one location pursuant to multiple franchise agreements with us. You are also required to maintain an umbrella policy with a minimum of \$1,000,000 of coverage, which must expressly provide coverage above the coverages listed above. We must be named as an additional insured on all your policies. These are only the minimum coverages

required. We do not represent or warrant that these coverages are adequate. You should consult with your insurance advisors to assure that you obtain all required coverages as well as any additional types of coverages or higher limits that they may recommend.

(b) **Other Insurance Requirements.** Upon request, you will deliver to us copies of all such policies of insurance and proof of payment therefor. All policies required hereunder must provide that the insurer will endeavor to give us written notice not less than 30 days before the date the coverage is canceled, altered, or permitted to lapse or expire. We may, from time to time, increase the limits of any required policy of insurance.

**19. Termination by Us.**

(a) **Automatic Termination.** You will be in default under this Agreement, and the Franchise and all rights granted to you in this Agreement automatically terminate without notice to you, if: (i) you make a general assignment for the benefit of creditors, or a petition in bankruptcy is filed by you; (ii) such a petition is filed against and not opposed by you; (iii) you are adjudicated as bankrupt or insolvent; (iv) a bill in equity or other proceeding is filed for the appointment of a receiver or other custodian for your business or assets and consented to by you; (v) a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; (vi) proceedings for a composition with creditors under any state or federal law are instituted by or against you; (vii) a final judgment against you remains unsatisfied or of record for 30 days or longer (unless an appeal or supersedeas bond is filed); (viii) you are liquidated or dissolved; (ix) any portion of your interest in the Franchise becomes subject to an attachment, garnishment, levy or seizure by any creditor or any other person claiming against or in your rights; (x) execution is levied against your business or property; or (xi) the real or personal property of your Restaurant is sold after levy thereupon by any sheriff, marshal, or constable.

(b) **Upon Notice.** You will be in default and we may, at our option, terminate the Franchise and all rights granted in this Agreement, without affording you any opportunity to cure the default, effective upon the earlier of receipt of notice of termination by you, or five days after mailing of such notice by us, if:

(i) at any time you cease to operate or otherwise abandon the Restaurant or forfeit the right to do or transact business in the jurisdiction where the Restaurant is located or lose the right to possession of the Premises; provided however, that if any such loss of possession results from the governmental exercise of the power of eminent domain or if, through no fault of yours, the Premises are damaged or destroyed, then you will have 45 days after either such event in which to apply for our approval to relocate or reconstruct the premises of the Restaurant (which approval shall not be unreasonably withheld), provided, that you must either relocate or begin and diligently pursue reconstruction of the Restaurant within 60 days after the event;

(ii) except as otherwise permitted in Sections 14 and 15, any owner of more than a 5% interest in you transfers all or part of such interest or you transfer any interest in the Franchise or a material portion of your assets or the assets of the Restaurant without our prior written consent;

(iii) you, or any person or entity owning more than 5% of you, are (or is)

proven to have engaged in fraudulent conduct or are (or is) convicted of, or pleads guilty or no contest to, a felony or a crime involving moral turpitude or any other crime or offense that is reasonably likely to have an adverse effect on the Chain, the Marks or the goodwill associated there-with; provided, that if the act or conviction involves your owner, we will not terminate the Franchise if you notify us promptly after you learn of the event constituting the default and within 15 days of the date of the notice, that either: (A) the person or entity that committed the wrongful act has divested his, her or its entire interest in you; or (B) you obtain our consent for such owner to maintain his, her or its ownership interest;

(iv) an approved transfer is not effected within 9 months of your death or incapacity, or the death, incapacity or dissolution of any owner of an interest in you;

(v) you make any intentional, unauthorized disclosure or divulgence of the contents of any Manual or other confidential information provided to you by us;

(vi) you are repeatedly notified of being in default of any of the terms or requirements of this Agreement within any 12-month period, whether or not such defaults are timely cured after notice;

(vii) you fail to comply with any of your covenants set forth in Sections 16 or 17, fail to maintain the insurance coverages under Section 18, or make any material misrepresentation to us or breach any warranty or representation made to us, whether in this Agreement or otherwise;

(viii) you knowingly or intentionally maintain false books or records or submit any false record, statement or report to us;

(ix) you, by act or omission, materially impair the value of, or the goodwill associated with, the Chain, any of the Marks or the System;

(x) an imminent threat or danger to public health or safety results from the construction, maintenance, or operation of the Restaurant;

(xi) you fail to close the Restaurant within 24 hours of being required to do so pursuant to Section 19.(c)(v) below; or

(xii) you receive a written notice from a governmental or quasi-governmental authority that you are not complying with applicable law, and you do not begin complying with such law within fifteen (15) days after written notice of non-compliance from us, in the absence of a good faith dispute over the law's application or legality and without promptly resorting to an administrative or judicial forum for relief; provided, however, that if a notice from a governmental or quasi-governmental authority provides for a cure period of longer than fifteen (15) days, then such longer time period shall apply.

(c) **Upon Notice and Failure to Cure.** In addition to those defaults provided for under subsections (a) or (b) above, you will be in default hereunder for any failure to maintain or comply with any of the terms, covenants, specifications, standards, procedures or requirements imposed by this Agreement or in any Manual, policy or procedure statement or other written document provided by us, or to carry out the terms of this Agreement in good faith. Except as

provided under subsections (a) or (b) above, we will provide you with written notice and 30 days to cure or, if a default cannot reasonably be cured within 30 days, to begin within that time substantial and continuing action to cure such default and to provide us with evidence of such actions. If the defaults specified in such notice are not cured within the 30-day period, or if substantial and continuing action to cure has not been initiated, we may, at our option, terminate the Franchise effective on the earlier of the date of receipt by you of notice of termination or 5 days after the mailing of such notice by us. Such defaults include the occurrence of any of the following events:

(i) you fail to construct, remodel, or commence operating the Restaurant in accordance with this Agreement;

(ii) you fail, refuse, or neglect to promptly pay any monies owing to us, our Affiliates or the Marketing Fund or a Cooperative when due, or to submit the financial or other information required under this Agreement;

(iii) any person or entity owning 5% or less of you transfers such interest in violation of this Agreement; provided, however, that your right to cure such a default will be conditioned upon you immediately notifying us of the improper transfer and taking all actions necessary to either: (A) obtain our approval thereof; or (B) if approval is not desired or the transfer or transferee is not approved by us, to re-acquire the interest so transferred;

(iv) you misuse or make any unauthorized use of the Marks;

(v) you, by act or omission in connection with the operation of the Restaurant, permit a continuing violation of any applicable law, ordinance, rule, or regulation of a governmental body or an imminent threat or danger to public health or safety, an imminent hazard to the health or safety of Restaurant personnel, or other threat or danger of immediate and substantial harm to the System or the image and goodwill associated with the System and the Marks results from the construction, maintenance, or operation of the Restaurant (and, in the case of any such imminent threat or danger or any law, ordinance, rule or regulation for public or Restaurant personnel health or safety, we have the right to reduce the cure period to 72 hours and require you to close the Restaurant until the cure is effected);

(vi) you commit a material breach of the lease for the Premises or suffer or permit the existence of any condition that could result in your default or material breach of such lease; or

(vii) you fail to comply with any mandatory standards, procedures, specifications, or requirements set forth in the Manual.

(d) **Materiality of Breaches.** You acknowledge that a breach or violation of any term, covenant, condition, warranty, representation or other obligation by you (other than a breach or violation that may be cured under Section 19.(c) and is in fact cured within 15 days after notice) constitutes a material breach and default under this Agreement. Any breach or violation that may be cured under Section 19.(c) and that is not in fact cured within the 15-day cure period also constitutes a material breach and default under this Agreement.

**20. Obligations upon Termination or Expiration.**

**(a) Post Termination Obligations.** Upon transfer, termination or expiration of the Franchise, all rights granted to you under this Agreement terminate, and you have the following obligations with respect to the Restaurant franchised under this Agreement:

**(i)** You must immediately cease to operate the business franchised under this Agreement, and must not thereafter, directly or indirectly, represent to the public or hold yourself out as a Papa ~~John's~~Johns franchisee with respect to such business and within ten (10) days of closing make such modifications and alterations to the Premises as may be necessary to distinguish the appearance of the Premises from that of other Papa ~~John's~~Johns restaurants and make such specific additional changes thereto as we may reasonably request or as may be required by any then-existing Closing Policy.

**(ii)** You must immediately and permanently cease to use, in any manner whatsoever, all confidential information, website, methods, procedures and techniques used by or associated with the System, and the proprietary Marks "Papa John's," "Papa John's Pizza," and all other Marks and distinctive forms, slogans, signs, symbols, logos and devices associated with the Papa ~~John's~~Johns Chain, including in any website or domain name.

**(iii)** You must immediately return to us (or, if approved by us, to your transferee) any property held or used by you that is owned by us and cease to use, and either destroy or convey to us (or, if approved by us, to your transferee), all signs, advertising materials, displays, stationery, forms and any other materials that bear or display the Marks.

**(iv)** You must take such actions as may be necessary to cancel any assumed name or similar registration that contains the mark "Papa John's" or "Papa John's Pizza" or any other Mark, and you furnish us with evidence satisfactory to us of compliance with this obligation within thirty (30) days after termination or expiration of the Franchise.

**(v)** You must promptly pay all sums owed to us and our Affiliates, and if the Franchise is terminated for any reason other than as a result of a material breach of this Agreement by us that is not cured within 30 days or such longer period as may be necessary after written notice thereof from you, such sums include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by us as a result of the default and the termination, which obligation will give rise to and remain, until paid in full, a lien in favor of us against any and all of the personal property, furnishings, equipment, signs, fixtures and inventory owned by you and located on the Premises on the date the Franchise terminated and we have the right to set off against and deduct any amounts owed to you by us or any of our Affiliates any or all sums owed to us or our Affiliates that remain unpaid 30 days after termination or expiration of this Agreement.

**(vi)** You must pay to us all damages, costs and expenses, including reasonable attorneys' fees, incurred by us subsequent to the transfer, termination or expiration of the Franchise in obtaining injunctive or other relief for the enforcement of any term, covenant or provision of this Agreement.

**(vii)** You must immediately deliver to us (or, if approved by us, to your transferee) all Manuals, policy and procedure statements, instructions, and other materials related

to operating the Restaurant, including brochures, charts and any other materials provided by us and all copies thereof, and neither retain nor convey to another (other than an approved transferee) any copy or record of any of the foregoing and, in the case of expiration or termination of the Franchise, you must allow us to remove the Designated Software as described in Section 10.(c)(iii)(E).

**(viii)** You must comply with the covenants contained in this Agreement, including, but not limited to, the covenants not to compete and the covenants not to disclose trade secrets or confidential information contained in Sections 16 and 17.

**(ix)** You will not, for a period of two (2) years after the transfer, termination or expiration of the Franchise (the "Restricted Period"), regardless of the reason for any such termination or expiration, within a 10-mile radius of (1) the Restaurant, or (2) any business location at which we or an Affiliate or our franchisee then operates a Papa [John's](#) restaurant or other Papa [John's](#) business,

**(A)** directly or indirectly, irrespective of whether compensation is provided, enter into the employ of, render any service to or act in concert with any person, partnership, limited liability company, corporation or other entity that owns, operates, manages, franchises or licenses any Competitive Business, or

**(B)** directly or indirectly, irrespective of whether compensation is provided, engage in any such Competitive Business on your own account, or

**(C)** become interested in any such Competitive Business, directly or indirectly, irrespective of whether compensation is provided, as an individual, partner, member, shareholder, director, officer, principal, agent, employee, consultant or in any other relationship or capacity, provided that the purchase of a publicly traded security of a corporation engaged in such business or service does not in itself constitute a breach of this Section so long as you do not own, directly or indirectly, more than 1% of the securities of such corporation, or

**(D)** divert or attempt to divert any business or any customers of the Papa [John's](#) chain to any Competitive Business.

**(x)** If we terminate this Agreement based on your default (including if you abandon or otherwise cease to operate the Franchise), you agree to pay to us, as liquidated damages, an amount calculated as follows: (a) the average of your monthly Royalty that are due under this Agreement for the twelve (12) months immediately before your abandonment or our delivery of the notice of default (or, if you have been operating for less than 12 months, the average of your monthly Royalty for the number of months you have operated the Franchise); (b) multiplied by the lesser of 24 or the number of months remaining in the then-current term of this Agreement under Section 2 above. Notwithstanding the foregoing, if we approve the closure of the Location according to the then existing Store Closing Policy you will not be charged liquidated damages as described herein.

**(b) Asset Purchase Option.**

**(i) Option.** Upon termination of this Agreement by us, upon termination

of this Agreement by you without cause or upon expiration of this Agreement, we have the option, exercisable by giving written notice thereof within 15 days from the date of such expiration or termination, to purchase from you all (except as otherwise provided in this Section) the assets used in the Restaurant. Assets subject to this purchase option include leasehold improvements, equipment (including hardware and ancillary equipment components of the Information System), furniture, fixtures, signs and inventory for the Restaurant, but not any real property. We have the unrestricted right to assign this option to purchase. We or our assignee are entitled to all customary warranties and representations given by the seller of a business, including representations and warranties as to:

(A) ownership, condition and title to assets; (B) liens and encumbrances relating to the assets; and (C) validity of contracts and liabilities inuring to us or affecting the assets, contingent or otherwise.

(ii) **Purchase Price.** The purchase price for the assets of the Restaurant will be the fair market value thereof, determined as of the date of termination or expiration of this Agreement in a manner consistent with reasonable depreciation of leasehold improvements owned by you and the equipment, furniture, fixtures, signs and inventory of the Restaurant, provided that the purchase price will not contain any factor or increment for any trademark, service mark or other commercial symbol used in connection with the operation of the Restaurant, any goodwill or "going concern" value for the Restaurant or any value for computer software or other proprietary information of ours that is merely lent or licensed to you and which you are obligated to cease using and/or return to us upon expiration or termination of the Franchise; and further provided that we may exclude from the assets purchased hereunder any equipment, furniture, fixtures, signs and inventory that do not, as determined by us in our sole discretion, meet quality standards for Papa [John's](#) restaurants. If you and we are unable to agree on the fair market value of the assets, the fair market value will be determined by an independent appraiser selected by us and you. If you and we are unable to agree on a single appraiser, each party must select one appraiser, who must select a third appraiser, and the fair market value will be the average of the three independent appraisals. The fees and costs of such appraiser or appraisers will be borne equally by you and us. Except as provided above, nothing contained herein restricts the manner in which the appraisers so selected value the leasehold improvements, equipment, furniture, fixtures, signs and inventory.

(iii) **Closing.** The purchase price will be paid in cash, a cash equivalent, or marketable securities of equal value at the closing of the purchase, which must take place no later than 90 days after receipt by you of notice of exercise of this option to purchase, at which time you must deliver instruments transferring to us or our assignee: (1) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us or our assignee), with all sales and other transfer taxes paid by you; and (2) all licenses and permits of the Restaurant that may be assigned or transferred. If you cannot deliver clear title to all of the purchased assets as aforesaid, or if there are other unresolved issues, the closing of the sale may, at our election, be accomplished through an escrow. You must, before closing, comply with all applicable legal requirements, including the bulk sales provisions of the Uniform Commercial Code of the state in which the Restaurant is located. We have the right to set off against and reduce the purchase price by any and all amounts owed by you to us or our Affiliates, and the amount of any encumbrances or liens against the assets or any obligations assumed by us. You and each owner of an interest in you must indemnify us against all liabilities not so assumed.

(iv) **Actions Pending Closing.** If we or our assignee exercise this option to purchase, pending the closing of such purchase as hereinabove provided, we have the right to

appoint a manager to maintain the operation of the Restaurant as set forth under Section 15.(b). Alternatively, we may require you to close the Restaurant during such time period without removing any assets from the Restaurant. You must maintain in force all insurance policies required pursuant to this Agreement, until the closing on the sale.

**21. Independent Contractor; Indemnification.**

(a) **Independent Contractor.** This Agreement creates only a contractual relationship between the parties subject to normal rules of contract law. This Agreement does not create a fiduciary relationship between us and you and you are and will remain an independent contractor. Nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. You will hold yourself out to the public as an independent contractor, separate and apart from us. You will not make any contract, agreement, warranty or representation on our behalf without our prior written consent, and you agree that you will not incur any debt or other obligation in our name. This Agreement will not be deemed to confer any rights or benefits to any person or entity not expressly named herein.

(b) **Business Management.** You acknowledge that: (i) we will have no responsibility for the day-to-day operations of the Restaurant or the management of your business, including ensuring the safety and security of your customers or employees; (ii) you independently control the operation of your business and the results of your operations will depend almost exclusively on your business acumen and promotional and managerial efforts; and (iii) we have no responsibility for or control or supervision of your employment practices.

(c) **Indemnification.** We will not be liable by reason of any act or omission by you in your operation of the Restaurant or for any claim, cause of action or judgment arising there- from against you or us. You will hold harmless, defend and indemnify us and our Affiliates, and our and their respective shareholders, officers, directors, agents, and employees, from and against any and all losses, expenses, judgments, claims, costs (including reasonable attorney fees, court costs, and expert witness costs, as and when incurred) and damages arising out of or in connection with any claim or cause of action in which we are or become a named defendant and that arises, directly or indirectly, out of the construction or operation of, or in connection with, your Restaurant, other than a claim finally determined to have resulted directly from our negligence.

**22. Your Representations.** You hereby represent and warrant that:

(a) All information submitted to us by you or those owning an interest in you, including all applications, financial statements and other documents and information, is true and correct in all respects and does not omit any material statement or item of fact necessary to make the statements made therein not false or misleading. You have disclosed to us the identity of all owners of any beneficial interest in you and, if and to the extent that any such owner is a corporation, LLC or other business entity, the names of all beneficial owners of such owner/entity.

(b) Neither you nor any shareholder, member or other holder of any ownership interest in you is subject to or has entered into any other agreement, promise, representation, warranty, covenant, court order or other legal or equitable obligation that conflicts with this

Agreement or prohibits or limits your entering into this Agreement or your ability to perform your obligations under this Agreement.

**23. ENFORCEMENT.**

(a) **ARBITRATION. EXCEPT FOR CONTROVERSIES, DISPUTES OR CLAIMS RELATED TO OR BASED ON: (1) ANY ACTION TO STOP OR PREVENT ANY THREAT OR DANGER TO PUBLIC HEALTH OR SAFETY RESULTING FROM THE CONSTRUCTION, MAINTENANCE, OR OPERATION OF THE RESTAURANT; (2) ANY DEBT COLLECTION ACTION (OTHER THAN OUR ENFORCEMENT OF YOUR OBLIGATION TO CONTRIBUTE TO A COOPERATIVE); OR (3) AT THE CLAIMANT'S OPTION, ANY ALLEGED VIOLATION OF ANY PROVISION OF SECTION 16 OR 17 HEREOF, OR USE OF THE MARKS AFTER THE EXPIRATION OR TERMINATION OF THIS AGREEMENT; ALL CONTROVERSIES, DISPUTES OR CLAIMS BETWEEN US (INCLUDING OUR AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES) AND YOU (INCLUDING YOUR OWNERS, GUARANTORS, AFFILIATES AND EMPLOYEES, IF APPLICABLE) ARISING OUT OF OR RELATED TO:**

(i) **THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN YOU AND US OR ANY PROVISION OF ANY SUCH AGREEMENT, INCLUDING YOUR OBLIGATION TO CONTRIBUTE TO A COOPERATIVE;**

(ii) **OUR RELATIONSHIP WITH YOU, INCLUDING ISSUES RELATING TO OUR DECISION TO TERMINATE THAT RELATIONSHIP;**

(iii) **THE VALIDITY OF THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN YOU AND US OR ANY PROVISION OF ANY SUCH AGREEMENT; OR**

(iv) **ANY STANDARD, SPECIFICATION OR OPERATING PROCEDURE RELATING TO THE ESTABLISHMENT OR OPERATION OF THE RESTAURANT.**

**MUST BE SUBMITTED FOR BINDING ARBITRATION TO THE AMERICAN ARBITRATION ASSOCIATION ("AAA") ON DEMAND OF EITHER PARTY. SUCH ARBITRATION PROCEEDING WILL BE CONDUCTED IN LOUISVILLE, KENTUCKY AND, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, WILL BE HEARD BY ONE ARBITRATOR IN ACCORDANCE WITH THE THEN CURRENT COMMERCIAL ARBITRATION RULES OF THE AAA. ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.) AND NOT BY ANY STATE ARBITRATION LAW.**

**THE ARBITRATOR HAS THE RIGHT TO AWARD OR INCLUDE IN THE AWARD ANY RELIEF THAT THE ARBITRATOR DEEMS PROPER IN THE CIRCUMSTANCES, INCLUDING MONEY DAMAGES (WITH INTEREST ON**

UNPAID AMOUNTS FROM THE DATE DUE OR DATE DAMAGES ARISE OR ARE INCURRED), SPECIFIC PERFORMANCE, INJUNCTIVE RELIEF AND ATTORNEYS' FEES AND COSTS, PROVIDED THAT THE ARBITRATOR DOES NOT HAVE THE RIGHT TO DECLARE ANY MARK GENERIC OR OTHERWISE INVALID OR, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, TO AWARD EXEMPLARY OR PUNITIVE DAMAGES. THE AWARD AND DECISION OF THE ARBITRATOR WILL BE CONCLUSIVE AND BINDING UPON ALL PARTIES HERETO, AND JUDGMENT UPON THE AWARD MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION.

WE AND YOU ARE BOUND BY THE PROVISIONS OF ANY LIMITATION ON THE PERIOD OF TIME IN WHICH CLAIMS MUST BE BROUGHT UNDER APPLICABLE LAW OR THIS AGREEMENT, WHICHEVER EXPIRES EARLIER. IN CONNECTION WITH ANY ARBITRATION PROCEEDING, EACH PARTY MUST SUBMIT OR FILE ANY CLAIM THAT WOULD CONSTITUTE A COMPULSORY COUNTERCLAIM (AS DEFINED BY RULE 13 OF THE FEDERAL RULES OF CIVIL PROCEDURE) WITHIN THE SAME PROCEEDING AS THE CLAIM TO WHICH IT RELATES. ANY SUCH CLAIM THAT IS NOT SUBMITTED OR FILED AS DESCRIBED ABOVE WILL BE FOREVER BARRED.

EXCEPT FOR INCLUSION OF RELATED PARTIES AS EXPRESSLY PROVIDED IN THIS SECTION 23.(a), ARBITRATION WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE, BASIS AND THAT AN ARBITRATION PROCEEDING BETWEEN US (INCLUDING OUR AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES) AND YOU (INCLUDING YOUR OWNERS, GUARANTORS, AFFILIATES OR EMPLOYEES, IF APPLICABLE) MAY NOT BE CONSOLIDATED WITH ANY OTHER ARBITRATION PROCEEDING BETWEEN US AND ANY OTHER PERSON, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR ASSOCIATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION 23.(a), WE AND YOU EACH HAVE THE RIGHT IN A PROPER CASE TO BRING AN ACTION TO OBTAIN A TEMPORARY RESTRAINING ORDER OR TEMPORARY OR PRELIMINARY INJUNCTIVE RELIEF FROM A COURT OF COMPETENT JURISDICTION (SUBJECT TO THE PROVISIONS OF SECTION 23.(c)), PROVIDED, THAT WE AND YOU MUST CONTEMPORANEOUSLY (WITHIN 10 BUSINESS DAYS OF COMMENCEMENT OF COURT ACTION) SUBMIT OUR DISPUTE FOR ARBITRATION ON THE MERITS AS PROVIDED HEREIN, EXCEPT AS OTHERWISE PROVIDED IN THE FIRST PARAGRAPH OF THIS SECTION 23.(a).

THE PROVISIONS OF THIS SECTION ARE INTENDED TO BENEFIT AND BIND CERTAIN THIRD PARTY NON-SIGNATORIES AND WILL CONTINUE IN FULL FORCE AND EFFECT SUBSEQUENT TO AND NOTWITHSTANDING THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

(b) GOVERNING LAW. EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF

1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) OR OTHER APPLICABLE PREEMPTIVE FEDERAL LAW, THIS AGREEMENT AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF KENTUCKY, WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES.

(c) CONSENT TO JURISDICTION AND VENUE. ALL JUDICIAL ACTIONS BROUGHT BY US AGAINST YOU OR YOUR OWNERS OR BY YOU OR YOUR OWNERS AGAINST US OR OUR SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES MUST BE BROUGHT EXCLUSIVELY IN A COURT OF COMPETENT JURISDICTION IN JEFFERSON COUNTY, KENTUCKY OR FEDERAL DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION, AND YOU (AND EACH OWNER) IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY OBJECTION YOU, HE OR SHE MAY HAVE TO EITHER THE JURISDICTION OF OR VENUE IN SUCH COURTS. NOTWITHSTANDING THE FOREGOING, WE MAY BRING AN ACTION TO OBTAIN A RESTRAINING ORDER OR TEMPORARY OR PRELIMINARY INJUNCTION, OR ENFORCE AN ARBITRATION AWARD, IN ANY FEDERAL OR STATE COURT OF GENERAL JURISDICTION IN THE STATE IN WHICH YOU RESIDE OR IN WHICH THE RESTAURANT IS LOCATED.

(d) WAIVER OF PUNITIVE DAMAGES. EXCEPT WITH RESPECT TO YOUR OBLIGATION TO INDEMNIFY US PURSUANT TO SECTION 21 AND CLAIMS WE BRING AGAINST YOU UNDER SECTIONS 16.(c), 16.(f) AND 17, WE AND YOU AND YOUR OWNERS WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS (INCLUDING PRE-JUDG- MENT INTEREST).

(e) WAIVER OF JURY TRIAL. WE AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF US.

(f) LIMITATIONS OF CLAIMS. EXCEPT FOR CLAIMS BROUGHT BY US WITH REGARD TO YOUR OBLIGATIONS UNDER SECTIONS 16 AND 17, AND YOUR OBLIGATION TO INDEMNIFY US PURSUANT TO SECTION 21, ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP OF YOU AND US PURSUANT TO THIS AGREEMENT WILL BE BARRED UNLESS AN ACTION IS COMMENCED WITHIN ONE (1) YEAR FROM THE DATE ON WHICH THE ACT OR EVENT GIVING RISE TO THE CLAIM OCCURRED, OR ONE (1) YEAR FROM THE DATE ON WHICH THE CLAIMANT KNEW OR SHOULD HAVE KNOWN, IN THE EXERCISE OF REASONABLE DILIGENCE, OF THE FACTS GIVING RISE TO SUCH CLAIMS, WHICHEVER LATER OCCURS.

(g) Costs, Expenses and Attorneys' Fees. Except as provided in Sections



mean “including but not limited to” or “including without limitation.”

(c) **Entire Agreement.** This Agreement, the documents incorporated herein by reference and the Exhibits attached hereto, constitute the entire agreement between the parties, and all prior understandings or agreements concerning the subject matter hereof are canceled and superseded by this Agreement, provided, nothing in this Agreement is intended to disclaim any representations made in the Franchise Disclosure Document that we furnished to you in connection with the offer and sale of Papa ~~John's~~Johns franchises. The Exhibits to this Agreement are incorporated herein by reference and made a part hereof as if set out in full herein.

(d) **Affiliate.** As used in this Agreement, the term "Affiliate" means any person or entity that is owned or controlled by us or that owns or controls us or is under common control with us, directly or through one or more intermediaries.

(e) **Amendments.** Except for those permitted to be made unilaterally by us, no supplement, amendment or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto.

(f) **Waivers.** No failure by us to exercise any right given to us hereunder or to insist upon strict compliance by you with any obligation, agreement or undertaking hereunder, and no custom or practice of the parties at variance with the terms hereof, constitutes a waiver of our right to demand full and exact compliance by you with the terms hereof. Waiver by us of any particular default by you does not affect or impair our rights with respect to any subsequent default of the same or of a different nature, nor will any delay or omission by us to exercise any right arising from such default affect or impair our rights as to such default or any subsequent default.

(g) **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

(h) **Headings.** The headings used in this Agreement are for convenience only, and the paragraphs will be interpreted as if such headings were omitted.

(i) **Time of Essence.** You acknowledge that time is of the essence with regard to your obligations hereunder and that all of your obligations are material to us and this Agreement.

(j) **Effective Date.** This Agreement is effective only upon execution by an authorized representative of Papa ~~John's~~Johns and delivery to you. The date that we set forth below is the Effective Date of the Agreement.

(k) **Identification of Restaurant; Effective Date.** The Location, Telephone Number, Store Number used to identify the Restaurant in the Papa ~~John's~~Johns Chain and Effective Date are as follows:

(i) **Location:** \_\_\_\_\_

(ii) **Telephone Number:** \_\_\_\_\_

(iii) **Store Number:** \_\_\_\_\_

(iv) **Effective Date:** \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

**DEVELOPER**

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

**PAPA JOHN'S FRANCHISING, LLC**

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

**PAPA JOHN'S**JOHNS

**SMALL TOWN NON-TRADITIONAL**

**AGREEMENT EXHIBIT A**

**AREA MAP**

The areas encompassed on the attached map entitled " \_\_\_\_\_ " constitute the "Development Area," as defined in the foregoing Papa **John's**Johns Non-Traditional Franchise Agreement, by and between **PAPA JOHN'S FRANCHISING, LLC** and \_\_\_\_\_ (except for Non- Traditional Sites expressly excluded from the Development Area under Section 1 of the Non- Traditional Franchise Agreement).

**PAPA JOHN'S**JOHNS

**SMALL TOWN NON-TRADITIONAL FRANCHISE AGREEMENT**

**EXHIBIT B**

**ASSIGNMENT OF TELEPHONE NUMBERS,  
LISTINGS AND ELECTRONIC CHANNELS**

THIS ASSIGNMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in accordance with the terms of that certain Papa John's International, Inc. Franchise Agreement (the "Franchise Agreement") between \_\_\_\_\_, a \_\_\_\_\_.

FOR VALUE RECEIVED, you hereby assign to us all of your right, title and interest in and to those certain telephone numbers listed below and regular, classified or other telephone directory listings and listings or advertisements on or in any other directory, internet website, domain name, social media site or channel (such as, but not limited to, Facebook and Twitter accounts or sites) and other digital or electronic marketing channel or media that includes or is associated with our trademarks and service marks and used from time to time in connection with the operation of the Restaurant at the address provided above (collectively, the "Telephone Numbers and Listings"). Except as specified herein, we shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment, unless we notify the telephone company or other directory provider and/or the listing agencies with which you have placed telephone directory listings (all such entities are collectively referred to herein as the "Telephone Company") to effectuate the assignment pursuant to the terms hereof.

**PAPA JOHN'S FRANCHISING, LLC:**

**YOU:**

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

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

Telephone Numbers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT E:**

DEVELOPMENT AGREEMENT

PAPA ~~JOHN'S~~ JOHNS  
DEVELOPMENT AGREEMENT

Developer: \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_

Number of Restaurants: \_\_\_\_\_ Development

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### **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into as of the "Effective Date" (as defined in Section 16.(j)), by and between **PAPA JOHN'S FRANCHISING, LLC**, a Kentucky limited liability company ("we", "us" or "Papa **John's**[Johns](#)"), and \_\_\_\_\_, a \_\_\_\_\_ ("you"). If you are a corporation, limited liability company or partnership, certain provisions of the Agreement also apply to your owners and will be noted.

#### **RECITALS:**

**A.** We and our Affiliates (defined below) have expended time, money and effort to develop a distinctive system for operating retail restaurants devoted primarily to carry-out and delivery of pizza and other food items. The chain of current and future Papa **John's**[Johns](#) restaurants is referred to herein as the "Papa **John's**[Johns](#) Chain" or the "Chain".

**B.** The Chain is characterized by a proprietary system which includes: special recipes and menu items; distinctive design, decor, color scheme and furnishings; software and programs; standards, specifications and procedures for operations; systems for communicating with us, suppliers and customers; procedures for quality control; training assistance; and advertising and promotional programs; all of which we may improve, amend and further develop from time to time (the "System").

C. We identify our goods and services with certain service marks, trade names and trademarks, including "Papa John's," "Papa John's Pizza" and "Pizza Papa John's and Design" (the Papa [John'sJohns](#) logo) as well as certain other trademarks, service marks, slogans, logos and emblems that have been or may be designated for use in connection with the System from time to time (the "Marks").

D. You desire to obtain certain rights to develop one or multiple Papa [John'sJohns](#) Pizza restaurant(s) in the "Development Area" (as defined below) in accordance with the terms of this Agreement.

E. We have agreed to grant you such rights.

**NOW, THEREFORE,** the parties agree as follows:

**1. Grant.**

(a) We hereby grant to you the right and you undertake the obligation to establish \_\_\_\_\_ Papa [John'sJohns](#) restaurant(s) (at specific locations we approve) in the areas specified on attached Exhibit A. (The Papa [John'sJohns](#) restaurants that you develop pursuant to this Agreement are collectively referred to as the "Restaurants" and individually as a "Restaurant"; the areas specified on Exhibit A are referred to, collectively (with respect to all Restaurants to be developed) and individually (with respect to a given Restaurant to be developed), as the "Development Area").

Development of Restaurants at non-traditional locations, such as, but not limited to, enclosed malls, institutions (such as hospitals or schools), airports, parks (including theme parks), military installations, sports arenas or stadiums, train stations, travel plazas and entertainment venues collectively ("Non-Traditional Sites") is permitted. However, unless otherwise agreed by us in writing, and absent such agreement, Restaurants located at Non-Traditional Sites ("Non-Traditional Restaurants") do not count towards fulfillment of your obligations to develop Restaurants as set forth in this Agreement. Additionally, you understand and acknowledge that there may be suitable locations for Non-Traditional Restaurants that are subject to exclusive vending rights of third parties. We reserve the right to open Papa [John'sJohns](#) restaurants, or franchise the right to open Papa [John'sJohns](#) restaurants to other persons at any such Non-Traditional Site, regardless of where it is located, and this reservation constitutes an exception to the exclusivity provisions of Section 1.(c). No delivery service will be permitted from any Papa [John'sJohns](#) restaurant located at any Non-Traditional Site within the Development Area unless otherwise agreed by you and us.

(b) Each Restaurant will be established and operated pursuant to a separate "Franchise Agreement" to be entered into between you and us. As used herein, the term "Franchise Agreement" means the then-current form of Papa [John'sJohns](#) Franchise Agreement that we are offering to new franchisees under our then-current franchise disclosure document, to be executed for each Restaurant developed under this Agreement and all attachments and exhibits thereto.

(c) Except as may be otherwise provided in this Agreement or in the

Franchise Agreements, we will not locate, nor license another to locate, a Papa [John'sJohns](#) restaurant in the Development Area during the "Term" (as defined in Section 4). Notwithstanding the foregoing: (i) we do not warrant or represent that no other Papa [John'sJohns](#) restaurant will solicit or make any sales within the Development Area, and you expressly acknowledge that such solicitations or sales may occur within the Development Area. We have no duty to protect you from any such sales, solicitations, or attempted sales; (ii) you will compete with other Papa [John'sJohns](#) restaurants that are now, or that may in the future be, located near or adjacent to your Development Area; (iii) we will of necessity define the trade area for each Restaurant for purposes of electronic and digital orders, considering such matters as we reasonably deem material, including existing trade, or delivery areas of Papa [John'sJohns](#) restaurants in geographic proximity to the address or customer placing the order; demographic characteristics of the location of such proximate Papa [John'sJohns](#) restaurants; traffic patterns and similar factors affecting delivery efficiency; the opening or closing of other Papa [John'sJohns](#) restaurants; and other commercial characteristics of geographically proximate Papa [John'sJohns](#) restaurants and such trade area definition may change from time to time; (iv) we reserve the right to operate, directly and/or through Affiliates, franchise, or license others to operate or franchise, restaurants or other food related establishments or businesses other than Papa [John'sJohns](#) restaurants and we and our Affiliates may do so within the Development Area, provided, that such restaurants or food establishments or businesses do not sell pizza on a delivery basis, or primarily carry-out basis; (v) we reserve the right to develop, market and conduct any other business under the Marks or any other trademark; and (vi) we reserve the right to manufacture or sell, directly or through third parties, or both, within and outside your Development Area, pizza and other products that are the same as or similar to those sold in Papa [John'sJohns](#) restaurants using brand names that are the same as or similar to the Marks, through any channel of distribution, provided that such items are not sold through restaurants or on a ready-to-eat basis. For clarification and in no way limiting the generality of this Section 1.(c), as used herein "Development Area" refers to each geographic area in which you are required to develop a Restaurant pursuant and subject to the terms of this Agreement and, following the development and opening of a Restaurant hereunder, the Development Area associated with that Restaurant will no longer be protected and considered a "Development Area" under this Agreement (it being understood that the territory protections for such developed Restaurant shall be as set forth in the applicable Franchise Agreement).

(d) This Agreement is not a franchise agreement and we do not grant you any franchise rights or other rights to use the Marks or System under this Agreement.

(e) You have no right to license or subfranchise others to use the Marks or the System, or to enter into any agreement with respect to the Marks or System.

## **2. Initial Fee Payments.**

(a) Upon execution and delivery of this Agreement, you must pay to us a development fee deposit of \$ \_\_\_\_\_ ("Development Fee") (\$ \_\_\_\_\_ for each Restaurant to be developed). The Development Fee is fully earned by us when paid, is non-refundable except as expressly provided in this Agreement and is not contingent upon our rendering any further performance. The Development Fee is in consideration of, among other things, the development rights granted to you, the reservation of the Development Area, the development opportunities

lost or deferred as a result of the rights granted to you in this Agreement and the administrative and other expenses that we have incurred. The Development Fee for each Restaurant will be credited towards the applicable initial franchise fee for that Restaurant.

(b) You shall expend a minimum of \$\_\_\_\_\_ on grand opening advertising, marketing and promotional efforts for each Restaurant in the period beginning one month before the Restaurant's scheduled opening date and ending six weeks after the Restaurant's actual opening date. The foregoing advertising, marketing and promotional expenditure is in addition to, and will not be counted towards, required monthly advertising contributions and expenditures required under the Franchise Agreement for each Restaurant.

### **3. Development of Restaurants; Schedule for Completion.**

(a) You must have the number of Restaurants open and operating within the time frame set forth in subsection 3.(g) below, and you may exercise each such development right only at locations that we have approved within the Development Area.

(b) With respect to each proposed location:

(i) You must submit a completed site evaluation form, together with such other information and materials as we may reasonably request. We will not unreasonably withhold our approval of a location. In approving or disapproving any proposed site, we will consider such matters as we deem material, including, without limitation: demographic characteristics of the proposed site; traffic patterns; parking; the predominant character of the neighborhood; competition from other businesses providing similar services within the area (including other Papa ~~John's~~Johns Restaurants); the proximity to other businesses; the rights granted to our other franchisees; the nature of other businesses in proximity to the site; and other commercial characteristics (including the purchase price or rental obligations and other lease terms for the proposed site) and the size of the premises, appearance, and other physical characteristics of the proposed site. A site must be approved for development and construction must begin at least ninety (90) days prior to the date such site is required to be opened as outlined in the Development Schedule (the "Construction Start Date"). Failure to meet such Construction Start Date may result in termination of the Development Agreement as outlined herein.

(ii) Approval of a site by us does not constitute an assurance, representation or warranty of any kind, expressed or implied, as to the successful operation of a Papa ~~John's~~Johns Restaurant, or for any other purpose. Our approval of a site indicates only that we believe the site complies with acceptable minimum criteria that we establish solely for our purposes as of the time period encompassing the evaluation. You acknowledge that application of criteria that have been effective with respect to other sites and premises may not be predictive of potential for all sites. Further, demographic and/or economic factors included in our criteria could change and other relevant factors that might alter the potential of a site may be excluded from our criteria. The uncertainty and instability of such criteria are beyond our control. We are not responsible if a site that we approve fails to meet your expectations as to potential revenue or operational criteria or for your failure to locate the required number of suitable sites in the Development Area. You further acknowledge that your acceptance of a Franchise for the operation of a Papa ~~John's~~Johns Restaurant at a site is based on your own independent

investigation of the suitability of a site.

(iii) Any proposed lease for a standard Restaurant must include an addendum in the form of Exhibit A to the Franchise Agreement, or contain terms and conditions substantially similar to those contained in Exhibit A to the Franchise Agreement. Any changes in the language set forth in Exhibit A must be approved by us in advance in writing. The addendum is not required for Non-Traditional Restaurants. If you intend to own the Premises, you shall furnish to us proof of ownership prior to the date you begin any construction, build-out or remodeling of the Premises.

(c) Subject to subsection (ii) below, we will provide the following training, support and assistance:

(i) Before the opening of your first Restaurant, we will provide training for the "Principal Operator" (as defined in Section 8) who has been approved by us. We will also provide training to other personnel as we may reasonably designate, and such other training for your employees at the locations and for such periods as we may designate from time to time, provided that you shall be responsible for all expenses incurred by such persons in connection with training, including, without limitation, all costs of travel, lodging, meals and wages. For each of your first two Restaurants, an opening team made up of our designated employees will be used for training before restaurant openings. A team will be scheduled to arrive up to 3 days before the opening of each of your first two Restaurants and stay 2 to 3 days afterward. The opening team's primary role is to partner with your trained Restaurant team members to conduct on-site training with respect to the duties of each position in the Restaurant, including the areas of staffing, food preparation and dough management. Before each Restaurant opens, you will be required to activate an online training account for the Restaurant. You or your team members may be required to complete some online training activities before the arrival of our opening support team. After the first two Restaurants, you may request a team to assist but you will be required to pay a separate fee for this service. Changes in the opening date of a Restaurant requiring the opening team to change travel arrangements may also result in a separate fee.

(ii) If you are a corporation, limited liability company or other business entity and your owners or principal management team have already received initial training, support or opening team assistance as owners or managers of another Papa ~~John's~~[Johns](#) franchisee, we will not be obligated to provide the foregoing training, support or assistance to the extent we have already provided it to your owners and/or principal management team.

(d) Before the opening of your Restaurant, it is strongly encouraged that you conduct grand opening advertising. You can expect to spend a range of \$3,000.00 to \$10,000.00. We (or an affiliated entity) may make promotional items available for grand opening programs, and we may provide guidance and assistance to you to develop and execute such programs.

(e) We will deliver the Franchise Agreement to you after you provide the address and telephone number for an approved location that you have leased or purchased. The Franchise Agreement for such location must be signed by you and submitted to us along with payment of the initial franchise fee within 10 days after it is delivered to you.

(f) The approval of a location and the delivery of a Franchise Agreement by us may be conditioned upon a determination by us, in our reasonable judgment, that:

(i) you have the financial and operational capacity to develop and operate the Restaurant;

(ii) the site that you propose for the Restaurant is within the Development Area and is a suitable site based upon criteria that we establish from time to time; and

(iii) you and your owners are in compliance with this Agreement and all Franchise Agreements executed pursuant to this Agreement.

(g) Notwithstanding any provision of any Franchise Agreement entered into between us and you, you must exercise each development right as follows:

**DEVELOPMENT SCHEDULE**

Dates on Which Each  
Restaurant Shall be Open

Cumulative Number of Restaurants  
to be Open and Operating\*

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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[\* - Includes only those Restaurants to be developed pursuant to this Development Agreement.]

(h) If you are eligible for any equipment incentives, and if a Restaurant is open and operating on or before the last day of the fiscal year of the scheduled opening date set forth in the above Development Schedule, we will provide to you or cause our Affiliate to provide to you, subject to the provisions of Section 3.(i), two conveyor ovens meeting our current standards and specifications (model and capacity to be specified by us) up to a value of \$\_\_\_\_\_ for each Restaurant. The cost of the equipment will be amortized or repaid as provided in Section 3.(i)(iii).

(i) For purposes of the incentives provided in this Section:

(i) The Restaurant must be open to the public and operating during normal business hours on normal business days to be open and operating for purposes of qualification for the incentive. A promotional, token or "soft" opening of a Restaurant followed by closure for 48 hours or more shall not constitute "open and operating" for purposes of this Section.

(ii) To receive the benefits described in Section 3.(h), if applicable, you must remain in good standing under this Agreement and all your Papa ~~John's~~Johns Franchise Agreements, including operations, marketing, development and amounts owed to us and our affiliates, subsidiaries and vendors.

(iii) The cost of the incentive equipment provided under Section 3.(h) will be amortized over 48 months and the cost will be either repaid or forgiven, as follows:

(A) Any period in which Franchisee is on or above the cumulative number of Units required in the Development Schedule, amortization amount of the equipment provided to you as of that date will be considered forgiven.

(B) If you are below the cumulative number of Units required in the Development Schedule at the end of any fiscal year, we will assess and bill you a development deferral service fee in an amount equal to 1/48<sup>th</sup> part of the total value of the incentive equipment provided to you as of that date and you will be required to pay us that amount within thirty (30) days of our invoice. The foregoing development deferral fee payment will be billed and collected monthly until the earlier of: (1) the date that you are caught up with the Development Schedule; or (2) you have paid development deferral service fees equaling the total value of all equipment incentive packages provided to you. If any payments are not made when due (or cannot be collected due to insufficient funds or any other reason): (1) no further incentive packages will be awarded; (2) no further openings of new Restaurants will be permitted. Incentives and further Restaurant development will resume when. All payments have been made and you are current with the Development Schedule.

(C) If a Unit closes before the incentive equipment package is

fully paid or amortized, Franchisee will be required to pay the Franchisor the remaining unamortized/unpaid amount.

(D) If a Unit transfers before the incentive equipment package is fully paid or amortized, Franchisee shall: (1) take all steps to ensure that Franchisee's buyer is fully aware of the outstanding incentive equipment package and shall ensure that Franchisee's buyer will assign and assume the obligations under the Equipment Lease; or (2) Franchisee will be required to pay the Franchisor the remaining unamortized/unpaid amount prior to closing.

(E) Notwithstanding the above, if the Restaurant is transferred in whole or in part to any current owner or an owner with ownership via a family trust, the new franchise owner will assume the obligation of the incentive pursuant to an assignment and assumption of the Equipment Lease and will cooperate with all legally necessary filings of such Equipment Lease.

(j) It is your responsibility to ensure that each Restaurant is constructed or remodeled, equipped and operated in compliance with all laws, ordinances and governmental rules and regulations and the Franchise Agreement, and you must obtain all necessary permits and licenses relating thereto.

(k) At least 10 days before the opening of the Restaurant (and thereafter as requested by us), you must execute and deliver to us, our bank(s) and your bank, as necessary, all forms and documents that we may request to permit us to debit your bank account, either by check, via electronic funds transfer or other means utilizing our computerized information system or by such alternative methods as we may designate ("Payment Methods"). You must comply with all procedures specified by us from time to time, and take such reasonable actions as we may request to assist in any of the Payment Methods. We may use the Payment Methods to collect the amount of each period's royalty and any other amounts due to us, our Affiliates, the Papa John's Marketing Fund, Inc. or Papa Card, Inc. under the Franchise Agreement or otherwise.

#### **4. Term.**

Unless sooner terminated as provided in this Agreement, this Agreement expires on the earlier to occur of: (a) the date on which all the Restaurants have been developed; or (b) 12:00 midnight on the last date set forth on the Development Schedule (the "Term"). Upon the termination or expiration of this Agreement, all unexercised development rights automatically expire.

#### **5. Construction or Remodeling.**

You must, at your own expense (except as otherwise provided herein), construct or remodel each Restaurant at its location in accordance with the then-current specifications and standards established for the System and the terms of the Franchise Agreement. You must use qualified and duly licensed architects and contractors in the performance of construction or remodel, repair or maintenance of a Papa ~~John's~~[Johns](#) branded Restaurant. We reserve the right to review and approve the use of such architects and contractors prior to and during construction

or remodeling of a Restaurant. If we provide written notice that a particular architect, contractor, or any other construction vendor is not acceptable, you must find a suitable replacement within a reasonable time frame, as determined by Papa ~~John's~~Johns. You must allow us and our agents and employees access to all areas of the premises of each Restaurant at such times as we or they may reasonably request and you shall cooperate fully with us and our agents and employees in preparing the construction or remodeling plans and design, layout and décor specifications applicable to the location of each Restaurant to be developed hereunder. You may not begin construction or remodeling on any Restaurant until: (a) you have paid the full amount of the Development Fee; and (b) we have approved the plans for such Restaurant.

## **6. Your Organization, Operation and Ownership.**

If you are a corporation, partnership, limited liability company or other entity:

(a) If we request from time to time, you must furnish us with your Articles of Incorporation, Articles of Organization, Operating Agreement, By-Laws and other governing documents (and any amendments or modifications thereof), minutes and resolutions and all agreements or other documents, records and information pertaining to your existence and operation.

(b) You must confine your business activities exclusively to the establishment, management and operation of Papa ~~John's~~Johns restaurants pursuant to agreements with us.

(c) You must, at the same time you execute this Agreement, and at such other times as we may request, disclose the name and address of each person or entity owning a beneficial interest in you, and you may not issue any additional securities, nor allow the "transfer" (as defined in Section 10) of any of your outstanding securities, except as provided in Section 10.

(d) You must at all times comply with all applicable laws, ordinances, rules and regulations of governmental bodies.

(e) You must cause all persons or entities owning any interest in you to sign the Owner Agreement in the form we provide.

(f) You may not transfer or assign individual Restaurants to separate legal entities without our consent, which we may withhold in our discretion.

## **7. Your Covenants.**

(a) **Covenant Not-to-Compete.** You covenant that during the Term you will not engage in any of the following activities anywhere in the United States:

(i) directly or indirectly, and irrespective of whether compensation is provided, enter into the employ of, render any service to or act in concert with any person, partnership, limited liability company, corporation or other entity that owns, operates, manages,

franchises or licenses any business that (A) sells pizza or other non-pizza products (excluding soft drinks) that are the same as those sold by Papa ~~John's~~Johns restaurants on a delivery or carry-out basis, including, without limitation, business formats such as Domino's, Pizza Hut, Mr. Gatti's, Marco's, Sbarro and Little Caesars, or (B) derives 20% or more of its gross revenues, at the retail level, from the sale of pre-cooked, ready-to-eat food products on a delivery basis (a "Competitive Business"); or

(ii) directly or indirectly, and irrespective of whether compensation is provided, engage in any such Competitive Business on your own account; or

(iii) become interested in any such Competitive Business directly or indirectly, and irrespective of whether compensation is provided, as a partner, member, shareholder, principal, agent, consultant or in any other relationship or capacity; provided, that the purchase of a publicly traded security of a corporation engaged in such business or service will not in itself be deemed violative of this Agreement so long as you do not own, directly or indirectly, more than 1% of the securities of such corporation; or

(iv) divert or attempt to divert any business or any customers of the Papa ~~John's~~Johns chain to any Competitive Business.

To the extent required by the laws of the state in which the Restaurants are to be developed, the duration or the geographic areas included within the foregoing covenants, or both, will be deemed amended in accordance with Section 7.(e).

(b) **Appropriation and Disclosure of Information.** Except as permitted by the Franchise Agreement, you will not at any time use, copy or duplicate the System or any aspect thereof, or any of our trade secrets, recipes, methods of operation, processes, formulas, advertising, marketing, designs, trade dress, plans, know-how or other proprietary ideas or information, nor convey, divulge, make available or communicate such information to any third party or assist others in using, copying or duplicating any of the foregoing. Confidential and proprietary information does not include information that: (i) at the time disclosed to or obtained by you is in the public domain; (ii) after being disclosed or obtained becomes part of the public domain other than through your breach of this agreement; (iii) prior to disclosure was already in your possession, as evidenced by written records kept in the ordinary course of business or by proof of actual use;

(iv) was received by you from a third party (other than our Affiliate) and which the third party had a bona fide right to possess and disclose without breaching any duty, obligation or restriction imposed by agreement, operation of law or otherwise; or (v) is independently developed by you without reference to information disclosed to you by us or our Affiliate. Disclosure of information in compliance with lawful legal process does not constitute a breach of this Agreement, provided, that you give us notice of such process and a reasonable opportunity to oppose the disclosure or seek other protective orders or remedies.

(c) **Infringement.** You shall not at any time commit any act that would infringe upon or impair the value of the System or the Marks, nor engage in any business or market any product or service under a trade-name, trademark, service mark, logo or design that is confusingly or deceptively similar to any of the Marks.

(d) **Reasonableness of Scope and Duration.** You acknowledge that the covenants and agreements contained herein and in Section 9.(e) are, taken as a whole, reasonable with respect to the activities covered and their geographic scope and duration, and you shall not raise any issue of the reasonableness of the areas, activities or duration of any such covenants in any proceeding to enforce any such covenants. You represent that you have other skills and resources and that the restrictions contained in this Section 7 and in Section 9.(e) will not hinder your activities or ability to make a living either under this Agreement or in general.

(e) **Enforceability.** You recognize and acknowledge that we may not be adequately compensated by damages for a breach by you of any of the covenants and agreements contained in this Section or in Section 9.(e), and that, in addition to all other remedies, we are entitled to seek injunctive relief and specific performance. The covenants and agreements contained in this Section and in Section 9.(e) are intended to be construed as separate covenants and agreements and if any court makes a final determination that the restraints provided for in any such covenants and agreements are too broad as to the area, activity or time covered, said area, activity or time covered may be reduced to whatever extent the court deems reasonable, and such covenants and agreements may be enforced as to such reduced area, activity or time.

## **8. Principal Operator.**

You must designate an individual to serve as your "Principal Operator" to supervise the development process and oversee the operation of each Restaurant. The Principal Operator shall meet the following qualifications:

(a) The Principal Operator must own at least a 5% equity interest in you; provided that you will not be in default of this requirement if the Principal Operator is entitled to a bonus of not less than 5% of the net profits of the Restaurant(s), payable after the end of each Period (as defined in the Franchise Agreement), and also has the right to acquire not less than 5% equity interest in you within 12 months of his or her hire date, which rights must be evidenced by a written agreement between the Principal Operator and you. You must provide us with a copy of any such agreement upon request. Once the Principal Operator has acquired an equity interest in you, he or she must continue to own that interest (or a greater interest) during the entire period he or she serves as the Principal Operator and must comply with Section 6.(e) of this Agreement.

(b) The Principal Operator must devote full time and best efforts to the supervision and conduct of the development and operation of the Restaurant(s) contemplated under this Agreement and must agree to be bound by the confidentiality and non-competition provisions of the Owner Agreement. At such time as the Principal Operator becomes an owner of an interest in you, he or she must agree to be bound by all provisions of the Owner Agreement.

(c) The Principal Operator must be a person we reasonably approve who successfully completes, to our satisfaction, our initial training requirements and must participate in and successfully complete, to our satisfaction, all additional training as we may reasonably designate.

(d) The Principal Operator must be proficient in writing and speaking English, to ensure compliance with our operational standards and to ensure efficient communication with

customers and us.

If, at any time or for any reason, the Principal Operator no longer qualifies to act as such, you must promptly designate another Principal Operator subject to the same qualifications listed above. You must immediately notify us of the termination of the Principal Operator's employment with you, whether voluntary or involuntary.

## **9. Default and Termination.**

(a) **Automatic Termination.** You will be in default under this Agreement, and this Agreement and all rights granted in it automatically terminate without notice to you, if:

- (i) you make a general assignment for the benefit of creditors or a petition in bankruptcy is filed by you;
- (ii) such a petition is filed against and not opposed by you;
- (iii) you are adjudicated as bankrupt or insolvent;
- (iv) a bill in equity or other proceeding is filed for the appointment of a receiver or other custodian for your business or assets is filed and consented to by you;
- (v) a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction;
- (vi) proceedings for a composition with creditors under any state or federal law are instituted by or against you;
- (vii) a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed);
- (viii) you are dissolved;
- (ix) any portion of your interest in any Papa ~~John's~~[Johns](#) franchise becomes subject to an attachment, garnishment, levy or seizure by any creditor or any other person claiming against or in your rights;
- (x) execution is levied against your business or property; or
- (xi) the real or personal property of any Restaurant is sold after levy thereupon by any sheriff, marshal, or constable.

(b) **Without Notice.** You will be in default under this Agreement, and we may, at our option, terminate this Agreement and all rights granted under it without affording you any opportunity to cure such default, effective upon the earlier of (1) your receipt of the notice of termination, or (2) five days after mailing of such notice by us, upon the occurrence of any of the following events:

- (i) you fail to strictly comply with the Construction Start Date, or the development schedule set forth in Section 3;
- (ii) you make or attempt to make any transfer, whether voluntary or involuntary, of this Agreement or any interest herein, or of any rights or obligations arising under this Agreement, or of any interest in you, or of any material portion of your assets, without our prior written consent, except as otherwise provided under the Franchise Agreement;
- (iii) you fail to comply with any of your covenants set forth in Section 7 of this Agreement; or
- (iv) you divert or attempt to divert any business or any customers of the Papa ~~John's~~[Johns](#) chain to any Competitive Business.

(c) **With Notice.** For any other breach or default under this Agreement, we will provide you with written notice of default and 15 days to cure or, if a default cannot reasonably be cured within 15 days, to initiate within that time substantial and continuing action to cure such default and to provide us with evidence of such actions. If the defaults specified in such notice are not cured within the 15 day period, or if substantial and continuing action to cure has not been initiated, we may, at our option, terminate this Agreement and all rights granted to you under it by giving written notice of such termination to you. The notice of termination shall be effective on the earlier of: (i) the date of your receipt of the notice; or (ii) five days after the mailing of such notice by us.

(d) Upon termination of this Agreement, all your rights under it terminate and you then have no further right to establish any Restaurants. In addition, upon termination of this Agreement, we have the right to open and operate, or to franchise others to open and operate, Papa ~~John's~~Johns restaurants anywhere within the Development Area, except that we may not locate or franchise another to locate a Papa ~~John's~~Johns restaurant within the "Territory" provided for in any Franchise Agreement that remains in effect after the date of termination.

(e) **Post-Termination Non-Competition Covenants.** If this Agreement is transferred, expires or is terminated before your entry into a Franchise Agreement for at least one Restaurant, you shall not, for a period of two years after the expiration or termination of this Agreement, regardless of the cause for such expiration or termination (the "Restricted Period"), anywhere within either: (1) the boundaries of the Development Area including, for purposes of this Section 9.(e) only, any Non-Traditional Sites excluded from the Development Area by the operation of Section 1.(a); or (2) a 10-mile radius of any business location at which you, we or our Affiliate or our franchisee then conducts a Papa ~~John's~~Johns business:

(i) directly or indirectly, and irrespective of whether compensation is provided, enter into the employ of, render any service to or act in concert with any person, partnership, limited liability company, corporation or other entity that owns, operates, manages, franchises or licenses any Competitive Business; or

(ii) directly or indirectly, and irrespective of whether compensation is provided, engage in any such Competitive Business on your own account; or

(iii) become interested in any such Competitive Business directly or indirectly, and irrespective of whether compensation is provided, as a partner, member, shareholder, principal, agent, consultant or in any other relationship or capacity; provided, that the purchase of a publicly traded security of a corporation engaged in such business or service shall not in itself be deemed violative of this Agreement so long as you do not own, directly or indirectly, more than 1% of the securities of such corporation.

## 10. **Assignment or Transfer.**

(a) **Transfer by Us.** We may transfer this Agreement or any portion of it, or any or all of our rights, obligations or interests under it, without restriction. Upon any transfer or assignment of this Agreement by us, we shall be released from all obligations and liabilities



You: \_\_\_\_\_

ATTN: \_\_\_\_\_

Except as otherwise provided herein, a notice will be deemed to have been given: (a) on the date of personal delivery to a party; (b) the date of actual receipt by regular US Mail; (c), on the second business day after deposit with a nationally recognized courier service; or (d) on the third business day after deposit in the United States registered or certified mail, return receipt requested.

**13. Independent Contractor; Indemnification.** This Agreement creates only a contractual relationship between the parties subject to the normal rules of contract law. This Agreement:

(a) does not create a fiduciary relationship between us and you and you are and remain an independent contractor. Nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. You shall hold yourself out to the public as an independent contractor, separate and apart from us. You shall not make any contract, agreement, warranty, or representation on our behalf without our prior written consent, and you shall not incur any debt or other obligation in our name. This Agreement shall not be deemed to confer any rights or benefits to any person or entity not expressly named herein.

(b) **Business Management.** You acknowledge that: (i) we will have no responsibility for the day-to-day operations of any Restaurant developed under this Agreement or the management of your business, including without limitation, ensuring the safety and security of your customers or employees; (ii) you independently control the operation of your business and the results of your operations will depend almost exclusively on your business acumen and promotional and managerial efforts; and (iii) we have no responsibility for or control or supervision of your employment practices.

(c) **Indemnification.** We shall not be liable by reason of any act or omission of you in your development, construction or conduct of the Restaurants or for any claim, cause of action or judgment arising therefrom against you or us. You undertake to hold harmless, defend and indemnify us, our Affiliates, and our and their respective officers, directors, agents, and employees, from and against any and all losses, expenses, judgments, claims, attorney fees and damages arising out of or in connection with any claim or cause of action in which we are or become a named defendant and that arises, directly or indirectly, out of the operation of, or in connection with, your construction or operation of the Restaurants, other than a claim finally determined to have resulted directly from our negligence.

**14. Enforcement.**

(a) **ARBITRATION. EXCEPT FOR CONTROVERSIES, DISPUTES OR CLAIMS RELATED TO OR BASED ON: (1) USE OF THE MARKS AFTER THE EXPIRATION OR TERMINATION OF THIS AGREEMENT; (2) AT THE**

CLAIMANT'S OPTION, ANY DEBT COLLECTION ACTION; OR (3) AT THE CLAIMANT'S OPTION, ANY CLAIM OF VIOLATION OF ANY PROVISION OF SECTION 7 OR 9.(e) HEREOF, ALL CONTROVERSIES, DISPUTES OR CLAIMS BETWEEN US (INCLUDING OUR AFFILIATES, AND OUR AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES) AND YOU (INCLUDING YOUR OWNERS, GUARANTORS, AFFILIATES AND EMPLOYEES, IF APPLICABLE) ARISING OUT OF OR RELATED TO:

(i) THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN YOU AND US OR ANY PROVISION OF ANY SUCH AGREEMENT;

(ii) OUR RELATIONSHIP WITH YOU, INCLUDING ISSUES RELATING TO OUR DECISION TO TERMINATE THAT RELATIONSHIP;

(iii) THE VALIDITY OF THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN YOU AND US OR ANY PROVISION OF ANY SUCH AGREEMENT; OR

(iv) ANY STANDARD, SPECIFICATION OR OPERATING PROCEDURE RELATING TO THE DEVELOPMENT, ESTABLISHMENT OR OPERATION OF THE RESTAURANTS;

SHALL BE SUBMITTED FOR BINDING ARBITRATION TO THE AMERICAN ARBITRATION ASSOCIATION ("AAA") ON DEMAND OF EITHER PARTY. SUCH ARBITRATION PROCEEDING SHALL BE CONDUCTED AND ADMINISTERED IN LOUISVILLE, KENTUCKY AND, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SHALL BE HEARD BY ONE ARBITRATOR IN ACCORDANCE WITH THE THEN CURRENT COMMERCIAL ARBITRATION RULES OF THE AAA. ALL MATTERS RELATING TO ARBITRATION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.) AND NOT BY ANY STATE ARBITRATION LAW.

THE ARBITRATOR SHALL HAVE THE RIGHT TO AWARD OR INCLUDE IN THE AWARD ANY RELIEF THAT THE ARBITRATOR DEEMS PROPER IN THE CIRCUMSTANCES, INCLUDING, WITHOUT LIMITATION, MONEY DAMAGES (WITH INTEREST ON UNPAID AMOUNTS FROM THE DATE DUE OR DATE DAMAGES ARISE OR ARE INCURRED), SPECIFIC PERFORMANCE, INJUNCTIVE RELIEF AND ATTORNEYS' FEES AND COSTS, PROVIDED THAT THE ARBITRATOR SHALL NOT HAVE THE RIGHT TO DECLARE ANY MARK GENERIC OR OTHERWISE INVALID OR, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, TO AWARD EXEMPLARY OR PUNITIVE DAMAGES. THE AWARD AND DECISION OF THE ARBITRATOR SHALL BE CONCLUSIVE AND BINDING UPON ALL PARTIES HERETO, AND JUDGMENT UPON THE AWARD MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION.

WE AND YOU ARE BOUND BY THE PROVISIONS OF ANY LIMITATION ON THE PERIOD OF TIME IN WHICH CLAIMS MUST BE BROUGHT UNDER APPLI-

CABLE LAW OR THIS AGREEMENT, WHICHEVER EXPIRES EARLIER. IN CONNECTION WITH ANY SUCH ARBITRATION PROCEEDING, EACH PARTY MUST SUBMIT OR FILE ANY CLAIM THAT WOULD CONSTITUTE A COMPULSORY COUNTERCLAIM (AS DEFINED BY RULE 13 OF THE FEDERAL RULES OF CIVIL PROCEDURE) WITHIN THE SAME PROCEEDING AS THE CLAIM TO WHICH IT RELATES. ANY SUCH CLAIM THAT IS NOT SUBMITTED OR FILED AS DESCRIBED ABOVE SHALL BE FOREVER BARRED.

EXCEPT FOR INCLUSION OF RELATED PARTIES AS EXPRESSLY PROVIDED IN THIS SECTION 14.(a), ARBITRATION SHALL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE, BASIS, AND AN ARBITRATION PROCEEDING BETWEEN US (INCLUDING OUR AFFILIATES, AND/OR OUR OR THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES) AND YOU (INCLUDING YOUR OWNERS, GUARANTORS, AFFILIATES OR EMPLOYEES, IF APPLICABLE) MAY NOT BE CONSOLIDATED WITH ANY OTHER ARBITRATION PROCEEDING BETWEEN US AND ANY OTHER PERSON, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR ASSOCIATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION, WE AND YOU EACH HAVE THE RIGHT IN A PROPER CASE TO BRING AN ACTION TO OBTAIN A TEMPORARY RESTRAINING ORDER OR TEMPORARY OR PRELIMINARY INJUNCTIVE RELIEF FROM A COURT OF COMPETENT JURISDICTION; PROVIDED, THAT WE AND YOU MUST CONTEMPORANEOUSLY (WITHIN 10 BUSINESS DAYS AFTER COMMENCEMENT OF COURT ACTION) SUBMIT OUR DISPUTE FOR ARBITRATION ON THE MERITS AS PROVIDED HEREIN, EXCEPT AS OTHERWISE PROVIDED IN THE FIRST PARAGRAPH OF THIS SECTION 14.(a).

THE PROVISIONS OF THIS SECTION ARE INTENDED TO BENEFIT AND BIND CERTAIN THIRD-PARTY NON-SIGNATORIES AND SHALL CONTINUE IN FULL FORCE AND EFFECT SUBSEQUENT TO AND NOTWITHSTANDING THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

(b) GOVERNING LAW. EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) OR OTHER FEDERAL LAW, THIS AGREEMENT AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU SHALL BE GOVERNED BY THE LAWS OF THE STATE OF KENTUCKY, WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES.

(c) CONSENT TO JURISDICTION AND VENUE. ALL JUDICIAL ACTIONS BROUGHT BY US AGAINST YOU OR YOUR OWNERS OR BY YOU OR YOUR OWNERS AGAINST US OR OUR AFFILIATE, AND/OR OUR OR THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES MUST BE BROUGHT IN A COURT OF COMPETENT JURISDICTION IN JEFFERSON COUNTY, KENTUCKY OR FEDERAL DISTRICT COURT FOR THE

WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION, AND YOU (AND EACH OWNER) IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY OBJECTION YOU, HE OR SHE MAY HAVE TO EITHER THE JURISDICTION OF OR VENUE IN SUCH COURTS. NOTWITHSTANDING THE FOREGOING, WE MAY BRING AN ACTION TO OBTAIN A RESTRAINING ORDER OR TEMPORARY OR PRELIMINARY INJUNCTION, OR ENFORCE AN ARBITRATION AWARD, IN ANY FEDERAL OR STATE COURT OF GENERAL JURISDICTION IN THE STATE IN WHICH YOU RESIDE OR IN WHICH THE RESTAURANTS ARE LOCATED.

(d) **WAIVER OF PUNITIVE DAMAGES.** EXCEPT WITH RESPECT TO YOUR OBLIGATION TO INDEMNIFY US PURSUANT TO SECTION 13 AND CLAIMS WE BRING AGAINST YOU FOR YOUR UNAUTHORIZED USE OR DISCLOSURE OF ANY CONFIDENTIAL INFORMATION, WE AND YOU AND YOUR OWNERS WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER. IN THE EVENT OF A DISPUTE BETWEEN US, THE PARTY MAKING A CLAIM SHALL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS (INCLUDING PRE-JUDGMENT INTEREST).

(e) **WAIVER OF JURY TRIAL.** WE AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF US.

(f) **LIMITATIONS OF CLAIMS.** EXCEPT FOR CLAIMS BROUGHT BY US WITH REGARD TO YOUR OBLIGATIONS UNDER SECTIONS 7.(a), 7.(b), 7.(c) OR 9.(e), AND TO INDEMNIFY US PURSUANT TO SECTION 13, ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP OF YOU AND US PURSUANT TO THIS AGREEMENT SHALL BE BARRED UNLESS AN ACTION IS COMMENCED WITHIN ONE (1) YEAR FROM THE DATE ON WHICH THE ACT OR EVENT GIVING RISE TO THE CLAIM OCCURRED, OR ONE (1) YEAR FROM THE DATE ON WHICH THE CLAIMANT KNEW OR SHOULD HAVE KNOWN, IN THE EXERCISE OF REASONABLE DILIGENCE, OF THE FACTS GIVING RISE TO SUCH CLAIMS, WHICHEVER LATER OCCURS.

(g) **Costs, Expenses and Attorneys' Fees.** Except as provided in Sections 13.(c) and 14.(a), each party shall pay its own costs, expenses and attorneys' fees in any action, claim, suit or proceeding arising out of this Agreement or the franchise relationship of the parties.

15. **Your Representations.** You hereby acknowledge and represent as follows:

(a) All information submitted to us by you or those owning an interest in you, including all applications, financial statements and other documents and information, is true and correct in all respects and does not omit any statement or item of material fact necessary to make

the statements made therein not false or misleading. You have disclosed to us the identity of all owners of any beneficial interest in you and, if and to the extent that any such owner is a corporation, LLC or other business entity, the names of all beneficial owners of such owner/entity.

(b) Neither you nor any shareholder, member or other holder of any ownership interest in you is subject to or has entered into any other agreement, promise, representation, warranty, covenant, court order or other legal or equitable obligation that conflicts with this Agreement or prohibits or limits your entering into this Agreement or your ability to perform your obligations under this Agreement.

## 16. Miscellaneous.

(a) Severability. You are bound to the maximum extent permitted by law that is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from the striking of any provision hereof by a court or arbitrator, or that a court or arbitrator holds to be unenforceable in a final decision to which we are a party, or that may result from reducing the scope of any provision to the extent required to comply with a court order or arbitration award or decision or with any state or federal law, whether currently in effect or subsequently enacted.

(b) Construction. All references herein to the masculine, neuter, or singular shall be construed to include the masculine, feminine, neuter, or plural, as the case may require. All acknowledgements, warranties, representations, covenants, agreements, and obligations herein made or undertaken by you shall be deemed jointly and severally undertaken by all those executing this Agreement as you. During any period in which any of the covenants in Section 7 or Section 9.(e) is being breached or violated, including any period in which either of the parties seeks judicial or arbitral enforcement, interpretation or modification of any such covenant, and all appeals thereof, the restricted period set forth therein shall toll and be suspended.

(c) Entire Agreement. This Agreement, the documents incorporated herein by reference and the Exhibits attached hereto, constitute the entire agreement between the parties, and all prior understandings or agreements concerning the subject matter hereof are canceled and superseded by this Agreement, provided, nothing herein is intended to derogate from representations made in the Disclosure Document. The Exhibit to this Agreement is incorporated herein by reference and made a part hereof as if set out in full herein.

(d) Affiliate. As used in this Agreement, the term "Affiliate" means any person or entity that is owned or controlled by, or that owns or controls, or is under common control with, a specified person or entity, either directly or through one or more intermediaries.

(e) Amendments. Except for those permitted to be made unilaterally by us, no supplement, amendment or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto.

(f) Waivers. No failure by us to exercise any right given to us hereunder, or to insist upon strict compliance by you with any obligation, agreement or undertaking hereunder,

and no custom or practice of the parties at variance with the terms hereof will constitute a waiver of our right to demand full and exact compliance by you with the terms hereof. Waiver by us of any particular default by you does not affect or impair our rights with respect to any subsequent default of the same or of a different nature, nor does any delay or omission of us to exercise any right arising from such default affect or impair our rights as to such default or any subsequent default.

(g) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument.

(h) **Headings.** The headings used in this Agreement are for convenience only, and the paragraphs shall be interpreted as if such headings were omitted.

(i) **Time of Essence.** You acknowledge that time is of the essence with regard to your obligations hereunder, and that all of your obligations are material to us and this Agreement.

(j) **Effective Date.** This Agreement is effective only upon execution by an authorized representative of Papa ~~John's~~Johns and delivery to you. The date that we effect delivery, as set forth below, shall be the Effective Date of the Agreement.

**IN WITNESS WHEREOF**, the parties have signed this Development Agreement as of the Effective Date.

**DEVELOPER**

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

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

**PAPA JOHN'S FRANCHISING, LLC**

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

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

Executed at Louisville, Jefferson County,  
Kentucky and delivered \_\_\_\_\_, 2024 (the  
"Effective Date")

**PAPA ~~JOHN'S~~JOHNS DEVELOPMENT AGREEMENT EXHIBIT A**

**DEVELOPMENT AREA**

The areas encompassed on the attached map entitled " \_\_\_\_\_ " constitute the

"Development Area," as defined in the foregoing Papa **John's**Johns Development Agreement, by and between PAPA JOHN'S FRANCHISING, LLC and \_\_\_\_\_ (except for Non- Traditional Sites expressly excluded from the Development Area under Section 1.(a) of the Development Agreement).

**PAPA JOHN'S**JOHNS

**DEVELOPMENT AGREEMENT**

**EXHIBIT B**

**Type of Incentive Program:** \_\_\_\_\_

**EQUIPMENT LEASE AGREEMENT**

**THIS LEASE AGREEMENT** ("Lease") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between PAPA JOHNS USA, INC., a Kentucky corporation ("PJUSA"), and \_\_\_\_\_, a \_\_\_\_\_ ("Lessee").

**RECITALS:**

**A.** PJUSA has agreed to purchase and lease to Lessee certain pizza ovens and other restaurant equipment as more fully described in Section 1 of this Lease.

**B.** Lessee desires to lease such equipment from PJUSA and PJUSA has agreed to do so, upon the terms and conditions of this Lease.

**NOW THEREFORE**, PJUSA and Lessee hereby agree as follows:

**1. Lease of Equipment; Upgrade Option.** PJUSA hereby leases to Lessee and Lessee hereby leases from PJUSA, the restaurant equipment (the "Equipment") identified on Schedule 1 attached hereto. Schedule 1 will not be completed on the commencement date of this Lease but only after the equipment is invoiced to PJUSA and shipped. Lessee acknowledges by initialing below that this Lease does not contain all of the Equipment information as of the commencement date and that certain Equipment information may be added to Schedule 1 at a later date.

*Initial:* \_\_\_\_\_ *Date:* \_\_\_\_\_

**2. Term.** The term of this Lease commences on the date hereof and continues until the last day of the 48<sup>th</sup> full calendar month after the date that the Restaurant (as defined in Section 3.a) opens for business (the "Term").

**3. Rental Charges/Purchase Option.**

**a. Consideration.** The consideration for the leasing of the Equipment to Lessee during the Term is the commitment of Lessee to open and continuously operate Papa

**John's**Johns

pizza restaurant # \_\_\_\_\_

at \_\_\_\_\_

"Restaurant") under a Franchise Agreement with Papa John's Franchising, LLC ("PJF"), an

affiliate of PJUSA. So long as Lessee meets the lease contingency set forth below and remains in full compliance with the terms of the Franchise Agreement, no monthly or annual payments shall be due for the use of the Equipment.

**b. Purchase Option.** If Lessee is in good standing with PJF at the end of the Term and the Restaurant is still open and operating pursuant to Franchise Agreement, Lessee may purchase the Equipment by paying \$50 to PJUSA within 45 days of the expiration of the Term. If Lessee fails to meet any of the above criteria during the Term or after, the right of possession of the Equipment shall automatically revert to PJUSA.

**c. Lease Contingency.** This Lease is contingent upon the Restaurant being open for business on or before \_\_\_\_\_. If the Restaurant is not open for business on or before such date, PJUSA may revoke this Lease and, at PJUSA's option, require Lessee to either: (i) purchase the Equipment; or (ii) purchase a designated portion of the Equipment; or (iii) return the Equipment to PJUSA. The Restaurant must be open to the public and operating during normal business hours on normal business days to be deemed "open for business" for purposes of this Lease. A promotional, token, or "soft" opening of a Restaurant followed by a closure for 48 hours or more does not constitute "open for business."

**4. Delivery and Freight Costs; Installation.** Lessee shall pay all costs of (a) transportation and freight charges for delivery of the Equipment to Lessee's designated location; and (b) providing a suitable site for installation of the Equipment and actual installation of the Equipment at Lessee's site, including without limitation: rigging; structural alteration; rental of installation tools or equipment; necessary electrical power; and HVAC equipment and installations.

**5. Return of Equipment.** Except for Equipment purchased by Lessee pursuant to this Agreement or otherwise agreed by PJUSA, within 10 days of termination or expiration of this Lease, Lessee shall, at its own cost and expense, prepare the Equipment for shipping and deliver the Equipment to PJUSA or its designated agent. In the event Lessee fails or refuses to do so, Lessee shall allow PJUSA or its agents access to the premises where the Equipment is located to take immediate possession. The Equipment shall be returned to PJUSA in substantially the same condition as received by Lessee, ordinary wear and tear excepted. Upon receipt of the Equipment, PJUSA will perform diagnostic testing to determine whether the Equipment is in good condition and working order reasonably suited for its normal use and operation. If the Equipment fails such diagnostic testing, Lessee shall pay to PJUSA a maintenance fee equal to the cost to PJUSA of returning the Equipment to good condition and working order.

**6. Ownership; Location; Use.** The Equipment shall at all times be and remain the sole and exclusive property of PJUSA. Lessee shall have no right or property interest in the Equipment except for the right to possess and use the Equipment as provided in this Lease. The Equipment is and shall remain personal property even if installed in or attached to real property. Lessee shall at all times keep the Equipment free and clear from all claims, levies, liens and encumbrances. The Equipment shall be used solely for operation of the Restaurant and not for any other commercial, personal, family or household purposes. Lessee shall not make any alterations to the Equipment without the prior written consent of PJUSA.

7. **Repairs and Maintenance.** Lessee shall, at its own cost and expense, maintain the Equipment in good working order and make any and all repairs necessary to maintain the Equipment in good working order during the Term. Lessee shall follow the service procedures provided by the manufacturer of the Equipment.

8. **Risk of Loss; Insurance; Indemnification.** Lessee shall assume and bear the risk of loss or damage to the Equipment from the time the Equipment is delivered by PJUSA to a carrier for shipment to Lessee's designated location until returned to PJUSA. Throughout the Term and until possession of the Equipment is returned to PJUSA, Lessee shall keep the Equipment insured against all risks of loss in an amount not less than the replacement cost of the Equipment and PJUSA shall be listed as an additional insured and/or loss payee on such policy or policies of insurance. Lessee shall also carry general commercial liability insurance covering the Equipment and Lessee's use thereof, naming PJUSA as an additional insured thereunder. Lessee shall indemnify and defend PJUSA, together with its affiliates and their respective officers, directors, agents, employees and shareholders against, and hold each and all of them harmless from, all claims, liabilities, costs, damages and expenses arising from or related to Lessee's possession, use or operation of the Equipment, including without limitation, claims for damage to property or injury to persons. Lessee indemnification obligations hereunder shall survive the expiration or termination of this Lease.

9. **Condition of Equipment.** PJUSA warrants only that the Equipment, when delivered to Lessee's possession, will be free of all liens and encumbrances other than in connection with this Lease. **THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND PJUSA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Lessee agrees to look solely to the manufacturer for any warranty that may be offered. Lessee shall be responsible for reviewing and understanding any warranty that may be offered by the manufacturer and making any claims under such warranty directly with such manufacturer in accordance with the manufacturer warranty policies. Under no circumstances shall PJUSA be responsible or liable to Lessee or any other party for lost profits, or consequential or incidental damages, even if advised of the possibility thereof, and Lessee hereby waives any claim against PJUSA for any such losses or damages. Lessee shall be responsible for obtaining and maintaining any and all necessary or appropriate governmental approvals or permits for the installation and use of the Equipment, including ventilation.

10. **Assignment; Sublease.** Lessee shall have no right to assign this Lease or to sublease the Equipment without the prior written consent of PJUSA.

11. **Default.** Lessee shall be in default under this Lease if:

- a. Lessee is declared in default of the Franchise Agreement or the lease for the Restaurant premises;
- b. Any action is brought against Lessee causing the Equipment to be taken or encumbered;

c. Lessee dissolves or abandons its business, Lessee ceases to do business as a going concern, Lessee becomes insolvent, files a petition in bankruptcy, has a petition in bankruptcy filed against it which Lessee does not oppose, Lessee is adjudicated bankrupt or insolvent, Lessee makes an assignment for the benefit of creditors, or Lessee consents to the appointment of a receiver or trustee for all or any material portion of its assets;

d. Lessee fails to comply with any material term or provision of this Lease or to perform or fully discharge any of its duties or obligations hereunder.

**12. PJUSA Remedies.** In the event of default by Lessee, PJUSA shall be entitled to the following remedies, which shall be cumulative and not exclusive of any other remedies to which PJUSA may be entitled under applicable law, PJUSA or its designated agents or representatives may enter Lessee's site and repossess the Equipment or sue for a court ordered repossession and Lessee shall pay all costs and charges incurred by PJUSA in connection therewith, including without limitation, costs or charges incurred by PJUSA to recover the Equipment and return it to allocation chosen by PJUSA.

**13. Currency; Taxes.** All payments due to PJUSA hereunder shall be made in U.S. Dollars, and at PJUSA's election shall be paid by check, in immediately available funds, or via electronic funds transfer initiated by PJUSA, all without setoff or withholding by Lessee. Applicable sales or use tax will be billed to lessee as required by law.

**14. Governing Law.** This Lease shall be governed by and construed in accordance with, the laws of the Commonwealth of Kentucky, excluding its conflict of laws principles.

**15. Entire Agreement.** This Lease constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and prior written or contemporaneous oral agreement with respect thereto.

IN WITNESS WHEREOF, PJUSA and Lessee have executed this Lease as of the date first set forth above.

**PAPA JOHN'S USA, INC.:**

**LESSEE:**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1 – Equipment**

Date: \_\_\_\_\_ Store # \_\_\_\_\_ Franchise: \_\_\_\_\_

Store Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

\_\_\_\_\_ Double Stack of Conveyor Ovens

Brand: \_\_\_\_\_; Model No. \_\_\_\_\_

Serial No. \_\_\_\_\_; Serial No. \_\_\_\_\_

\_\_\_\_\_ Hood with Integrated Ansul System (if required; furnished with hood by the manufacturer)

Manufacturer: \_\_\_\_\_

\_\_\_\_\_ Walk In Cooler, Serial No. \_\_\_\_\_

\_\_\_\_\_ Make line, Serial No. \_\_\_\_\_

\_\_\_\_\_ Under Counter Refrigerator, Serial No. \_\_\_\_\_

\_\_\_\_\_ Safe, Serial No. \_\_\_\_\_

\_\_\_\_\_ Menu Board

\_\_\_\_\_ Front Counter

\_\_\_\_\_ Laminate Package

\_\_\_\_\_ Stainless Steel Package:

\_\_\_\_\_ Slap Table

\_\_\_\_\_ Sauce Table

\_\_\_\_\_ Drivers Table

\_\_\_\_\_ Counter Table

\_\_\_\_\_ Cut Table

\_\_\_\_\_ Safe Table

\_\_\_\_\_ Wall Panel

\_\_\_\_\_ Can Rack/Prep Table

Sink Package (includes faucets): \_\_\_ Above Sink Storage \_\_\_ Dry Storage \_\_\_ Cooler Storage \_\_\_  
Dunnage

**PAPA JOHN'S JOHNS**

**DEVELOPMENT AGREEMENT**

**EXHIBIT C**

## OVEN PAYMENT AGREEMENT

This **OVEN PAYMENT AGREEMENT** (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between **PAPA JOHN’S USA, INC.**, a Kentucky corporation and (“Papa **John’sJohns**”) and \_\_\_\_\_, a \_\_\_\_\_ (“Franchisee”).

### RECITALS:

A. Franchisee is obligated to reimburse Papa **John’sJohns** for two Middleby-Marshall [insert model number] ovens, serial numbers \_\_\_\_\_ and \_\_\_\_\_ that were installed at Papa **John’sJohns** restaurant # \_\_\_\_\_, [address of restaurant] (the “Equipment”), totaling \$ \_\_\_\_\_.

B. Papa **John’sJohns** has agreed to accept monthly installments toward the payment of this debt, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, Franchisee and Papa **John’sJohns** hereby agree as follows:

1. **Payment; Terms.** Franchisee shall pay Papa **John’sJohns** the sum of \$ \_\_\_\_\_ (the “Debt”) in monthly installments as follows: (a) twelve (12) equal installments of \$ \_\_\_\_\_ beginning \_\_\_\_\_,

2. **Default; Remedies.** In the event of default in payment by Franchisee, Papa **John’sJohns** shall be entitled to the following remedies, which shall be cumulative and not exclusive of any other remedies to which PJUSA may be entitled under applicable law: (a) Papa **John’sJohns** or its designated agents or representatives may enter the site and repossess the Equipment; or (b) Papa **John’sJohns** may sue for a court ordered repossession; and in either case, Franchisee shall pay all costs and charges incurred by Papa **John’sJohns** in connection therewith, including without limitation, costs or charges incurred by Papa **John’sJohns** to recover the Equipment and return it to a location chosen by Papa **John’sJohns**.

3. **Further Actions.** Franchisee hereby agrees to execute and deliver such additional instruments and documents, and to take such additional actions, as may be reasonably required from time to time in order to effectuate the terms and provisions of this Agreement, including without limitation, executing and delivering to Papa **John’sJohns** one or more financing statements or other security instruments.

4. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to subject matter hereof and supersedes any prior written or contemporaneous oral agreement with respect thereto.

**IN WITNESS WHEREOF**, Papa **John’sJohns** and Franchisee have executed and delivered this Agreement as of the date first set forth above.

**PAPA JOHN'S USA, INC**

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

\_\_\_\_\_

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

**EXHIBIT F:**

**AUTHORIZATION OF AUTOMATIC WITHDRAWAL**



**AUTHORIZATION TO HONOR DEBITS BY AND PAYABLE TO THE FOLLOWING PAYEES**

BANK NAME

ACCOUNT #

ABA ROUTING #

**X PAPA JOHN'S USA, INC**

**Affiliates/Additional Payees:**

Papa John's International, Inc.	Capital Delivery LTD
Papa John's Marketing Fund, Inc.	DMA Fund
Preferred Marketing Solutions	Papa Card, Inc.
PJ Food Service, Inc.	

1. Bank Account in Name of: \_\_\_\_\_

• **ATTACH TO THIS SHEET ONE VOIDED CHECK FOR THE ABOVE ACCOUNT.**

2. Store Location: \_\_\_\_\_ Store # \_\_\_\_\_  
*and future store locations for the above franchisee unless a separate bank account is identified and authorized*

3. Payor Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

**TO THE BANK DESIGNATED:**

- You are hereby requested and authorized to honor and to charge to the foregoing account, checks and electronic debits (collectively, "debits") drawn on such account which are payable to any of the above named Payees. It is agreed that rights with respect to each such debit shall be the same as if it bore a signature authorized for such account. It is further agreed that if any such debit is not honored, whether with or without cause, you shall be under no liability whatsoever. This authorization shall continue in force until revocation in writing is received by you.

**TO EACH ABOVE-NAMED PAYEE AND THE BANK DESIGNATED:**

The Payor agrees, with respect to any action taken pursuant to the above authorization:

- To indemnify the Bank and hold it harmless from any loss it may suffer resulting from or in connection with any debit, including, without limitation, execution and issuance of any check, draft or order, whether or not genuine, purporting to be authorized or executed by the Payee and received by the Bank in the regular course of business for the purpose of payment, including any costs or expenses reasonably in collection therewith.
- To indemnify and hold harmless Payee and the Bank for any liability, claim, loss or damage arising in the event that any such debit shall be dishonored, whether with or without cause and whether intentionally or inadvertently.
- To defend at Pay or's own cost and expense any action which might be brought by any depositor or any other persons because of any actions taken by the Bank or Pay ee pursuant to the foregoing request and authorization, or in any manner arising by reason of the Bank' s or Payee's participation therein.

DATE: / /

\_\_\_\_\_  
Name of Franchisee/Payor (please print)

By: \_\_\_\_\_  
SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE

---

**BE SURE ALL INFORMATION BLANKS ABOVE ARE COMPLETED. If you have any questions, please call John Voller at 502-261-4497**

**EXHIBIT G:**

CHEESE PURCHASE AGREEMENT

## CHEESE PURCHASE AGREEMENT

**THIS CHEESE PURCHASE AGREEMENT** (“Agreement”) is made and entered into effective as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between **PJ Food Service, Inc.**, a Kentucky corporation (“PJFS”), and **the undersigned franchisee** (“Buyer”). Papa John’s International, Inc. (“PJI”) and Papa John’s Franchising LLC (“PJF”) join in this Agreement for purposes of acknowledging and agreeing to its provisions.

**A.** PJFS is engaged in the business of warehousing and distributing cheese and other products to operators of “Papa John’s” pizza restaurants in the contiguous 48 states of the U.S. and has the capability of providing a stable source of cheese at relatively stable prices to Papa John’s franchisees who commit to purchase their cheese requirements from PJFS on a long-term basis.

**B.** Reducing the volatility of cheese prices charged to Papa John’s franchisees by PJFS involves buying cheese at the weekly spot market and reselling it to PJFS at a fixed periodic price, which in turn sells the cheese to Papa John’s franchisees at a fixed periodic price.

**C.** PJFS has incurred surpluses and deficits over time by selling cheese to the Papa John’s restaurant system at prices differing from the actual market price for cheese, based on the cheese price formula in effect from time to time.

**D.** In order to maintain the cheese purchasing program for the ongoing benefit of the domestic Papa John’s restaurant system (administered either through a separate entity, or as a separate accounting ledger within PJFS, at the discretion of PJI), and to reduce the complexity of financial reporting for PJI, the parties desire to enter into this agreement governing the purchase and sale of cheese between the parties.

**NOW THEREFORE**, in consideration of the above premises and the mutual covenants set forth herein, the parties hereby agree as follows:

**1. Definitions.** In addition to other terms defined elsewhere in this Agreement the following definitions apply:

**1.1.** The term “**Accumulated Cheese Purchase Liability**” means the cumulative dollar amount of sales of cheese at the Product Price to all buyers under this form of Agreement and to PJI and its affiliates, less the sum of (i) the dollar amount of cumulative purchases of cheese by PJFS under the Agreement and (ii) cumulative administrative costs, interest and dividends accrued, if such difference produces a negative number as the result.

**1.2.** The term “**Accumulated Cheese Purchase Receivable**” means the cumulative dollar amount of sales of cheese to all buyers under this form of Agreement, less the sum of (i) the cumulative purchases of cheese by PJFS under the Agreement and (ii) cumulative administrative costs, interest and dividends accrued, if such difference produces a positive number as the result.

**1.3** For purposes of Sections 1.1 and 1.2, the following terms have the following meanings: “Administrative costs” means routine administrative costs needed to operate the cheese-purchasing Program, consistent with past practices followed in administering the Program.

“Interest” means any interest costs for carrying the amount of the Accumulated Cheese Purchase

Liability or Surplus, as the case may be from time to time, based on PJI's prevailing interest rate on corporate borrowings in effect from time to time.

**1.4.** The parties acknowledge that the cheese-purchasing program may be administered through an independent entity or through PJFS as a separate accounting ledger entry system. Accordingly, the term "**Cheese-Purchasing Program**" herein means the cheese- purchasing program administered in either fashion.

**1.5.** The term "**Period**" means the four- or five-week fiscal month corresponding to the fiscal calendar of PJI.

**1.6.** The term "**Product**" means mozzarella cheese meeting the standards and specifications of PJI and PJF (as the franchisor of Papa John's pizza restaurants) and intended for use in domestic Papa John's pizza restaurants as a base ingredient of standard regularly offered pizzas. For avoidance of doubt, Product does not mean or include specialty cheeses (even if made from mozzarella or consisting of mozzarella) that are intended for use only on specified specialty pizzas, limited-time offers or in or on products other than regular menu pizzas and side items such as cheesesticks.

**1.7.** The term "**Restaurants**" shall mean at any relevant time the domestic Papa John's pizza restaurants then operated by Buyer.

**2. Purchase and Sale; Exclusivity** . Subject to the terms and conditions of this Agreement, Buyer agrees to purchase from PJFS, and PJFS agrees to sell to Buyer, the Product in reasonable commercial quantities as ordered by Buyer from time to time during the Term, in order to satisfy all of Buyer's requirements for Product at all of its Restaurants. Buyer shall place orders for the Product on a regular basis consistent with common practice and in accordance with Buyer's good-faith estimates of its reasonable needs. All such purchases shall be for the purpose of meeting Product needs in Buyer's Restaurants, and Buyer shall not resell any Product to any other party, other than incidental sales of the Product for use in restaurants operated by other Papa John's Pizza operators, without the prior written consent of PJFS. Except as otherwise provided in this Agreement, during the Term Buyer shall not purchase or acquire, directly or indirectly, any Product from any party other than PJFS.

**3. Conditional Purchase Commitment** . Notwithstanding the provisions of Section 2, Buyer may, but has no obligation to, purchase the Product from PJFS during any Period immediately following a Period during which an Accumulated Cheese Purchase Receivable position is reported. If an Accumulated Cheese Purchase Liability position is thereafter incurred, in any Period, Buyer's obligation to purchase the Product from PJFS hereunder with respect to Restaurants then subject to this Agreement resumes during the next immediately following Period, and continue unless and until an Accumulated Cheese Purchase Receivable position is again reported, as provided above. For purposes of this Section 3, the determination whether an Accumulated Cheese Purchase Receivable position or an Accumulated Cheese Purchase Liability position exists shall be made as of the end of the subject Period, in accordance with normal accounting principles of PJFS, and communicated to the Papa John's system during the next following Period. During any Period in which Buyer has no purchase obligation as provided above, Buyer may purchase or otherwise acquire the Product from a source other than PJFS, provided the alternative supplier has been approved under the normal supplier approval policies and standards

maintained from time to time by PJFS, PJI and PJF.

#### **4. Price; Payment Terms.**

**4.1. Price.** The price of the Product at the time of purchase by the Buyer pursuant to this Agreement (the “Product Price”) will be the price established for each fiscal Period determined in accordance with the formula matrix published and distributed to participating Papa John’s franchisees by PJFS on a monthly basis. PJFS will determine the Product Price according to a pricing formula (the “Price Formula”) based on the following parameters:

(i) The Product Price will remain fixed throughout the applicable fiscal Period, even if the Product Price established for the Period varies from the market price at which PJFS purchases the Product;

(ii) If the market price of the Product at which PJFS purchases the Product falls during a Period, the Cheese Program will build a surplus because PJFS will continue to sell the Product to Cheese Program participants at the established Product Price for the remainder of the Period, even though the established Product Price is above the market price at which PJFS purchases cheese. In that case, PJFS will establish the price of Product for the subsequent Period at a level designed to draw down the surplus.

(iii) If the market price of the Product at which PJFS purchases the Product rises during a Period, the Cheese Program will incur a deficit because PJFS will continue to sell cheese at the established Product Price for the remainder of the Period, even though the established Product Price is below the market price at which PJFS purchases the Product. In that case, PJFS will establish the price of Product for the subsequent Period at a level designed to reduce or retire the deficit.

(iv) Buyer acknowledges that the Product Price established by the Price Formula will differ from the market price for the Product. However, over the long term, the amount that Cheese Program participants pay for the Product will approximate the actual market price of the Product, and Cheese Program deficits and surpluses will balance to zero. The Product Price may differ from the market price in the short term but will not vary over the course of a fiscal Period.

**4.2. Buyer Liability** . Buyer acknowledges that any future Product Price established under the Cheese-Purchasing Program pursuant to this Agreement at a level less than the then-current market price will constitute or create an Accumulated Cheese Purchase Liability, as defined in Section 1.1, and a potential liability for Buyer in the form of a Liability Repayment, as defined below in Section 5.4. Buyer shall repay such liability in two ways: (a) Buyer’s payment of a Product Price that from time to time includes a premium over the market price, in accordance with the Price Formula; and (b) if applicable, Buyer’s payment of the Liability Repayment, as provided in Section 5.4 of this Agreement.

**4.3. Buyer Receivable** . Buyer acknowledges that any future Product Price established under the Cheese-Purchasing Program pursuant to this Agreement at a level more than the then-current market price will constitute or create an Accumulated Cheese Purchase Receivable, as defined in Section 1.2, and a potential receivable for Buyer in the form of a Receivable Refund, as defined below in Section 5.5. Buyer can recoup such a receivable as the Buyer’s payment of a Product Price from

time to time includes a reduction from the market price, in accordance with Price Formula. See Section 5.5 regarding the resolution of an Accumulated Cheese Purchased Receivable in the case of termination of the Agreement.

**4.4. Payment Terms.** All sales of the Product shall be subject to PJFS's standard payment terms and conditions in effect from time to time.

**4.5. Audits.** Buyer or a representative of Buyer shall have the right at Buyer's expense to audit PJFS's books and records relating to (a) the determination of the Product Price by application of the Price Formula, including but not limited to the calculation of an Accumulated Cheese Purchase Liability or Accumulated Cheese Purchase Receivable, if any, and (b) the calculation of a Liability Repayment or Receivable Refund, if any. Any such audit shall be conducted during regular business hours at PJFS's offices upon at least ten (10) days' advance written notice. If such audit discloses that Buyer (i) has paid more for the Product than required under this Agreement, or (ii) has been assessed a Liability Repayment greater than required under this Agreement, or has been paid or credited with a Receivable Refund less than required under this Agreement, PJFS shall promptly refund any such overpayment, or pay any such underpayment, to Buyer. If any such overpayment or underpayment exceeds five percent (5%) of the amount so paid by or due to Buyer, as the case may be, then PJFS shall also pay for the cost of the audit. If any such audit involves disclosure of confidential or proprietary information, including but not limited to information subject to protection under PJFS's agreement with its cheese supplier, Buyer and any representative of Buyer shall execute and deliver such confidentiality and nondisclosure agreements with respect to such information as PJFS may reasonably require.

## **5. Term; Termination.**

**5.1. Initial Term; Renewals.** The term of this Agreement commences on the Effective Date and continues for a term expiring at the next Period-end following the expiration of three years after the Effective Date (the "Initial Term"). Thereafter, this Agreement automatically renews for successive terms of twelve (12) Periods (each a "Renewal Term"), unless sooner terminated as provided in this Section 5. When used in this Agreement, the word "Term" means the Initial Term and each Renewal Term, if any.

**5.2. Termination by PJFS .** This Agreement may be terminated by PJFS (a) effective thirty (30) days following Buyer's failure to cure a material breach of this Agreement following notice of breach by PJFS, and (b) at any time upon notice of termination delivered to Buyer at least ninety (90) days prior to the effective date of such termination, with such termination effective as of the end of the next subsequent Period in which the Cheese-Purchasing Program ends in an Accumulated Cheese Purchase Receivable Position. If the Agreement is terminated by PJFS, Buyer will be eligible to receive a payment with respect to any Accumulated Cheese Purchase Receivable, as provided in Section 5.5, subject to any offsets arising out of Buyer's payment obligations to PJI or its affiliates and subsidiaries.

**5.3. Termination by Buyer.** Buyer may terminate this Agreement with respect to one or more Restaurants (a) effective thirty (30) days following PJFS's failure to cure a material breach of this Agreement following notice of breach by Buyer; (b) effective at the end of the Initial Term or any Renewal Term, upon notice of termination delivered to PJFS at least ninety (90) days prior to the effective date of such termination; or (c) effective at the end of the complete Period next following

delivery to PJFS of a notice of termination.

**5.4. Purchased Cheese Liability** . In the event of any termination of this Agreement with respect to one or more Restaurants, if the Cheese-Purchasing Program is in an Accumulated Cheese Purchase Liability position at the effective date of such termination, Buyer shall pay to PJFS an amount equivalent to Buyer's share of the Accumulated Cheese Purchase Liability position as of the termination date (a "Liability Repayment"), with such amount to be applied to reduce the Accumulated Cheese Purchase Liability. The Liability Repayment shall be equal to (i) the dollar amount of Buyer's aggregate purchases of the Product during the year ending on the termination date *divided by* (ii) the dollar amount of the aggregate purchases of the Product by the entire domestic Papa John's system during the year ending on the termination date, with the quotient *multiplied by* (iii) the dollar amount of the Accumulated Cheese Purchase Liability position as of the termination date. The Liability Repayment will be due and payable within thirty (30) calendar days following the termination date, unless Buyer elects to pay such amount in equal monthly installments over a 12-month period following the termination date, including pro rata interest equal to the borrowing cost charged to PJI. In the event of any termination of this Agreement with respect to fewer than all of Buyer's Restaurants, the Liability Repayment will be calculated as the pro rata share applicable to the subject Restaurants.

For purposes of illustrating the calculation of the Liability Repayment as of a termination date, if (i) Buyer purchased \$50,000 of Product for its one Restaurant during the preceding year, and (ii) total purchases of Product for the preceding year by the entire domestic Papa John's system equaled \$145,000,000, and (iii) as of the termination date the Accumulated Cheese Repurchase Liability equaled \$5,000,000, the Liability Repayment would be \$1,724.14 ( $\$50,000/\$145,000,000 = 0.0003 * \$5,000,000 = \$1,724.14$ ).

**5.5. Purchased Cheese Receivable** . In the event of termination of this Agreement by PJFS, if an Accumulated Cheese Purchase Receivable position exists at the effective date of such termination, Buyer shall receive from PJFS an amount equivalent to Buyer's ratable share of the Accumulated Cheese Purchase Receivable position as of the termination date (a "Receivable Refund"). The Receivable Refund shall be equal to (i) the dollar amount of Buyer's aggregate purchases of the Product during the year ending on the termination date *divided by* (ii) the dollar amount of the aggregate purchases of the Product by the entire domestic Papa John's system during the year ending on the termination date, with the quotient *multiplied by* (iii) the dollar amount of the Accumulated Cheese Purchase Receivable position as of the termination date. The Receivable Refund will be due and payable within thirty (30) calendar days following the termination date.

For purposes of illustrating the calculation of the Receivable Refund as of a termination date, if (i) Buyer purchased \$50,000 of Product for its one Restaurant during the preceding year, and (ii) total purchases of Product for the preceding year by the entire domestic Papa John's system equaled \$145,000,000, and (iii) as of the termination date the Accumulated Cheese Repurchase Receivable equaled \$5,000,000, the Receivable Refund would be \$1,724.14 ( $\$50,000/\$145,000,000 = 0.0003 * \$5,000,000 = \$1,724.14$ ).

If the Agreement is terminated by the Buyer, and the Cheese-Purchasing Program is in an Accumulated Cheese Purchase Receivable position at the effective date of such termination, Buyer will not be entitled to receive any Receivable Refund or other payment from PJFS with respect to any Accumulated Cheese Purchase Receivable.

**5.6. Cheese-Purchasing Program Re-entry** . If the Buyer terminates this Agreement with respect to one or more Restaurants and later requests re-entry into the Cheese-Purchasing Program with respect to one or more of such Restaurants, Buyer will be obligated to execute and deliver a new Cheese Purchase Agreement in substantially the form of this Agreement, along with an agreement addendum setting forth the following provisions: (i) Buyer will not benefit from any Accumulated Cheese Purchase Receivable existing at the time of Buyer's re-entry into the Cheese-Purchasing Program; and (ii) Buyer will be accountable for the pro-rata portion of any Accumulated Cheese Purchase Liability existing at the time of Buyer's re-entry into the Cheese-Purchasing Program.

**6. Force Majeure**. PJFS shall not be liable to Buyer for failure to supply the Product, and Buyer will not be liable to PJFS for failure to purchase the Product, under this Agreement if such failure arises because of: (a) fires, floods, the elements, Acts of God; (b) wars (declared or undeclared), rebellions or revolutions in any country, or acts of terrorism; (c) strikes, lock-outs or other labor difficulties; (d) acts, rulings, regulations, decisions or requirements of any tribunal or government agency, board or official; (e) Product shortages or recalls; or (f) any other cause, whether similar or dissimilar to those enumerated herein, beyond the reasonable control of PJFS or Buyer, as the case may be.

**7. Relationship of the Parties**. The relationship between PJFS and Buyer hereunder is that of vendor and purchaser only. Nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever and neither party shall have authority to act for or on behalf of the other in any matter.

**8. PJI Purchases** . PJI and its affiliates will participate in the Cheese-Purchasing Program on the same basis as Buyer with respect to all domestic Papa John's Pizza restaurants operated by PJI and its affiliates.

## **9. Miscellaneous Provisions**.

**9.1. Entire Agreement; Amendment**. This Agreement contains the entire agreement and understanding of the parties regarding its subject matter, and supersedes all prior or contemporaneous written or oral negotiations and agreements between them regarding its subject matter. This Agreement may be amended only in writing, signed by Buyer and PJFS.

**9.2. Assignability**. Buyer may not assign, by operation of law, merger or otherwise, license, sublicense or otherwise transfer any of its rights or obligations under this Agreement to any other person or entity without obtaining the prior written consent of PJFS. Buyer agrees that it will not sell or otherwise transfer assets except as provided in the Franchise Agreement for each Restaurant. In the event of any proposed sale of the assets of one or more Restaurants, or the proposed sale or transfer of a majority of the ownership of Buyer, Buyer will notify PJFS of the proposed transaction and the identity of the purchaser or successor at least fifteen (15) days before the proposed closing date. If the proposed purchaser or successor is or will be a customer of PJFS, Buyer will either (a) make the assumption of this Agreement by the purchaser a condition precedent to consummating the transaction, by inclusion in transfer documentation between Buyer and the purchaser or successor of substantially the following: "[Purchaser or successor] hereby assumes [Buyer]'s rights and obligations under that

certain Cheese Purchase Agreement between [Buyer] and PJ Food Service dated [Effective Date under this Agreement],” or (b) cause the payment at the time of the transfer of any Liability Repayment due under Section 5.4.

**9.3. Governing Law; Venue.** This Agreement, and the parties' respective rights hereunder, shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Kentucky, excluding Kentucky’s conflicts of laws principles. Any action to enforce this Agreement shall be brought only in a federal or state court with jurisdiction over the matter and located in Jefferson County, Kentucky.

**9.4. Waiver.** No waiver by any party of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

**9.5. Captions.** All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning and construction of any provision hereof.

**9.6 Binding Effect of Agreement.** Except as provided in Section 8.2, this Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors and assigns.

**9.7. Notices.** The term “notice” as used in this Agreement will mean written notice, except where specifically provided otherwise. Notice will be delivered by (i) certified mail, return receipt requested (or the equivalent), (ii) facsimile with receipt electronically verified, (iii) overnight courier service which provides a delivery receipt, or (iv) by an electronic mail message with receipt electronically verified, to the following addresses or to such other address or person as a party may specify by notice given in accordance with this Section 8.7:

*If to Buyer:*

Address maintained in PJF’s’s records pursuant to a Franchise Agreement

*If to PJFS:*

Treasurer  
PJ Food Service, Inc.  
2002 Papa John’s Boulevard  
Louisville, Kentucky 40299

*With a copy to:*

General Counsel  
Papa John’s International, Inc.  
2002 Papa John’s Boulevard  
Louisville, Kentucky 40299

**9.8. No Effect on Franchise Agreement.** No provision of this Agreement shall be deemed to modify any obligation of Buyer or PJ I under any Franchise Agreement between Buyer and PJI or any affiliate of PJI.

**9.9. Counterparts .** This Agreement may be executed by the parties in one or more counterparts that collectively will constitute one fully executed agreement.

**CONFIDENTIAL - For Designated Recipients Only**

**SIGNATURE PAGE TO CHEESE PURCHASE AGREEMENT EFFECTIVE DEC. 27, 2010**

**IN WITNESS WHEREOF**, Buyer, PJFS and BIBP, by their duly authorized officers, have executed this Cheese Purchase Agreement as of the Effective Date.

*Buyer(s):* \_\_\_\_\_

Signature: \_\_\_\_\_

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

*PJFS:*     **PJ FOOD SERVICE, INC.**

A handwritten signature in cursive script that reads "R. Shane Hutchins".

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By: R. Shane Hutchins Senior Vice  
President

***Please print a copy of this signature page and attach it to your agreement for your records***

Document comparison by Workshare Compare on Friday, August 30, 2024  
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Input:	
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Padding cell	

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Deletions	134
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Moved to	0
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Total changes	268

