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No. 82891-1

SUPREME COURT
OF THE STATE OF WASHINGTON

SOMETHING SWEET, LLC, a Washington Limited Liability Company;
KIRK BRANDENBURG and JILL BRANDENBURG, husband and wife,

Appellants,

v.

NICK-N-WILLY'S FRANCHISE COMPANY, LLC, a Colorado Limited
Liability Company; MICHAEL MOORE; and PATTI MOORE,

Respondents.

BRIEF OF APPELLANTS

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I. Introduction

This case was brought as an action for rescission and damages under the Franchise Investment Protection Act, Chapter 19.100.RCW (“FIPA”). The Appellants (referred to collectively as “the Brandenburgs”), plaintiffs below, alleged violations of FIPA’s anti-fraud provision, RCW 19.100.170, the registration provision of RCW 19.100.020(1) and the disclosure requirement of RCW 19.100.080. The alleged violation of RCW 19.100.170 was based upon the failure of Respondent Nick-N-Willy’s Franchise Company, LLC (“NNW”), a franchisor in the pizza industry, to inform the Brandenburgs that it intended to discontinue the very type of franchise they were purchasing, a material omission in violation of RCW 19.100.170(2).

The Brandenburgs also contended that Respondent Michael Moore was operating as a subfranchisor and that no franchise offering reflecting that fact was ever registered, a violation of RCW 19.100.020(1). It is undisputed that no registration document disclosing a subfranchisor has ever been filed in Washington in connection with NNW’s franchise offering. Necessarily then, no such document was ever provided to the Brandenburgs either, representing a violation of RCW 19.100.080.

Nonetheless, the trial court dismissed this case with prejudice on the Respondents’ summary judgment motions. The Brandenburg’s motion for reconsideration was denied and this appeal followed.

II. Assignments of Error

1. The trial court erred in dismissing the Brandenburgs' RCW 19.100.170(2) material omission claim where the fact of the omission was not even challenged and its materiality was both self-evident and testified to by the Brandenburgs.

2. The trial court erred in concluding as a matter of law that Michael Moore was not selling franchises where his contract with NNW called for him to do so, where he was entitled to commission on account of such sales, where he and Patti Moore were disclosed to the State of Washington as franchise salespersons and where NNW admitted that both he and his partner Patti Moore were selling Nick-N-Willy's franchises in answer to the Complaint.

3. The trial court erred in concluding as a matter of law that Michael Moore was not a "subfranchisor" when in fact all definitional elements of that term were present.

4. The trial court erred if his decision included any conclusion that subfranchisor registration is not required.

5. The trial court erred in dismissing the Complaint on the basis of the foregoing errors and in failing to reconsider that decision.

III. Issues Pertaining to Assignments of Error

1. What is the burden of a party moving for summary judgment of dismissal of a material omission claim? (Assignment of Error No. 1).
2. Is the decision of a franchisor to discontinue offering a particular form of franchise model material to a prospective purchaser of that franchise? (Assignment of Error No. 1).
3. What is a subfranchise under FIPA? (Assignments of Error Nos. 2 and 3).
4. Does FIPA require that registration and disclosure be undertaken with respect to subfranchisors? (Assignment of Error No. 4).

IV. Statement of the Case

The Brandenburs pursued the idea of opening their own pizza business by submitting an online form they found at the website of NNW, www.nicknwillys.com, on March 25, 2006. CP 8, 14. They were next contacted by Michael Moore, who responded by email. Ibid. Michael Moore identified himself as the Seattle Area Developer for NNW. Ibid.

Mr. Moore and Kirk Brandenburg met at a coffee shop a few days later to discuss NNW's franchise offering and Mr. Moore invited the Brandenburs to an open house which was being held for interested Nick-N-Willy's franchisee prospects on April 5, 2006, in Issaquah, Washington. The Brandenburs did attend the open house. Ibid.; CP 17-18.

At the open house, NNW executive Barry Stolbof told attendees, which included the Brandenburgs, to contact Michael Moore if they wanted to become Nick-N-Willy's franchisees. CP 8, 14. The franchise the Brandenburgs were considering was for what NNW termed an "Outlet". CP 8-9, 15. A Nick-N-Willy's Outlet offered so-called "take and bake" pizza to consumers who would then be expected to bake the pizzas themselves, off premises. Ibid. An Outlet did not have any ovens and, naturally therefore, did not have any dine-in capability. Ibid.

Michael Moore subsequently provided the Brandenburgs with a Uniform Franchise Offering Circular on behalf of NNW. CP 9, 15, 18. Thereafter, the Brandenburg's communications with Michael Moore turned more to the specific steps necessary to open and build out a Nick-N-Willy's Outlet and Mr. Moore introduced the Brandenburgs to a retail space broker, Jeff Rosen, who assisted them in lease negotiations for the Snoqualmie Ridge space their Nick-N-Willy's Outlet eventually came to occupy. Ibid. During June, 2006, Patti Moore began to work with the Brandenburgs as well. CP 9, 15, 19. Patti Moore was Michael Moore's partner in the Area Developer business. Ibid.; CP 749-50.

The partnership consisting of Michael Moore and Patti Moore, was then being conducted pursuant to an "Area Developer Marketing Agreement" which Mr. Moore signed on July 14, 2005. CP 58. A copy of

the July 14, 2005 agreement is attached as Appendix 1. Paragraph 1.3 of that agreement states as follows:

[Area Developer] desires to act as a special agent to Franchisor within a certain geographical area, enabling [Area Developer] to sell franchises for NICK-N-WILLY'S Stores and to develop, support and provide services to NICK-N-WILLY'S Stores within such geographical area, under the terms and conditions contained in this Agreement

The agreement goes on to describe the Area Developer as providing "Sales Services" at paragraphs 3.1 and 3.2, and to provide for "Franchise Sales Procedures" in section 4, including a "Development Quota" for each "Sales Quarter". Section 6 of the agreement contains the terms of payment of the Area Developer's "Sales Services Commissions" as well as the "Franchise Sales Conditions". Sections 7 and 8 refer to NNW's duties to provide the Area Developer with training and assistance respectively; the training includes "franchise sales" training (§ 7.1) and the assistance includes access to advice on "franchise sales" and access to "franchise sales advertising and promotional materials" (§ 8.2).

The Area Developer too has duties under the agreement with NNW, which include the obligation not to employ anyone unfit to market the franchises (§ 9.1), the obligation to begin rendering the Sales Services (§§ 9.2, 9.3), the duty to confirm the accuracy of information "[b]efore it offers or sells any franchise" (§ 13.2) and the duty to engage in advertising for "prospective franchisees" (§ 13.9). The agreement also obligates the

Area Developer to pay NNW an “Initial Area Developer Fee” (¶ 5.1) and contains an explicit recognition that information and disclosures concerning the Area Developer may have to be registered with the appropriate state agency before the Area Developer can solicit any franchise prospects (¶ 4.2).

Again, no subfranchise registration was on file with the Department of Financial Institutions with respect to the Moores, as the Respondents contend the Moores were not subfranchisors. NNW did file a Salesperson Disclosure Form with respect to both Michael Moore and Patti Moore. CP 741, 745.

Eventually the Brandenburgs contracted with NNW for a franchise in King County, Washington, pursuant to a written franchise agreement which states that it was to be effective on September 6, 2006. CP 9, 15, 19. Because their only interest was in the Outlet model of franchise, the Brandenburgs were not concerned about signing a lease prohibiting them from offering cooked pizzas, which they did. CP 447-48.

On August 5, 2008, the Brandenburgs commenced this action for rescission and damages under FIPA, against NNW and the Moores, alleging that the Brandenburgs had not been informed that NNW was considering or had already decided to discontinue offering the Outlet model of franchise at the time of their purchase and that the Moores’ Area Developer Marketing Business was an unregistered and undisclosed

subfranchise. CP 7-13. The action was dismissed with prejudice on the Respondents' motions for summary judgment. CP 680-85. A timely motion to reconsider was denied. CP 752-55. This appeal ensued.

V. Argument

A. **An Appellate Court reviews a summary judgment *de novo*.**

Appellate courts review decisions on summary judgment *de novo* and all facts and inferences are construed in a light most favorable to the nonmoving party. *York v. Wahkiakum School District No. 200*, 163 Wn. 2d 297, 302, 178 P.3d 995 (2008). In this case, the Brandenburgs are the nonmoving party and are entitled to the benefit of a favorable construction of all facts and inferences.

B. **FIPA is remedial legislation and expresses a fundamental public policy of Washington.**

FIPA was enacted to deal with franchise sales abuses. *Corp. v. ARCO*, 122 Wash.2d 574, 579, 860 P.2d 1015 (1993); *see generally* Chisum, *State Regulation of Franchising: The Washington Experience*, 48 Wash.L.Rev. 291, 334-90 (1973). To protect against sales abuses, FIPA generally requires the registration of franchise offers with the State and disclosure of all material information to prospective franchisees. *Corp v. ARCO* at 579-80; *Lobdell v. Sugar N' Spice, Inc.*, 33 Wn. App. 881, 888, 658 P.2d 1267 (1983); *see also* Chisum, 48 Wash.L.Rev. at 352-69. The statute's objective is to "maximize disclosure and thus minimize

franchisor overreaching.” *Nelson v. National Fund Raising Consultants, Inc.*, 120 Wn. 2d 382, 391, 842 P.2d 473 (1992). FIPA expresses a fundamental policy of Washington. RCW 19.100.220(3). Violations of the registration requirement of RCW 19.100.020(1) or the disclosure obligation of RCW 19.100.080 are explicitly declared “unlawful” by those provisions.

As remedial legislation, FIPA should be construed liberally to give effect to the purposes for which it was enacted. *See, State v. Douty*, 92 Wn.2d 930, 936, 603 P.2d 373 (1979), citing *Gray v. Goodson*, 61 Wn.2d 319, 324, 378 P.2d 413 (1963). The liberal construction given a remedial statute should seek to "suppress the evil and advance the remedy". *Kittilson v. Ford*, 23 Wn. App. 402, 407, 595 P.2d 944 (1979), *affirmed*, 93 Wn.2d 223, 608 P.2d 264 (1980).

C. NNW did not disclose its plans to discontinue the Outlet franchise to the Brandenburgs prior to sale.

The Brandenburgs complain that they bought an Outlet franchise without being told that NNW was planning to discontinue offering the Outlet model, a violation of RCW 19.100.170(2)’s prohibition on material omissions in connection with a franchise offer and sale. *See*, CP 10-11. Far from denying that failed to disclose its plans to the Brandenburgs, NNW instead offers the following justifications through its President and CEO:

1. NNW did not promise not to discontinue offering Outlets (CP 60);
2. the Brandenburgs did not have to purchase an Outlet (CP 60-61);
3. NNW was concerned enough about the prohibition on cooked pizza in the Brandenburgs' lease to ask for an acknowledgment of those "concerns"—in a letter produced 14 days *after* the franchise agreement had gone into effect (CP 61); and
4. NNW still supports the remaining Outlets (CP 61)¹.

Additionally, the Moores argue that NNW had the contractual right to discontinue the Outlet franchise model, an undoubtedly true but hardly relevant observation.

There are two fundamental things to be said about the Respondents' justifications: (1) they do not in any way deny the charge that NNW in fact planned to discontinue the Outlet model at the very time it was selling such a franchise to the Brandenburgs; and (2) they do not support any contention that NNW actually made any pre-sale disclosure of that plan or that the Brandenburgs knew NNW planned to discontinue the Outlet model prior to their purchase of the franchise. The Respondents' motions for summary judgment on this ground were utterly deficient and

¹ Although the Brandenburgs believe this contention constitutes nothing but an insufficient, bald assertion of fact and would be irrelevant even if true, the Brandenburgs disputed this contention. CP 446-47.

should have been denied. *See, Weatherbee v. Gustafson*, 64 Wn. App. 128, 132, 822 P.2d 1257 (1992) (reversing the trial court's grant of summary judgment because the evidence did not negate inferences supporting the plaintiffs' case).

The burden of showing the absence of any material facts was on the Respondents as the parties moving for summary judgment. *Hash v. Children's Orthopedic Hosp.*, 110 Wn. 2d 912, 915, 757 P.2d 507 (1988). But NNW never addressed the issue directly: NNW never denied the allegation that it had already decided to cease offering the Outlet franchise model by the time it was selling an Outlet franchise to the Brandenburgs. In fact, the most logical inference to be drawn from the "concerns" expressed by NNW in its *post-sale* letter to the Brandenburgs is that the Brandenburgs' allegation is true.

Nowhere in the record is there any indication that NNW ever disclosed or told the Brandenburgs that it had decided not to offer Outlets in the future, or that the Brandenburgs knew of it from some other source prior to their purchase. The Respondents utterly failed to demonstrate the absence of issues of material fact and thus failed to meet their burden as moving parties; their motions should have been denied.

The materiality of NNW's decision to discontinue offering Outlets should be obvious. RCW 19.100.170(2) is essentially the same as the antifraud provision in the Securities Act of Washington, RCW

21.20.010(2), and the same standard applies. *Morris v. International Yogurt Co.*, 107 Wn. 2d 314, 322-23, 729 P.2d 33 (1986). A “material fact” is a fact a reasonable person would find important in deciding on a course of action with respect to a transaction. *Morris*, at 323. Materiality is usually a question of fact. *Id.* The Brandenburs offered uncontroverted testimony on the materiality of this omitted information. CP 447. In this case, the omitted information is so plainly material that this Court should find that it was material as a matter of law. *See, Morris* at 324-25 (failure to disclose that yogurt mix represented to be “unique” was available to non-franchisees was a material omission as a matter of law).

The judgment of the trial court should be reversed and the case should proceed to trial with the Respondents bearing the burden of disproving the Brandenburs’ reliance on the omitted information. *See, Morris* at 330 (establishing a rebuttable presumption of reliance in material omission cases under RCW 19.100.170(2)).

D. The Area Development Marketing Agreement is a subfranchise.

A subfranchisor is “a person to whom a subfranchise is granted.” RCW 19.100.010(10). A subfranchise is “an agreement, express or implied, oral or written, by which a person pays or agrees to pay, directly or indirectly, a franchisor or affiliate for the right to grant, sell or negotiate

the sale of a franchise.” RCW 19.100.010(9). The real question, therefore, is whether Mr. Moore’s agreement with NNW was a subfranchise. Plainly it was.

As noted above, Mr. Moore paid or agreed to pay a fee for his Area Developer Marketing Agreement. That is not in dispute. The only remaining element of a subfranchise, besides the fee, is “the right to grant, sell or negotiate the sale of a franchise”; NNW now denies that the Area Developer Marketing Agreement gave the Moores any of those rights and the trial court agreed. The Brandenburgs have cataloged above the myriad ways in which that agreement contemplates that the Moores would be selling franchises and the fact that salesperson disclosures were placed on file regarding the Moores. The Respondents’ current position is simply contrary to their words and deeds throughout.

In addition, NNW has admitted the following allegations of the complaint (CP 7-13; CP 14-16):

5. Defendant Patti Moore is a Washington state citizen who at all times pertinent hereto has been doing business in Washington as a person offering and selling Nick-N-Willy’s franchises in association with Michael Moore.

6. The Brandenburg’s earliest contacts with NNW came through Michael Moore, who responded by email to the Brandenburg’s submission of a form they had filled out and submitted at www.nicknwillys.com on or about March 25, 2006.

7. Mr. Moore and Kirk Brandenburg then met at a coffee shop a few days later to discuss NNW’s franchise

offering and Mr. Moore invited the Brandenburgs to an open house which was being held for interested Nick-N-Willy's franchisee prospects on April 5, 2006, in Issaquah, Washington. The Brandenburgs did attend the open house.

8. At the open house, NNW executive Barry Stolbof told attendees, which included the Brandenburgs, to contact Michael Moore if they wanted to become Nick-N-Willy's franchisees

10. Sometime shortly after the open house, the Brandenburgs and Michael Moore began discussing Snoqualmie Ridge as a possible site for the Brandenburgs to open a Nick-N-Willy's Outlet.

11. Michael Moore subsequently provided the Brandenburgs with a Uniform Franchise Offering Circular on behalf of NNW.

12. Thereafter, the Brandenburg's communications with Michael Moore turned more to the specific steps necessary to open and build out a Nick-N-Willy's Outlet and Mr. Moore introduced the Brandenburgs to a retail space broker, Jeff Rosen, who assisted them in lease negotiations for the Snoqualmie Ridge space their Nick-N-Willy's Outlet eventually came to occupy.

13. During June, 2006, Patti Moore began to work with the Brandenburgs as well. It was explained to the Brandenburgs that Patti Moore was partnering with Michael Moore to discharge the duties of Area Developer

15. The franchise agreement was offered to and executed on Something Sweet's behalf by the Brandenburg's, who met with Patti Moore at a location on Snoqualmie Ridge for the purpose of executing the final paperwork

17. The franchise agreement in question was negotiated, offered and sold to the Brandenburgs on NNW's behalf primarily through the efforts of Michael Moore and Patti Moore.

The suggestion that the Moores were not selling Nick-N-Willy's franchises, at least to the extent it comes from NNW, is baffling.

The Respondents apparently contend Mr. Moore was not a subfranchisor because he did not enter into the franchise agreement between NNW and the Brandenburs. But privity of contract is not what FIPA says is required. Again, a subfranchise gives the purchaser “the right to grant, sell or negotiate the sale of a franchise”. If a subfranchisor was limited to the power to *grant* a franchise only, then NNW’s point might be well taken, but that is not the case. The definition of subfranchise is satisfied if the purchaser obtains the right to sell or negotiate the sale of franchises. Again, NNW admits that the Brandenburs’ franchise was “negotiated, offered and sold” to them “primarily through the efforts of Michael Moore and Patti Moore”.

The Moores are selling Nick-N-Willy’s franchises and NNW has admitted they are doing so. The Respondents’ Area Developer Marketing Agreement plainly provides that granting them the right and obligation to sell Nick-N-Willy’s franchises was one of its chief purposes. That agreement entitles the Moores to commissions on those sales as well. Although the Respondents argue that the Area Developers are *only* allowed to “solicit prospective franchisees”, as set forth above, the Area Developer Marketing Agreement liberally refers to what they are doing as selling. And, of course, these are “Sales Services” the Area Developers are performing. Soliciting is inextricably bound up with such sales activities. FIPA’s definitional

section provides that "[o]ffer or offer to sell' includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise." RCW 19.100.010(16)(emphasis added).

The Respondents' will likely attempt to argue that the Legislature intended to distinguish "sell" from "offer to sell" by defining the terms differently. RCW 19.100.010(15) provides as follows: "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise." They will point out that the term "offer to sell" says it includes solicitation, while "sell" does not. But this argument is unsound. Neither "sell" nor "offer to sell" are being defined narrowly and there is no reason to think the Legislature envisioned a bright line separating the two terms—the line the Respondents will try to draw. In fact, by using the word "includes" in both RCW 19.100.010(15) and RCW 19.100.010(16), the Legislature intended to broaden the meaning of the terms. *See, Brown v. Scott Paper Worldwide Co.*, 143 Wn. 2d 349, 359, 20 P.3d 921 (2001)(the word "includes" is a term of enlargement, not limitation).

The Moores are plainly—and admittedly in the case of NNW—selling franchises. The conclusion that they are subfranchisors is simply inescapable.

E. FIPA requires subfranchisor registration.

FIPA's basic registration proposition is stated at RCW 19.100.020(1): "It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under this chapter or exempted under RCW 19.100.030." NNW will point out that it registered an offering in Olympia with the Washington Department of Financial Institutions, just as FIPA contemplates. But it has long been clear that the Department requires both the subfranchisor and the franchisor to register under circumstances such as those presented by this case.

RCW 19.100.250 empowers the Director of Financial Institutions to issue interpretive opinions. In response to the obvious indication at RCW 19.100.040 that both a subfranchisor and the franchisor should be required to register under FIPA, and the confusion about that requirement, Franchise Act Interpretive Statement FIS-01 was issued in 1991. <http://www.dfi.wa.gov/sd/franchiseinterpretive01all.htm>. FIS-01 provides, first of all, that "[i]f a subfranchisor offers or sells or is a substantial factor in arranging the offer and sale of a franchise, the offering by the subfranchisor must be registered or exempted therefrom."²

² NNW has never suggested any exemption from registration applies to this sale. It would be Nick-N-Willy's burden to prove that any exemption was available. RCW 19.100.220(1).

(emphasis added). FIS-01 then goes on to make clear that dual registration is required as follows:

3. When must both the franchisor and the subfranchisor file a registration statement?

A subfranchisor that intends to offer or sell in the state must in all cases make application for registration as required by RCW 19.100.040. If the franchisor also intends to offer franchises in the state, it too must comply with RCW 19.100.040. The Securities Administrator requires the franchisor and its subfranchisors to file separate registration statements and pay separate filing fees for their offerings.

It is entirely clear that Mr. Moore and his partner, Patti Moore, offered, sold and were substantial factors in the offer and sale of the franchise at issue here. Those facts are admitted. The Department of Financial Institutions has concluded that dual registration is required under facts such as those presented here.

F. Dual registration makes sense.

Anticipating that NNW and the Moores may protest that both the Department and the Brandenburgs are being hyper-technical, it is well worth realizing how clearly this fact pattern supports the importance of dual registration and the central policies and aims of FIPA. More than registration alone, the Brandenburgs should have received disclosures about the Moores and the area development business. Registration's chief

significance to a franchisee is the fact it makes the franchisor prepare disclosures--what a franchisor or subfranchisor registers *is* the disclosure document they are also required by RCW 19.100.080 to provide to the franchisee. *See*, RCW 19.100.040(1). Mr. Moore would have had to provide all the same information required of NNW, including his financial statements. RCW 19.100.040(2).

It was the Area Developer that the Brandenburgs were agreeing to look to for significant franchise support. The failure to register the Moores' information was far more than a technical "gotcha". The Brandenburgs had agreed in advance, at Paragraph 9.2 of their franchise agreement, to the delegation of multiple franchisor duties to any Area Developer³. Further, if FIPA exemplifies anything, it is the right of a franchisee to know with whom he or she is dealing. The disclosures concerning the Moores would likely have been more material to the Brandenburgs than the disclosures concerning the multiple minor officers of NNW which are disclosed in the UFOC⁴. The failure to provide mandatory and material information about the Moores and their business was not just a technical failure—it violated the anti-fraud provision of FIPA, RCW 19.100.170, as well. The defendants' failure to register and make disclosure as required by RCW 19.100.080 was really inexcusable.

³ The Franchise Agreement is "Exhibit B" to Richard Weil's Declaration which begins at CP56.

⁴ The UFOC is "Exhibit C" to Mr. Weil's Declaration.

G. NNW knew dual registration was an issue.

As mentioned above, far from having been “caught unawares” by this dual registration requirement, NNW contemplated that its “Area Developers” could also be legally obligated to register and expressly set out terms in the Area Developer Marketing Agreement to deal with that. Paragraph 4.2 of the agreement imposes multiple duties to provide information and purports to impose the costs of registering the Area Developer’s information on the Area Developer.

Obviously NNW considered dual registration explicitly. As between NNW and the Moores, the Brandenburgs express no opinion on where the fault for the failure to fully register resides. The Respondents can fight this issue out between themselves. RCW 19.100.190(4) expressly contemplates contribution actions between liable persons under FIPA. Plainly the Moores were subfranchisors. There should have been a registration on file, specific to the Moores, in compliance with RCW 19.100.020(1) and the Brandenburgs should have received the mandatory disclosures concerning the Moores that FIPA contemplates at RCW 19.100.040 and in compliance with RCW 19.100.080.

VI. Conclusion

For all the foregoing reasons, this Court should reverse and remand with directions to enter an Order declaring that NNW and the Moores violated RCW 19.100.020(1) and RCW 19.100.080, that the Brandenburgs

have established a material omission of fact by NNW in violation of RCW 19.100.170(2) and that the matter should proceed to trial on the remaining issues with the Respondents bearing the burden of rebutting the presumption of reliance on the omitted fact which favors the Brandenburgs.

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Dated this 12th day of June, 2009.

Respectfully submitted,

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By 

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CERTIFICATE OF SERVICE

On June 12, 2009, I caused to be served, via U.S. Mail, a
true and correct copy of Brief of Appellants upon the following parties:

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Dated this 12th day of June, 2009 at Seattle, Washington.


Katie Angelikis
Legal Assistant

APPENDIX 1

NICK-N-WILLY'S FRANCHISE COMPANY, LLC
AREA DEVELOPER MARKETING AGREEMENT

King County, WA
Development Area

July 14th, 2005
Date

Michael Aouf
Area Developer

NICK-N-WILLY'S FRANCHISE COMPANY, LLC
AREA DEVELOPER MARKETING AGREEMENT

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EXHIBITS

Exhibit I	Rider to Area Developer Marketing Agreement
Exhibit II	Guaranty and Assumption of Area Developer's Obligations
Exhibit III	Statement of Ownership
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Exhibit V	Nondisclosure and Noncompetition Agreement
Exhibit VI	Authorization Agreement for Prearranged Payments
	Addendum Required by Washington State

NICK-N-WILLY'S FRANCHISE COMPANY, LLC

AREA DEVELOPER MARKETING AGREEMENT

AREA DEVELOPER: MICHAEL MOULC

ADDRESS: 460 E 950 N
SILKSVILLE, VT 84663

EFFECTIVE DATE: July, 14th, 2005

THIS AGREEMENT (the "Agreement") is between NICK-N-WILLY'S FRANCHISE COMPANY, LLC, a Colorado Limited Liability Company, located at 9777 S. Yosemite Street Suite 230, Lone Tree, Colorado 80124 ("Franchisor") and the Area Developer listed above ("Area Developer" or "AD"), who agree as follows:

1. BACKGROUND AND PURPOSE

1.1. Franchisor has developed methods for establishing, operating and promoting restaurants ("NICK-N-WILLY'S Restaurant" or "Restaurants") and take and bake outlets ("NICK-N-WILLY'S Outlets" or "Outlets"). Outlets and Restaurants are collectively referred to in this Agreement as "NICK-N-WILLY'S Stores" or "Stores." Restaurants and Outlets sell unbaked pizzas and cookies to customers to take home and bake themselves, salads and other uncooked foods, beverages, and related services. In addition, Restaurants offer customers individual-sized baked pizzas and the opportunity to dine inside the Restaurant. Franchisor licenses certain valuable trade names, service marks and trademarks owned by Franchisor, including the service mark "NICK-N-WILLY'S" (the "Marks"), and Franchisor's distinctive techniques, expertise and knowledge in the establishment, operation and promotion of Stores and related licensed methods of doing business (the "Licensed Methods").

1.2. Franchisor grants to qualified individuals, or to entities with which such individuals are affiliated, the right and license to develop and operate Stores using the Marks and Licensed Methods.

1.3. AD desires to act as a special agent to Franchisor within a certain geographic area, enabling AD to sell franchises for NICK-N-WILLY'S Stores and to develop, support and provide services to NICK-N-WILLY'S Stores within such geographical area, under the terms and conditions contained in this Agreement ("AD Business" or "Business").

1.4. Franchisor is willing to grant AD the right to serve as an Area Developer, enabling AD to offer franchises for, and to provide site selection and support services to NICK-N-WILLY'S Stores within a certain geographical area, under terms and conditions in this Agreement.

2. DEFINITIONS

2.1. Development Area. "Development Area" is the geographical area described in the attached Exhibit I.

2.2. **Sales Quarter.** "Sales Quarter" means each calendar quarter during the term of this Agreement.

2.3. **Franchise Agreement.** "Franchise Agreement" means the forms of agreements (including, without limitation, franchise agreement and any exhibits, riders, collateral assignments of lease or sublease, and personal guarantees used in connection therewith) used by Franchisor from time to time in the granting of franchises for the ownership and operation of NICK-N-WILLY'S Stores. AD acknowledges that AD will use Franchisor's then-current form of franchise agreement and that Franchisor may, from time to time, modify or amend in any respect the form of franchise agreement and related agreements, including without limitation modifying fees, customarily used in granting NICK-N-WILLY'S Store franchises.

2.4. **Franchisee.** "Franchisee" means any person, corporation, partnership or other entity who has entered into a Franchise Agreement with Franchisor.

2.5. **AD Manual.** "AD Manual" means the manuals, technical bulletins, electronically transmitted information and other written materials covering the proper operating and marketing techniques of an AD Business, standards and specifications for implementing the Licensed Methods and systems directly related to the AD Business, such as the information on Franchisor's intranet system and the rules governing the use of Franchisor's intranet.

2.6. **Prime Lease and Premises.** "Prime Lease" shall mean a lease of commercial space ("Premises") entered into by the Area Developer, as tenant, for Premises located within the Development Area.

2.7. **Sublease.** "Sublease" shall mean a lease entered into between the Area Developer, as sublessor, and a Franchisee as subtenant, for all or any portion of the Premises leased pursuant to a Prime Lease.

2.8. **Assignment.** "Assignment" shall mean an assignment or other transfer to a Franchisee of all of the Area Developer's rights, title and interest in and to a Prime Lease.

3. SCOPE OF APPOINTMENT

3.1. **Appointment of Area Developer/Scope of Operations.** Franchisor appoints AD, and AD agrees to perform its obligations, as a special agent of Franchisor in accordance with the terms and conditions of this Agreement, and only within the Development Area, to: (1) solicit prospective Franchisees for NICK-N-WILLY'S Stores to be located in the Development Area ("**Sales Services**") as described in Section 9.3; (2) perform certain site acquisition and development services described in Section 9.4 ("**Site Services**"); and (3) to render support and other services ("**Support Services**") to Stores located within the Development Area as those services are described in Section 9.5. Franchisor may, in its sole discretion, grant AD the nonexclusive right, but AD shall not be obligated, to serve as landlord or sublessor to Franchisees in the Development Area. If AD requests such right and Franchisor consents, this Agreement shall govern the terms and conditions of such grant.

3.2. **Rights and Limitations to Development Area.** During this Agreement's term, Franchisor will not establish and license any other Area Developers to act as special agents to perform Sales Services or to thereafter render Site Services or Support Services to Franchisees within the

Development Area; provided, however, that Franchisor shall retain such rights in the Development Area as described in Section 3.3.

3.3. Reservation of Rights to Franchisor. AD acknowledges that the Agreement granted hereunder is nonexclusive and Franchisor (on behalf of itself, its affiliates and designees), retains the rights (without compensation or obligation whatsoever to AD unless specifically set forth herein):

a. to use, and to license others to use, the Marks and Licensed Methods for the operation of other AD Businesses at any location outside of the Development Area, wherever located;

b. to solicit prospective Franchisees and to grant other persons franchises to operate NICK-N-WILLY'S Stores at such locations within and outside of the Development Area and on such terms and conditions as Franchisor deems appropriate;

c. to own and operate such NICK-N-WILLY'S Stores either itself or through Franchisor's affiliates or designees within the Development Area (subject to its obligation to compensate AD, as set forth in Section 6.4);

d. to use and license the use of alternative proprietary marks or methods in connection with the operation of restaurants and stores featuring pizzas, salads, other food and related services at any location either within or outside of the Development Area, which businesses may be the same as, or similar to, or different from NICK-N-WILLY'S Stores, or which may be in alternative channels of distribution;

e. to use the Marks and Licensed Methods in connection with some or all of the same products and services offered by NICK-N-WILLY'S Stores, other services and products, promotional and marketing efforts or related items in alternative channels of distribution other than Outlets and Restaurants, including but not limited to, wholesale distribution and catalog and Internet sales, at any location;

f. to use and license others to use the Marks and Licensed Methods within or outside of the Development Area in connection with the operation of Stores within "Captive Audience Facilities" which are defined as facilities where people are congregating for a primary purpose unrelated to the Store business, creating significant foot traffic in the facility. Captive Audience Facilities include airports and other transportation hubs, hospitals, college campuses and other educational facilities, convention centers, grocery stores, department stores, "big box" retail centers, video/DVD rental stores, resorts, sports arenas and stadiums, hotels and within office buildings. Franchisor and its affiliates and designees reserve the right to contract with Captive Audience Facilities to develop and operate Stores within these facilities; and

g. to engage in any other activities not expressly prohibited in this Agreement.

4. FRANCHISE SALES PROCEDURES

4.1. Development Quota. AD agrees to comply with the development quota set forth in Exhibit I to this Agreement ("Development Quota") with respect to each Sales Quarter. The determination as to whether AD has met its Development Quota under this Agreement shall be based on the number of Franchise Agreements in effect and the number of Stores open and operating at the end of

a Sales Quarter. For purposes of these development obligations, a Store must be open and operating in compliance with the applicable Franchise Agreement in order to be counted toward the satisfaction of the Development Quota. AD agrees that during the term of this Agreement, it will at all times faithfully, honestly, and diligently perform its obligations hereunder and will continuously exert its best efforts to promote and enhance the development and operation of NICK-N-WILLY'S Stores within the Development Area. AD acknowledges and agrees that any Stores located in Captive Audience Facilities within the Development Area, regardless of whether such Stores are operated under Franchise Agreements, shall not be counted toward the Development Quota.

4.2. Franchise Registration and Disclosure. Neither AD nor any employee or representative of AD shall solicit prospective Franchisees of NICK-N-WILLY'S Stores until Franchisor has registered its current Uniform Franchise Offering Circular ("UFOC") in applicable jurisdictions and has provided AD with the requisite documents, or at any time when Franchisor notifies AD that its registration is not then in effect or its documents are not then in compliance with applicable law. If AD's activities pursuant to this Agreement require the preparation, amendment, registration or filing of information or any disclosure or other documents, all requisite offering circulars, ancillary documents and registration applications shall be prepared and filed by Franchisor or its designee, and registration secured before AD may solicit prospective Franchisees of NICK-N-WILLY'S Stores. Costs of such registration applicable to AD shall be borne by AD. In particular, AD shall:

- a. prepare and forward to Franchisor verified financial statements of AD in such form and for such periods as shall be designated by Franchisor, including audited financial statements if necessary and appropriate to comply with applicable legal disclosure, filing or other legal requirements;
- b. promptly provide all information reasonably required by Franchisor to prepare all requisite offering circulars and ancillary documents for the offering of franchises throughout the Development Area;
- c. execute all documents required by Franchisor for the purpose of registering AD and Franchisor to offer franchises throughout the Development Area; and
- d. pay or reimburse Franchisor, or its designee, upon demand, for the costs of registering and preparing those portions of all such offering circulars and ancillary documents which are applicable to AD.

AD agrees to review all information pertaining to AD prepared to comply with legal requirements for selling franchises in the Development Area and verify its accuracy if so requested by Franchisor. AD acknowledges that Franchisor, its affiliates or its designees, shall not be liable to AD for any errors, omissions or delays which may occur in the preparation of such materials described in this Section.

4.3. Advertising, Recruiting and Screening. AD shall be responsible for advertising for, recruiting, screening and interviewing prospects for NICK-N-WILLY'S Store franchises within the Development Area. AD shall provide prospective Franchisees with written information regarding a NICK-N-WILLY'S Store franchise approved by Franchisor, or via the telephone, face-to-face meetings or by visiting other NICK-N-WILLY'S Stores within the Development Area. AD shall submit each qualified applicant ("Applicant") for a NICK-N-WILLY'S Store franchise to Franchisor for approval. AD further agrees that all Applicants submitted to Franchisor by AD, if an individual, or the Managing Owner of the Applicant, if the Applicant is not an individual, shall be individuals of good character, have

adequate financial resources and meet Franchisor's criteria for Franchisees or Managing Owners of Franchisees. (A "Managing Owner" is defined in Section 7.1 of the Franchise Agreement). Each application for a franchise received by AD shall be submitted to Franchisor with all information respecting the Applicant, the Managing Owner of the Applicant, if applicable, the Applicant's proposed franchise location, if known, and all other information then customarily required by Franchisor concerning Applicants, including such financial statements and other information as Franchisor may reasonably require. AD shall assist the Applicant in the preparation of such financial reports and other information. If required by Franchisor, AD shall conduct background checks on Applicants at Franchisor's expense, provided that all such checks will be conducted in accordance with Franchisor's standards and specifications and, at Franchisor's option, through Franchisor's designated provider.

4.4. Franchisor's Approval of Prospective Franchisees. By delivery of written notice to AD, Franchisor shall approve or disapprove Applicants to become NICK-N-WILLY'S Store Franchisees. Franchisor agrees to use commercially reasonable efforts to deliver such notification to AD within 10 business days after the later of: (a) receipt by Franchisor of a complete application, financial statement, criminal background and/or credit check and other materials regarding the Applicant requested by Franchisor; or (b) the personal interview of Applicant by Franchisor, if any. Franchisor shall determine whether the Applicant possesses sufficient financial and managerial capability and meets the other criteria then utilized by Franchisor in the grant of franchises. Franchisor may refuse to grant a franchise to an Applicant if it so chooses. The grant of the franchise shall be effected only upon and after the full execution of the then-current Franchise Agreement by Franchisor and the Applicant.

5. PAYMENTS TO FRANCHISOR

5.1. Initial Area Developer Marketing Fee. The initial area developer marketing fee ("Initial Area Developer Fee") payable to the Franchisor AD in consideration for AD's appointment as exclusive Area Developer within the Development Area shall be calculated and set forth in the attached Exhibit I. Unless otherwise agreed, the Initial Area Developer Fee is payable in full upon execution of this Agreement. The Initial Area Developer Fee is fully earned by the Franchisor upon receipt and is nonrefundable once paid. AD acknowledges that the Initial Area Developer Fee does not include payment of any initial franchise fees for individual NICK-N-WILLY'S Stores.

5.2 Manner of Payment. Upon Franchisor's request, and in no event later than thirty (30) days prior to the opening of the AD Business, AD shall execute an Authorization Agreement for Prearranged Payments in the form attached hereto as Exhibit VI. AD acknowledges and agrees that Franchisor shall have the right to electronically transfer funds from AD's bank account to Franchisor's bank account for any amounts owed by AD to Franchisor including Advertising Fees, (defined in Section 13.9 below), costs related to errors and omissions insurance, promissory note payments and any other amounts due to Franchisor from AD.

6. PAYMENTS TO AREA DEVELOPER

6.1. Sales Services Commissions and Conditions of Payment. During the term of this Agreement, AD shall be paid a commission, as set forth in this Section, based on a percentage of initial franchise fees paid by Franchisees for the purchase of a franchise for a NICK-N-WILLY'S Store to be located within the Development Area ("Sales Services Commission"), subject to fulfillment of the following conditions ("Franchise Sales Conditions"):

a. Franchisee executes a Franchise Agreement with Franchisor and an initial franchise fee has been paid in full and actually received by Franchisor (Franchisor shall not be deemed to have received any fees paid into escrow, if applicable, until such fees have actually been remitted to Franchisor);

b. The sale for which the initial franchise fee has been paid is not a resale of any existing NICK-N-WILLY'S Store, or any interest therein; and

c. AD has complied with all other of its obligations under this Agreement with respect to such sale and has verified the same to Franchisor, in writing in a form prescribed by Franchisor.

6.2. Sales Services Commission Payments. Sales Services Commissions shall be an amount equal to thirty-five percent (35%) of the total initial franchise fees paid to Franchisor, and will be payable to AD within twenty (20) days after the Franchise Sales Conditions have been fulfilled, provided that the initial franchise fees have not been deposited into an escrow account, in which case, Sales Services Commissions will be payable to AD within fifteen (15) days after Franchisor has received the funds out of escrow. AD shall not receive any Sales Services Commission for franchises sold on or before the date of this Agreement or for NICK-N-WILLY'S Stores owned and operated by Franchisor, its affiliates or designees ("**Company Owned Stores**") in the Development Area, if any. In addition, AD shall not receive any Sales Services Commission for any NICK-N-WILLY'S Store located within a Captive Audience Facility unless AD has completed the Sales Services described in Section 9.3 and has been notified by Franchisor that it will receive a Sales Services Commission. No Sales Services Commission shall be payable during any period that a Franchisee has the contractual right to request a refund of any part of the initial franchise fee.

6.3. Commissions on Transfers of Franchises. If, during the term of this Agreement, an open and operating NICK-N-WILLY'S Store located within the Development Area or an interest therein is resold to a different Franchisee and the sale results in the execution of a Franchise Agreement and the payment of a transfer fee, then AD will be paid a commission in the amount of thirty-five percent (35%) of the transfer fee paid and actually received by Franchisor, payable within twenty (20) days of the completion of the transfer, provided that Franchisor shall not be deemed to have received any fees paid into escrow, if applicable, until 15 days after such fees have actually been remitted to Franchisor. Commissions on transfers for unopened restaurants will not be paid to AD. Notwithstanding the foregoing, AD will not be entitled to any transfer commission unless AD screens the prospective Franchisee as required by Section 4.3, provides certain information reasonably required by Franchisor to evaluate the prospective Franchisee, and provides the services required in Section 9.5.

6.4. Commissions on Royalty Fees. Franchisor shall pay to AD, within twenty (20) days of the end of each four (4) or five (5) week period as determined by Franchisor, thirty-five percent (35%) of the Royalties (as defined in the Franchise Agreement and excluding advertising fees or any other fees) actually received by Franchisor from each Franchisee-owned Store located in the Development Area, including Stores owned by AD and AD's affiliates, during the applicable period pursuant to their Franchise Agreement ("**Commission on Royalty Fees**"). Notwithstanding the foregoing:

a. If AD has failed or is not obligated to conduct the periodic inspections and file the reports described in Section 9.6 or failed to perform in any material respect the other services described in Article 9 to be provided to Franchisees located in the Development Area during any applicable four or five-week period with respect to one or more Franchisees located in the

Development Area, AD shall not be entitled to receive Commissions on Royalty Fees with respect to such Franchisees for the period during which reports or services were not provided.

b. AD shall not be entitled to share in or receive any Commissions on Royalty Fees from any fees paid to Franchisor by Franchisees in the Development Area prior to the time AD completes the initial AD training program and commences full performance of the services set forth in Article 9.

c. AD shall not be entitled to share in or receive any Commissions on Royalty Fees actually received by Franchisor (or that would otherwise be payable by any Company Owned Stores) from any Stores in the Development Area opened prior to the Effective Date of this Agreement.

d. To compensate AD for providing Support Services to Company Owned Stores and Stores located in Captive Audience Facilities, if required to do so by Franchisor, except as set forth in Section 6.4(c), AD shall receive payments equal to thirty-five percent (35%) of the Royalty Fees which would otherwise be payable to Franchisor from any Company Owned Stores in the Development Area.

6.5. Commission After Termination. All payments under this Article 6 shall immediately and permanently cease after the expiration or termination of this Agreement, although AD shall receive all amounts which have accrued to AD as of the effective date of expiration or termination.

6.6. Application of Payments. Franchisor's payments to AD shall be based on amounts actually collected from Franchisees, not on payments accrued, due or owing, but if any payments by Franchisees to Franchisor have been deposited into an escrow account, payments to AD will be made within 15 days after Franchisor has received the funds out of escrow. If a Franchise Agreement for a NICK-N-WILLY'S Store within the Development Area is terminated under circumstances entitling Franchisee to the return of all or part of the initial franchise fee or Royalty Fees (or in the event that Franchisor becomes legally obligated or decides in its sole discretion to return part or all of the initial franchise fee or Royalty Fees), Franchisor may deduct the portion of the amount to be returned to Franchisee in the same proportion as AD shared in the initial franchise fee or Royalty Fees from any future amounts owed AD. Franchisor shall apply any payments received from a Franchisee to any past due indebtedness of that Franchisee for Royalty Fees, advertising contributions, purchases from Franchisor or its affiliates, interest or any other indebtedness of that Franchisee to Franchisor or its affiliates. To the extent that such payments are applied to a Franchisee's overdue Royalty Fee payments, AD shall be entitled to its pro rata share of such payments, less its pro rata share of the costs of collection paid to third parties.

6.7. Setoffs. AD shall not be allowed to set off amounts owed to Franchisor for fees or other amounts due hereunder, against any monies owed to AD by Franchisor, which right of set off is hereby expressly waived by AD. Franchisor shall be allowed to set off amounts owed to AD for commissions, Royalty Fees or other amounts due hereunder, against any monies owed to Franchisor by AD, including setting off amounts owed to AD for commissions or Royalty Fees against monies owed to Franchisor for commissions on Sales Services which were paid to AD before Franchisee failed to successfully complete Franchisor's initial training program.

7. TRAINING ASSISTANCE

7.1. **Area Developer Training.** Within sixty (60) days after the date of execution of this Agreement, Franchisor shall furnish, and AD (or if AD is a partnership, corporation, or other entity, an individual designated by AD who owns at least twenty-five percent (25%) of the ownership interest in AD and who has been approved by Franchisor, who shall be designated as the "Managing Owner") shall attend, at AD's sole cost and expense, an initial training program, to consist of the training program applicable to Franchisor's Franchisees and such further training which may include topics such as marketing, franchise sales, franchise law compliance, site selection and Store operations, as Franchisor in its sole discretion deems advisable, furnished at such place and time as Franchisor may designate.

7.2. **Length of Training.** Franchisor shall determine the appropriate length of the portion of the initial AD training program applicable only to Area Developers, which will be in addition to the first part of the initial AD training program applicable to Area Developers and Franchisees. No tuition or fee shall be charged for the initial training. However, AD shall be responsible for all travel and living expenses incurred in connection with attendance at both parts of the initial training program.

7.3. **Additional Training.** The initial training program will be made available to replacement or additional Managing Owners and other management personnel during the term of this Agreement. Franchisor reserves the right to charge a tuition or fee in an amount payable in advance for such training. AD will be responsible for all travel and living expenses incurred by its personnel in connection with attendance at the training program. Further, the availability of the training programs will be subject to space considerations and prior commitments to new NICK-N-WILLY'S Franchisees and ADs.

7.4. **Seminars and Ongoing Training.** From time to time, Franchisor may present seminars, conventions or continuing development programs for the benefit of AD. AD or its Managing Owner shall be required to attend any ongoing mandatory seminars, industry conventions or programs as may be offered by Franchisor. If AD fails to attend all or any part of a mandatory seminar, convention or program without obtaining Franchisor's prior written approval of the absence, AD shall pay Franchisor one thousand dollars (\$1,000) for each program missed. Franchisor shall give AD at least 30 days prior written notice of any seminar, convention or program that is deemed mandatory. Franchisor will not require that AD attend any ongoing training more often than four times per calendar year. AD will be responsible for all travel and living expenses associated with attendance at any ongoing training program.

8. FRANCHISOR'S OPERATING ASSISTANCE

8.1. **AD Manual.** Franchisor shall, in addition to AD training program, loan to AD during the term hereof one copy of its AD Manual to assist AD and its employees in the conduct of the business contemplated by this Agreement. Franchisor may prescribe mandatory and suggested standards and operating procedures for AD in the AD Manual, which may be modified from time to time by Franchisor. AD shall keep its copy of the AD Manual current. In the event of a dispute relating to the AD Manual, the master copy that Franchisor maintains at its principal office shall be controlling. AD may not at any time copy any part of the AD Manual, unless approved in writing by Franchisor. If AD's copy of the AD Manual is lost, destroyed or damaged, AD shall be obligated to obtain from Franchisor, at Franchisor's then applicable charge, a replacement copy of the AD Manual. The AD Manual and other writings communicated to AD shall constitute material provisions of this Agreement as if fully set forth within its text.

8.2. Operating Assistance. Franchisor will make available the following services during the term of this Agreement:

- a. Upon the reasonable request of AD, consultation by telephone regarding advice related to franchise sales, Franchisee support and assistance; and
- b. Access to franchise sales advertising and promotional materials, Franchise Agreement and UFOC documents, as may be developed and updated by Franchisor, the reasonable cost of which may be passed on to AD.

9. AREA DEVELOPER'S OBLIGATIONS

9.1. Hiring and Training of Employees of Area Developer. AD shall hire all of AD's employees, shall be exclusively responsible for the terms of their employment and compensation and shall implement a training program for employees to enable their compliance with Franchisor's requirements; provided that AD shall not employ any person whom Franchisor, in its sole discretion, has determined to be unfit to represent Franchisor in the marketing of NICK-N-WILLY'S Store franchises or in furnishing services to Franchisees.

9.2. Commencement of Business. Unless otherwise agreed to in writing by Franchisor and AD, AD has sixty (60) days from the date of this Agreement within which to complete the initial training and commence operation of its AD Business. Franchisor will extend the time within which AD has to commence operations for a reasonable period of time, in the event that factors beyond AD's reasonable control prevent AD from meeting this schedule, so long as AD has made reasonable and continuing efforts to comply and AD requests in writing, an extension of time in which to have its Business established before the period lapses. The obligations of AD, including Sales Services shall begin on the Effective Date of this Agreement. AD will also, at AD's expense, and within thirty (30) days of the Effective Date of this Agreement, purchase or otherwise obtain for use in connection with the Business (a) computer hardware and software that comply with the standards and specifications of Franchisor; (b) an office serviced by a minimum of one dedicated telephone line with 24-hour professional answering service or voice mail; (c) a facsimile machine with its own dedicated telephone line; (d) business cards and stationery; (e) an account with an Internet service provider that meets Franchisor's specifications; (f) a high speed Internet connection, if available; and (g) any other items required by the AD Manual. The telephone number of the Business office must be listed in the white pages of the telephone directories in the Development Area.

9.3. Sales Services. AD shall solicit and identify prospective franchisees for NICK-N-WILLY'S Stores to be located within the Development Area.

9.4. Site Services. AD shall perform the following Site Services on behalf of Franchisor with respect to Franchisees of NICK-N-WILLY'S Stores located in the Development Area:

- a. Assist with Store location selection for each Franchisee, which shall consist of providing each Franchisee with criteria for a satisfactory site and assisting each Franchisee in completing a site submittal package (containing such demographic, commercial and other information as Franchisor may reasonably require) for each location at which Franchisee proposes to establish and operate a NICK-N-WILLY'S Store, assist in negotiating lease terms and coordinate the work of contractors and architects with respect to the development of each NICK-N-WILLY'S Store;

b. Provide standards and specifications for the build out, interior design, layout, floor plan, signs, designs, color and decor of the Store as prescribed from time to time by Franchisor; and

c. Submit completed forms and reports to Franchisor as prescribed by Franchisor from time to time, including site selection and pre-opening assistance forms and reports related to leases and construction.

AD shall not provide any Site Services to Company Owned Stores or Stores located in Captive Audience Facilities unless required to do so by Franchisor.

9.5. Pre-Opening and Opening Support Services:

a. Provide advice to Franchisee regarding the standards and specifications for the equipment, supplies and materials used in, and the menu items offered for sale by, the Store and advice regarding the selection of suppliers for the purchasing of such items used in connection with the NICK-N-WILLY'S Store;

b. Provide initial training and on-site assistance for a combined total of not less than 80 hours in the opening of NICK-N-WILLY'S Stores located in the Development Area; and

c. Provide guidance to Franchisee in implementing advertising and marketing programs, operating and sales procedures and bookkeeping and accounting programs.

AD shall not provide any pre-opening and opening Support Services to Company Owned Stores or Stores located in Captive Audience Facilities unless required to do so by Franchisor.

9.6. Ongoing Support Services. With respect to Franchisees of NICK-N-WILLY'S Stores located in the Development Area, AD shall perform the following Support Services on behalf of Franchisor:

a. Upon the reasonable request of Franchisee, provide consultation by telephone regarding the continuing operation and management of the Store and advice regarding restaurant services, product quality control, menu items and customer relations issues;

b. Provide on-going updates of information and programs regarding menu items and their preparation, the restaurant business in general, NICK-N-WILLY'S Stores and related Licensed Methods, including without limitation, information about special or new services of Franchisor;

c. Provide advice and assistance to Franchisee in connection with the development of and improvements to Franchisee's Store;

d. Conduct at least one (1) quality assurance inspection of each NICK-N-WILLY'S Store in the Development Area every month in the manner as required by Franchisor from time to time, said inspections to be verified by written reports in a form acceptable to Franchisor;

e. Provide access to advertising and promotional materials as may be developed by Franchisor from time to time;

f. At Franchisor's written request, establish an advertising cooperative for all NICK-N-WILLY'S Stores located in the Development Area using forms and procedures supplied by Franchisor; and

g. Submit periodic reports to Franchisor on activities in the Development Area, using procedures and forms prescribed by Franchisor.

AD shall not provide any on-going Support Services to Company Owned Stores or Stores located in Captive Audience Facilities unless required to do so by Franchisor.

9.7. Dealings with Franchisees. AD acknowledges that it is being delegated certain responsibilities of Franchisor under the Franchise Agreement to Franchisees in the Development Area. The responsibilities to Franchisees are to be performed by AD as described in this Agreement or as set forth in the AD Manual or other reasonable standards and specifications as may be provided by Franchisor from time to time, and the responsibilities to Franchisees will not materially change during the term of this Agreement. In providing services to Franchisees of NICK-N-WILLY'S Stores located in the Development Area, AD shall in all respects comply with the terms and conditions of any Franchise Agreement or other agreement in effect between Franchisee and Franchisor. AD understands, however, that its rights as an Area Developer are only by virtue of this Agreement and that it is not in any manner a party, third party beneficiary or holder of any other right, title or interest in or to any Franchise Agreement. Similarly, no Franchisee is a third party beneficiary of this Agreement or any other agreement between Franchisor and AD. AD agrees that it may not under any circumstances sell any products or other items to, or collect any money for any reason from, Franchisees without Franchisor's prior written consent.

9.8. Area Developer's Inspections. AD shall ascertain through field audits, reviews and inspections, that each Franchisee in the Development Area has complied satisfactorily with all of the terms and conditions of the Franchise Agreement, specifications, standards, operating procedures, and the Franchisee's Operations Manual, and shall promptly notify Franchisee in writing, with a copy and evaluation report to Franchisor, of any deficiencies; provided, however, AD understands and acknowledges that its inspections and reports are advisory only and that Franchisor shall have: (a) all of the rights to inspect and ascertain compliance of all Franchisees as if this Agreement were not in effect; (b) the sole right to send notices of default to Franchisee; (c) the sole right to terminate a Franchise Agreement for failure to cure such defaults (if an opportunity to cure is granted); and (d) the sole right to take any legal action with respect to any default or any violation of a Franchise Agreement. If AD believes that any Franchisee in the Development Area has breached a Franchise Agreement with Franchisor, AD shall document in writing all facts related to the alleged breach and shall request in writing that Franchisor investigate such alleged breach. If, as a result of Franchisor's investigation, Franchisor determines that there is a breach by Franchisee of its Franchise Agreement with Franchisor, Franchisor shall, in its sole discretion, take such action as it deems appropriate.

9.9. Obligations Under Prime Leases and Subleases. If AD receives Franchisor's prior written approval (i) to act as a landlord or sublessor to a Franchisee pursuant to Section 3.1; and (ii) of a proposed Prime Lease, which approval will not be unreasonably withheld, AD may enter into such approved Prime Lease as tenant (subject to Franchisor's right to enter into a master lease with AD and then sublease with the Franchisee) and thereby lease Premises located in the Development Area for the

sole purpose of subleasing the Premises at AD's cost or assigning AD's rights under a Prime Lease to a Franchisee for a NICK-N-WILLY'S Store. AD may sublet the Premises to a Franchisee if the AD obtains the Franchisor's prior written approval of the proposed Sublease, which approval will not be unreasonably withheld. Alternatively, AD may assign its rights under a Prime Lease to a Franchisee if AD obtains Franchisor's prior written approval of the proposed Assignment, which approval will not be unreasonably withheld. If AD enters into a Prime Lease, a Sublease, an Assignment or some combination thereof, AD shall be obligated to promptly pay all sums due under such Prime Lease and/or Sublease and/or Assignment, if not paid by the Franchisee, and shall otherwise comply with all terms and conditions of all Prime Leases, Assignments and Subleases executed by AD.

9.10 Electronic Communications. AD shall obtain and maintain computer hardware, software and an Internet connection meeting Franchisor's standards and specifications as they may exist from time to time. AD agrees that Franchisor may assign an electronic mail address to AD and AD agrees to use such address to access messages and information posted by Franchisor and other NICK-N-WILLY'S Area Developers and franchise owners. Franchisor may post information about AD's Business on Franchisor's intranet system for comparative analysis purposes. AD agrees to participate in Franchisor's electronic intranet system and to abide by the terms of use governing it. Information on Franchisor's intranet system and the terms of use governing Franchisor's intranet system are deemed to be incorporated into the terms of the AD Manual and any violations of the terms of use will be treated as a violation of the rules governing the AD Manual.

10. MARKS

10.1. Ownership and Goodwill of Marks. AD acknowledges that its right to use the Marks is derived solely from this Agreement (unless such rights are granted under a separate written agreement with Franchisor) and is limited to operating as an AD pursuant to and in compliance with this Agreement. Any unauthorized use of the Marks by AD shall constitute a breach hereof and an infringement of Franchisor's rights in and to the Marks. AD acknowledges and agrees that its usage of the Marks and any goodwill established thereby shall inure to Franchisor's exclusive benefit and that this Agreement does not confer any goodwill or other interests in the Marks upon AD.

10.2. Limitations on Use. AD shall not use any Mark (a) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed to AD under this Agreement), (b) in connection with unauthorized services or products, (c) as part of any domain name or electronic address maintained on the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system, or (d) in any other manner not expressly authorized in writing by Franchisor. AD agrees to give such notices of trademark and service mark registration as Franchisor specifies and to use and obtain such fictitious or assumed name registrations as may be required by Franchisor or under applicable law. AD further agrees that no service mark other than "NICK-N-WILLY'S" or such other Marks as may be specified by Franchisor shall be used in the marketing, promotion or operation of AD's Business.

AD has the right to use the trade name "NICK-N-WILLY'S" in the operation of its Business, but none of the words "NICK-N-WILLY'S" may be used in the legal name of the entity used to conduct the AD Business. AD may not register or attempt to register in its own name any trade name using the words "NICK-N-WILLY'S." When this Agreement expires or is terminated, AD must execute any assignment or other documents Franchisor requires to transfer to Franchisor any rights AD possesses in a trade name utilizing "NICK-N-WILLY'S" or any other Mark Franchisor owns.

10.3. Discontinuance of Use of Marks. If it becomes advisable at any time, in Franchisor's sole discretion, for Franchisor or AD to modify or discontinue use of any Mark or use one or more additional or substitute trade or service marks, AD agrees to comply, at its own expense, with Franchisor's directions to do so within a reasonable time after receiving notice.

10.4. Notification of Infringements and Claims. AD shall immediately notify Franchisor of any apparent infringement of or challenge to AD's use of any Mark, or claim by any person of any rights in any Mark, and AD shall not communicate with any person other than Franchisor or its counsel in connection with any such matter. AD may not settle any claim without Franchisor's written consent. Franchisor shall have sole discretion to take such action as it deems appropriate and the right to control exclusively any litigation, U.S. Patent and Trademark Office proceeding or any other administrative proceeding arising out of any such infringement, challenge or claim or otherwise relating to any Mark. AD agrees to execute any and all instruments and documents, render such assistance and perform such acts as, in the opinion of Franchisor's counsel, may be necessary or advisable to protect and maintain Franchisor's interests in the Marks.

11. CONFIDENTIAL INFORMATION

11.1. Confidential Information. Franchisor possesses certain proprietary confidential information consisting of, but not limited to, the AD Manual, the Operations Manual loaned to Franchisees, Franchisor's intranet system, information on Franchisor's intranet system, terms of use for Franchisor's intranet system, the methods, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques and knowledge of and experience in the operation and franchising of NICK-N-WILLY'S Stores (the "**Confidential Information**"). Franchisor shall disclose the Confidential Information to AD in the training program, the AD Manual and in guidance furnished to AD during the term hereof. AD has not acquired any interest in the Confidential Information, other than the right to utilize it in the Development Area in the execution of AD's duties hereunder during the term of this Agreement, and AD acknowledges that the use or duplication of the Confidential Information in any other business venture would constitute an unfair method of competition. AD acknowledges and agrees that the Confidential Information is proprietary, includes trade secrets of Franchisor and is disclosed to AD solely on the condition that AD agrees, and AD (and its shareholders, partners, members and managers if AD is a corporation, partnership or limited liability company) does hereby agree that AD: (a) shall not use the Confidential Information in any other business or capacity; (b) shall maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement; (c) shall not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and (d) shall adopt and implement all reasonable procedures prescribed from time to time by Franchisor to prevent unauthorized use or disclosure of the Confidential Information. AD agrees that Franchisor shall have the perpetual right to use and authorize other NICK-N-WILLY'S Store Franchisees and Area Developers to use, and AD shall fully and promptly disclose to Franchisor, all ideas, concepts, methods and techniques relating to the development and operation of a NICK-N-WILLY'S Store or AD's activities howsoever conceived or developed by AD or its employees or the franchised NICK-N-WILLY'S Stores serviced by AD during the term of this Agreement. AD acknowledges that any such ideas, concepts, methods and techniques shall be the property of Franchisor and Franchisor may utilize or disclose such information to franchisees or other agents as it determines to be appropriate.

11.2. Nondisclosure and Noncompetition Agreement. Franchisor reserves the right to require AD to have each of its shareholders, officers, directors, partners, employees, members and

managers, and if AD is an individual, AD's spouse, to execute a Nondisclosure and Noncompetition Agreement in the form attached hereto as Exhibit V.

12. EXCLUSIVE RELATIONSHIP

12.1. Exclusive Relationship. Franchisor has entered into this Agreement with AD on the condition that AD will deal exclusively with Franchisor insofar as any business defined below as a "Competitive Business." Franchisor acknowledges that AD may perform similar services for other franchise systems or engage in unrelated business activities, however, without violating the terms of this Agreement. If AD is engaged in any other business activities, AD shall disclose such business activities to Franchisor in writing prior to signing this Agreement. AD acknowledges and agrees that Franchisor would be unable to protect its Confidential Information and would be unable to encourage a free exchange of ideas and information among Area Developers and Franchisor if Area Developers were permitted to hold interests in any Competitive Business, as defined below. AD therefore agrees that, during the term hereof, neither AD, AD's shareholders, members or partners who participate in the management of AD, nor AD's spouse, and, if applicable, the Managing Owner, shall:

- a. have any direct or indirect interest as a disclosed or beneficial owner in a "Competitive Business," which shall be defined as a business operating or granting franchises or licenses to others to operate, a restaurant or other food service business deriving more than ten percent (10%) of its gross receipts, excluding gross receipts relating to the sale of alcoholic beverages, from the sale of pizza;
- b. perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business, wherever located or operating;
- c. divert or attempt to divert any business related to, or any customer or account of, the AD Business, Franchisor's business or any other NICK-N-WILLY'S Area Developer's or Franchisee's business, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of Franchisor or another Area Developer or Franchisee licensed by Franchisor to any Competitive Business by any direct inducement or otherwise;
- d. directly or indirectly solicit or employ any person who is employed by Franchisor.

Notwithstanding the foregoing, (i) AD shall not be prohibited from owning securities in a Competitive Business if such securities are listed on a stock exchange or traded on the over-the-counter market and represent five percent (5%) or less of that class of securities issued and outstanding; (ii) any NICK-N-WILLY'S Stores governed by a franchise agreement between AD or its affiliate and Franchisor shall be excluded from the definition of Competitive Business; and (iii) AD will not be deemed to be operating a Competitive Business, as that term is defined above, if AD temporarily operates a NICK-N-WILLY'S Store which had either been sublet to a Franchisee under an approved Sublease or had been assigned to a Franchisee under an approved Assignment, for a period of not more than ninety (90) consecutive days following the Franchisee's failure to operate such NICK-N-WILLY'S Store for a period of five (5) consecutive days or a default by the Franchisee under the terms of its Sublease or Assignment. If AD operates any NICK-N-WILLY'S Store for a period longer than ninety (90) consecutive days, then Franchisor will have the right to require AD to sign the Franchisor's then-current form of Franchise Agreement to govern the operation of such Store.

13. OPERATING STANDARDS

13.1. Standards of Service. AD shall at all times give prompt, courteous and efficient service to NICK-N-WILLY'S Store Franchisees in the Development Area. AD shall, in all dealings with such Franchisees, prospective Franchisees and the public, adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct.

13.2. Compliance with Laws and Good Business Practices. AD shall secure and maintain in force all required licenses, permits and certificates relating to AD's activities hereunder and shall operate in full compliance with all applicable laws, ordinances and regulations. AD acknowledges being advised that many jurisdictions have enacted laws concerning advertising, sale, renewal, termination and continuing relationship between parties to a franchise agreement, including without limitation, laws concerning disclosure requirements. AD agrees promptly to become aware of, and to comply with, all such laws and legal requirements in force in the Development Area and to utilize only offering circulars that Franchisor has approved for use in the applicable jurisdiction.

13.3. Accuracy of Information. Before it offers or sells any franchise, AD shall each time take reasonable steps to confirm that the information contained in any written materials, agreements and other documents related to the offer or sale of franchises is true, correct and not misleading at the time of such offer or sale, and the offer or sale of such franchise will not at that time be contrary to or in violation of any applicable state law related to the registration of the franchise offering. Franchisor shall provide AD with any changes to its disclosure documents and other agreements on a timely basis, and shall, upon request, provide AD with confirmation that the information contained in any written materials, agreements or documents being used by AD is true, correct and not misleading, except for information specifically relating to disclosures regarding AD. If AD notifies Franchisor of an error in any information in Franchisor's documents, Franchisor shall have a reasonable period of time to attempt to correct any deficiencies, misrepresentations or omissions in such information.

13.4. Notification of Litigation. AD shall notify Franchisor in writing within five days of the commencement of any action, suit, arbitration, proceeding or investigation, and of the issuance of any order, writ, injunction, award or decree, by any court, agency or other governmental instrumentality which names AD (or its Managing Owner) or otherwise concerns the operation or financial condition of AD, AD's Business or any Franchisee.

13.5. Location, Ownership and Management of Business. AD shall either live within 200 miles of AD's Development Area or maintain a full-time staffed office within the Development Area. AD's Business shall at all times be under the direct, day-to-day, supervision of AD (or the Managing Owner). AD shall at all times during the term of this Agreement own and control the Business. Upon the request of Franchisor, AD shall promptly provide satisfactory proof of such ownership. AD represents that the Statement of Ownership, attached to this Agreement as Exhibit III is true, complete, and accurate and not misleading. AD shall promptly provide Franchisor with written notification if the information contained in the Statement of Ownership changes at any time during the term of this Agreement and shall comply with the applicable transfer provision contained in Section 15. If AD is not an individual, an individual or individuals designated by Franchisor shall execute the Guaranty and Assumption of AD's Obligations attached hereto as Exhibit II and incorporated herein by this reference.

13.6. Conflicting Interests. AD shall at all times faithfully, honestly and diligently perform its obligations hereunder and continuously exert its best efforts to promote, enhance and service NICK-N-WILLY'S Stores in the Development Area. AD shall not engage in any other business or other activity, directly or indirectly, including operating a NICK-N-WILLY'S Store, that requires any

significant management responsibility, time commitments, or otherwise may conflict with AD's obligations hereunder, without the prior written approval of Franchisor.

13.7. Insurance. AD shall at all times during the term of this Agreement maintain in force, at AD's sole expense, insurance for AD Business of the types, in the amounts and with such terms and conditions as Franchisor may from time to time reasonably prescribe in the AD Manual or otherwise. All of the required insurance policies shall show Franchisor as an additional insured, contain a waiver of the insurance company's right of subrogation against Franchisor and provide that Franchisor will receive thirty (30) days' prior written notice of termination, expiration or cancellation of any such policy. Franchisor reserves the right to require AD to participate in Franchisor's Group Errors and Omissions insurance policy and require AD to pay its prorata share of such insurance coverage, the first of which payments shall be paid to Franchisor before AD commences training under Article 7. Franchisor reserves the right to pay AD's share of insurance premiums and offset commission payments by the same amount owed to Franchisor.

13.8. Proof of Insurance Coverage. AD will provide proof of insurance to Franchisor prior to commencement of operations of its AD Business. This proof will show that the insurer has been authorized to inform Franchisor in the event any policies lapse or are cancelled. Franchisor has the right to change the minimum amount of insurance AD is required to maintain by giving AD prior reasonable notice, giving due consideration to what is reasonable and customary in the similar business. Noncompliance with the insurance provisions set forth herein shall be deemed a material breach of this Agreement; and in the event of any lapse in insurance coverage, in addition to all other remedies, Franchisor shall have the right to demand that AD cease operations of AD Business until coverage is reinstated, or, in the alternative, pay any delinquencies in premium payments and charge the same back to AD.

13.9. Advertising in Development Area. Beginning 60 days after the Effective Date, AD shall spend quarterly a minimum of thirty dollars (\$30) per 100,000 population ("Advertising Fee") in the Development Area on advertising and/or open house events for prospective franchisees in the Development Area. AD shall submit to Franchisor an accounting of the amounts spent on advertising within thirty (30) days following the end of the second Sales Quarter after the Effective Date and within thirty (30) days after the end of each Sales Quarter thereafter. In addition to the required Advertising Fee spent on local advertising, Franchisor reserves the right to require AD to participate in a maximum of two franchise shows or real estate trade shows each year, such trade shows to be selected by Franchisor. AD agrees to list its Business telephone numbers in the white pages and in the classified telephone directories in the Development Area.

13.10. Approval of Advertising. Prior to their use by AD, samples of all advertising and promotional materials not prepared or previously approved by Franchisor shall be submitted to Franchisor for approval. AD shall not use any advertising or promotional materials that Franchisor has disapproved. AD acknowledges and understands that certain states require the filing of franchise sales advertising materials with the appropriate state agency prior to dissemination. AD agrees to fully and timely comply with such filing requirements at AD's own expense unless such advertising has been previously filed with the state by Franchisor. Franchisor may charge AD for the costs incurred by Franchisor in printing advertising and marketing materials supplied by Franchisor to AD at AD's request.

13.11. Marketing Fund. Franchisor reserves the right, upon 30 days notice, to require AD to pay all or a portion of the Advertising Fee to Franchisor's Area Developer Marketing Fund ("Marketing

Fund"). If Franchisor establishes a Marketing Fund, the following terms and conditions will apply to the Advertising Fee payment:

a. The Advertising Fee shall be payable weekly. Any Advertising Fee collected by Franchisor will be deposited by Franchisor in one or more separate accounts (referred to collectively as the "Fund"), all designated as "NICK-N-WILLY'S Area Developer Marketing Fund." The Advertising Fees will be subject to interest at 18% per annum. Upon written request by AD, Franchisor will make available to AD, no later than 120 days after the end of each calendar year, an annual unaudited financial statement for the Fund which indicates how deposits to the Fund have been spent. Franchisor has the right to deposit into the Fund any advertising, marketing, or similar allowances paid by suppliers who deal with AD Businesses, in Franchisor's sole discretion. AD Businesses that Franchisor or its affiliates own pursuant to the terms of Franchisor's standard form of Area Developer Marketing Agreement will contribute to the Fund on the same basis as ADs.

b. The Fund will be administered by Franchisor and may be used for production and placement of media advertising, direct response literature, direct mailings, brochures, collateral advertising material, surveys of advertising effectiveness, development of Internet websites, or other advertising or public relations expenditures relating to advertising franchises for individual NICK-N-WILLY'S Stores, providing professional services, materials, and personnel to support the marketing function. Franchisor may reimburse itself for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes and other reasonable direct and indirect expenses incurred by Franchisor or its authorized representatives in connection with the programs funded by the Fund. Franchisor will not be liable for any act or omission that is consistent with this Agreement and is done in good faith. Franchisor may spend in any fiscal year an amount greater or less than the aggregate contribution of all AD Businesses to the Fund in that year, and the Fund may borrow from Franchisor or others to cover deficits or to invest in any surplus for future use. All interest earned on monies contributed to the Fund will be used to pay advertising costs before other assets of the Fund are expended. Franchisor may cause the Fund to be incorporated or operated through a separate entity, at such time as Franchisor deems appropriate, and such successor entity, if established, will have all rights and duties of Franchisor with respect to the Fund as specified in this Section. Franchisor undertakes no obligation to ensure that the Fund benefits each AD Business in proportion to its respective contribution. The Fund's primary purpose is to promote sales of franchised Stores. AD agrees to participate in any promotional campaigns and advertising and other programs that the Fund periodically establishes.

13.12. Accounting, Bookkeeping and Records. AD shall maintain at its Business premises in the Development Area all original invoices, receipts, checks, contracts, licenses, acknowledgment of receipt forms and bookkeeping and business records as Franchisor may require from time to time. AD shall furnish to Franchisor, within one hundred twenty (120) days after the end of AD's fiscal year, a balance sheet and profit and loss statement for AD's Business for such year (or monthly or quarterly statement if required by Franchisor, in which case such statements shall also reflect year-to-date information). In addition, upon request of Franchisor, within ten (10) days after such returns are filed, exact copies of federal and state income, sales and any other tax returns and such other forms, records, books and other information as Franchisor may periodically require regarding AD's Business shall be furnished to Franchisor. AD shall maintain all records and reports of the Business conducted pursuant to this Agreement for at least two (2) years after the date of termination or expiration of this Agreement.

13.13. Reports. AD shall, as often as required by Franchisor, deliver to Franchisor a written report of its Business activities including specifically those duties set forth in Article 9, in such form and in such detail as Franchisor may from time to time specify, including information about efforts to solicit prospective Franchisees, the status of pending real estate transactions and the status of the Stores in the Development Area. AD shall, as often as required by Franchisor, during the term of this Agreement, deliver to Franchisor the quality assurance inspection reports required in Section 9.6 for each Franchisee in the Development Area, in such form and in such detail as Franchisor may from time to time specify.

14. INSPECTIONS AND AUDITS

14.1. Inspections and Audits. To determine whether AD is complying with this Agreement, Franchisor or its designee shall have the right at any time during normal business hours, and with prior notice to AD, to enter the premises in which AD is then keeping its business records and inspect, and conduct an audit of, the business records, bookkeeping and accounting records, invoices, payroll records, time cards, check stubs, bank deposits, receipts, sales tax records and returns and other business records and documents of AD's Business. AD and its employees shall fully cooperate with representatives of Franchisor making, conducting, supervising or observing any such inspection or audit.

15. TRANSFERS

15.1. Transfers by Franchisor. AD acknowledges that Franchisor maintains a staff to manage and operate the NICK-N-WILLY'S Store System and that staff members can change from time to time. AD represents that it has not signed this Agreement in reliance on any shareholder, director, officer, or employee remaining with Franchisor in that capacity. Franchisor may change its ownership or form and/or assign this Agreement and any other agreement without restriction.

15.2. Transfers by Area Developer. AD agrees that the rights and duties created by this Agreement are personal to AD (or its shareholders or partners if AD is a corporation or partnership) and that Franchisor has entered into this Agreement in reliance upon Franchisor's perceptions of the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of AD (or its shareholders, members, managers or partners). Accordingly, without the prior written consent of Franchisor, neither this Agreement (or any interest therein), nor any part or all of the ownership of AD may be transferred. Any unauthorized transfer shall constitute a breach hereof and be void and of no effect. As used in this Agreement, the term "transfer" shall mean and include the voluntary, involuntary, direct or indirect assignment, sale, subfranchise, gift or other disposition by AD (or any of its owners) of any interest in: (1) this Agreement; (2) the ownership of AD; or (3) the assets of the Business.

15.3. Conditions for Approval of Transfer. Franchisor shall not be obligated to approve a proposed transfer unless AD (and its owners) are in full compliance with this Agreement. The proposed transferee and its owners must be individuals of good moral character and otherwise meet Franchisor's then applicable standards for Area Developers. If the transfer is of this Agreement and the AD Business, or a Controlling Interest (as defined below) in AD, or is one of a series of transfers (regardless of the time period over which such transfers occur) which in the aggregate transfer this Agreement, assets of the AD Business or a Controlling Interest in AD, all of the following conditions must be met before or concurrently with the effective date of the transfer:

- a. The transferee has sufficient business experience, aptitude and financial resources to act as AD, agrees to be bound by all of the terms and conditions of this Agreement

(unless Franchisor exercises its option under subparagraph (e) below to require the transferee to sign its then current form of agreement), and, with its Managing Owner, must have completed Franchisor's training program to Franchisor's satisfaction;

b. AD has paid all amounts owed to Franchisor or its affiliates and third party creditors and submitted to Franchisor all required reports and statements. Any amounts due to Franchisor by AD or AD's affiliate under the terms of a promissory note financing the Initial Area Developer Fee shall accelerate and immediately become due and payable in full;

c. AD or the transferee has paid Franchisor a transfer fee in the amount of twenty-five percent (25%) of the purchase price;

d. AD (and its transferring owners) executes a general release, in form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective shareholders, officers, directors, employees and agents;

e. The transferee signs an express written assumption of AD's obligations pursuant to this Agreement, or at the option of Franchisor, executes an Area Developer Marketing Agreement in the form then-currently offered by Franchisor, the term of which will end on the expiration date of this Agreement and the terms of which may differ materially from any and all of the terms contained in this Agreement, and which shall supersede this Agreement in all respects. If a new Area Developer Marketing Agreement is signed, however, the transferee will not be required to pay any additional initial fee;

f. Franchisor approves the material terms and conditions of such transfer, including, without limitation, that the price and terms of payment are not so burdensome as to affect adversely the transferee's business as an AD of Franchisor;

g. If AD (and the transferring owners) finances any part of the sale price of the transferred interest, AD and its owners agree that all obligations of the transferee under any promissory notes, agreements or security interests shall be subordinate to the transferee's obligations to pay fees, and other amounts due to Franchisor and its affiliates and otherwise to comply with this Agreement; and

h. AD (and its transferring owners) executes a noncompetition covenant in favor of Franchisor and the transferee with terms the same as those set forth in Section 17.5.

A person will be deemed to have a "Controlling Interest" in AD if that person has the right to vote twenty-five percent (25%) or more of the voting securities or other forms of ownership interest of a corporation, partnership, or other form of entity, to receive twenty-five percent (25%) or more of the net profits of any such entity, or is otherwise able to direct or cause direction of that entity's management or policies.

15.4. Transfer to an Entity. If AD is in full compliance with this Agreement, AD may transfer this Agreement to any entity wholly-owned by AD or its individual owners with Franchisor's prior written approval. In such event, the transfer fee described in Section 15.3(c) will be waived by Franchisor provided that all owners of such entity shall sign a Guaranty and Assumption of AD's Obligations attached hereto as Exhibit II and deliver to Franchisor a revised copy of the Statement of Ownership attached hereto as Exhibit III.

15.5. Franchisor's Approval of Transfer. Franchisor has thirty (30) days from the date of the written notice to approve or disapprove in writing, of AD's proposed transfer. Written notice shall mean and include all documentation necessary to evaluate the transferee. AD acknowledges that the proposed transferee shall be evaluated for approval by Franchisor based on the same criteria as is currently being used to assess new ADs of Franchisor and that such proposed transferee shall be provided, if appropriate, with such disclosures as may be required by state or federal law. Franchisor may review all information regarding the Business that AD gives the transferee and give the transferee copies of any reports that AD has given Franchisor or Franchisor has made regarding the Business.

15.6. Death or Disability of Area Developer. Upon the death or permanent disability of AD (or a Managing Owner of AD), the personal representative of such person shall transfer his or her interest in this Agreement or such interest in AD to an approved third party. Such disposition of this Agreement or such interest (including, without limitation, transfer by bequest or inheritance) shall be completed within a reasonable time, not to exceed six (6) months from the date of death or permanent disability (unless extended by probate proceedings), and shall be subject to all the terms and conditions applicable to transfers contained in this Section. Failure to transfer the interest in this Agreement or such interest in AD within said period of time shall constitute a breach of this Agreement. For purposes hereof, the term "**permanent disability**" shall mean a mental or physical disability, impairment or condition that prevents AD or the Managing Owner from performing the essential functions of AD.

15.7. Right of First Refusal. In the event AD (or, if applicable, an owner) wishes to sell, transfer, gift, assign or otherwise dispose of any interest in this Agreement, a Controlling Interest in any entity that owns it, or all or a substantial portion of the assets of the Business, AD agrees to grant to Franchisor a thirty (30) day right of first refusal to purchase such rights, interest or assets on either (1) the same terms and conditions as are contained in the written offer to purchase submitted to AD by a bona fide proposed purchaser or (2) the same sale price offered, paid over 12 equal monthly installments; however, in either event the following additional terms and conditions shall apply:

a. AD shall notify Franchisor of such offer by sending a written notice to Franchisor, enclosing a copy of the written offer signed by the bona fide proposed purchaser;

b. The thirty (30) day right of first refusal period will run concurrently with the period in which Franchisor has to approve or disapprove the proposed transferee;

c. Such right of first refusal arises for each proposed transfer and any material change in the terms or conditions of the proposed transfer, even if to the same bona fide proposed purchaser, shall be deemed a separate offer for which a new thirty (30) day right of first refusal shall be given to Franchisor;

d. If the consideration or manner of payment offered by a third party is such that Franchisor may not reasonably be required to furnish the same, then Franchisor may purchase the interest which is proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the cash consideration, one independent appraiser shall be designated by each of AD and Franchisor, and those two appraisers shall designate a third appraiser whose determination will be binding upon the parties. All expenses of the appraiser shall be paid for equally between Franchisor and AD; and

e. If Franchisor chooses not to exercise its right of first refusal, Franchisee shall be free to complete the sale, transfer or assignment, subject to compliance with Sections 15.3 and 15.5. Absence of a reply to AD's notice of a proposed sale within the thirty (30) day period is deemed a waiver of such right of first refusal but not a waiver of the required compliance with Sections 15.3 and 15.5.

15.8. Transfers of Prime Lease or Sublease Interest. In the event of a proposed transfer, as that term is defined in Section 15.2, of all or any portion of the AD's interest in a Prime Lease or a Sublease or an Assignment, the AD agrees that Section 15 of this Agreement will apply to such proposed transfer (other than the transfer fee), and agrees to be bound by such provisions with respect to the transfer.

16. TERM AND EXPIRATION

16.1. Term. The primary term of this Agreement is for a period of 7 years from the Effective Date, unless sooner terminated as provided herein.

16.2. Renewals. At the end of the primary term, AD shall have the option to renew its Area Developer rights for two additional 7-year terms, so long as AD:

a. At least sixty (60) days prior to expiration of each preceding term, executes the form of Area Developer Marketing Agreement then in use by Franchisor; which agreement may contain terms which are materially different from those in this Agreement; however, AD will not be required to pay any renewal fees, and commission percentages and definition of the Development Area will not be altered;

b. Has complied with all provisions of this Agreement during the preceding term. "Compliance" shall mean, at a minimum, that AD has not received any written notification from Franchisor of breach hereunder more than three (3) times during the preceding term;

c. Is not in default or under notification of breach of this Agreement at the time it gives notice under Section 16.4 or at any time from the date that AD gives notice until the beginning of the subsequent term;

d. Executes a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, and their respective shareholders, officers, directors, employees and agents arising out of or relating to this Agreement; and

e. Has met its Development Quotas that were originally established in the preceding term and has agreed on a new Development Quota for the next term in accordance with Section 16.3.

16.3. New Development Quota.

a. In addition to those items listed in Section 16.2, this Agreement may only be renewed if AD and Franchisor have agreed on a new Development Quota for the additional term at least ninety (90) days prior to expiration of the preceding term.

b. In the event that Franchisor and AD are unable to agree on a new Development Quota for the additional term within ninety (90) days prior to expiration of the preceding term, the parties agree to submit the matter to arbitration before and in accordance with the rules of the American Arbitration Association in order to determine a new Development Quota. The decision of the arbitrator shall be non-appealable, conclusive and binding on all parties. The arbitration fee shall be borne equally by Franchisor and AD. Each party shall be responsible for any other expenses incurred by that party in association with such arbitration, including attorney and expert witness fees, notwithstanding provisions of Section 19 to the contrary. The arbitration shall be held in Denver, Colorado.

c. In the event that AD is not satisfied with the decision of the arbitration, AD shall have fifteen (15) days from the date that the arbitration decision is rendered to waive its option to renew its Area Developer rights.

d. If AD has notified Franchisor of its intent to renew as provided in Section 16.4, and so long as a demand for arbitration has been filed prior to the expiration of the primary term and the parties are diligently pursuing such arbitration, this Agreement shall automatically be extended until fifteen (15) days following the date that the arbitration award is rendered.

16.4. Exercise of Renewal Option. AD may exercise its option to renew by giving written notice of such exercise to Franchisor not more than one hundred eighty (180) days nor less than one hundred twenty (120) days prior to the expiration of the preceding term.

16.5. Conditions of Refusal. Franchisor shall not be obligated to offer AD renewal upon the expiration of this Agreement if AD fails to comply with any of the above conditions of renewal. Upon expiration, the terms of Section 6.7 may apply. In such event, except for failure to execute the then-current Area Developer Marketing Agreement, Franchisor shall give AD notice of expiration at least sixty (60) days prior to the expiration of the term, and such notice shall set forth the reasons for such refusal to offer renewal. Upon the expiration of this Agreement, AD shall comply with the provisions of Section 17.3.

17. TERMINATION

17.1. By Area Developer. AD may terminate this Agreement at any time during the term hereof with ninety (90) days advance written notice to Franchisor.

17.2. By Franchisor. Franchisor shall have the right to terminate this Agreement effective upon delivery of written notice of termination to AD, unless otherwise noted below (subject to any state laws to the contrary, where state law shall prevail) if AD (or any of its shareholders, members, owners, managers, or partners, or the Managing Owner):

- a. Fails to satisfactorily complete the training program as provided in Section 7.1;
- b. Has made any material misrepresentation or omission in its application to be an AD or in operating as an AD;
- c. Fails to meet the Development Quota set forth in Exhibit I and does not correct such failure within ninety (90) days after written notice of such failure to comply is delivered to AD;

d. Fails to comply with any other provision of this Agreement or any mandatory specification, standard or operating procedure prescribed by Franchisor and does not correct such failure within thirty (30) days after written notice of such failure to comply is delivered to AD;

e. Surrenders, transfers control of or makes an unauthorized transfer of this Agreement or an ownership interest in AD or abandons or fails actively to operate the Business contemplated hereunder;

f. Is convicted by a trial court of or pleads no contest to a felony, or to any other crime or offense that is, in the opinion of Franchisor, likely to adversely affect the goodwill associated with the Marks, or engages in any conduct which may adversely affect the reputation of NICK-N-WILLY'S Stores or the goodwill associated with the Marks;

g. Is declared bankrupt or insolvent or voluntarily institutes a bankruptcy proceeding under the Bankruptcy Code or is adjudicated bankrupt as a result of an involuntary petition in bankruptcy being filed against it. (This provision may not be enforceable under federal bankruptcy law, 11 U.S.C. §§ 101 et seq.);

h. Abandons or ceases to operate the AD Business for a period of 30 consecutive days or any shorter period that indicates an intent by AD to discontinue operation of the AD Business unless precluded from doing so by an event beyond AD's reasonable control (other than for financial reasons) or abandons any Premises of a Store owned by AD;

i. Has received three (3) notices of default from Franchisor within a twelve (12) month period, regardless of whether the defaults were cured by AD;

j. Defaults under the terms and conditions of any Prime Lease or Sublease or Assignment and fails, upon request from Franchisor, to assign all or a portion of the AD's interest in such Prime Lease and any related Sublease or Assignment, to Franchisor, within five (5) days of the Franchisor's notifying AD of such request. If AD fails to assign all of its interest(s) as requested by Franchisor within 5 days of Franchisor's notification, Franchisor may act as Attorney in Fact with respect to such assignment and AD hereby appoints the Franchisor to act as its attorney in fact for such assignment, which appointment is coupled with an interest. In the event that any such leasehold interest is assigned to Franchisor, all funds held by the AD on behalf of a Franchisee under a Sublease or an Assignment, including but not limited to all security, damage or other deposits, shall be transferred to Franchisor immediately;

k. Defaults under the terms of any other agreement between AD and Franchisor, including but not limited to, any Franchise Agreement governing the operation of any Store wherever located or defaults under the terms of any promissory note made by AD or its affiliates and held by Franchisor;

l. Fails to comply with any requirements under the federal and state franchise laws, including, but not limited to, communicating in written, verbal, or other form to any prospective Franchisee any information or presentation which states or suggests a specific level or range of potential or actual sales, income, gross or net profits, food costs, labor costs, or other operating costs unless that information or presentation is identical to that contained in Franchisor's offering circular and other disclosure documents; or

m. Fails to pay any amounts due Franchisor or its affiliates within ten (10) days after receiving notice that such fees or amounts are overdue; or

n. Is in violation of any of Franchisor's standards regarding the proper use of the Marks, including but not limited to, Franchisor's prohibition against ADs and Franchisees using any of the Marks on a website or in a domain name, other than on Franchisor's intranet system.

17.3. Rights and Obligations of Area Developer Upon Termination or Expiration. Upon termination of this Agreement, whether pursuant to Section 17.1, 17.2 or upon expiration of this Agreement pursuant to Section 16, AD agrees:

a. To pay Franchisor within fifteen (15) days after the effective date of termination or expiration of this Agreement, or such later date that the amounts due to Franchisor are determined, such fees, amounts owed for purchases by AD from Franchisor or its affiliates, interest due on any of the foregoing and all other amounts owed to Franchisor or its affiliates under this Agreement, any Franchise Agreement, promissory note and any other agreement between AD or its affiliates and Franchisor or its affiliates which are then unpaid;

b. To refrain from, directly or indirectly at any time or in any manner (except with respect to NICK-N-WILLY'S Store franchises owned and operated by AD) identifying itself or any business as a current AD or authorized agent of Franchisor or its affiliates, use any Mark, any colorable imitation thereof or other indicia of a NICK-N-WILLY'S Store in any manner or for any purpose or utilize for any purpose any trade name, trademark or service mark or other commercial symbol that suggests or indicates a connection or association with Franchisor or its affiliates;

c. To immediately deliver to Franchisor all past and present franchise sales leads and records and all contracts, acknowledgments of receipt, and other information and records related to Franchisees of Franchisor in the Development Area;

d. To immediately deliver to Franchisor all advertising materials, the AD Manual, all other manuals, forms, offering circulars, franchise sales brochures and other materials containing any Mark or otherwise identifying or relating to the sale or service of NICK-N-WILLY'S Stores;

e. To refrain from communicating, in any manner, with Franchisees concerning Franchisor or obligations arising from this Agreement or the Franchise Agreement, except as expressly authorized by Franchisor;

f. To take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to AD's use of any Mark;

g. To notify the telephone company and all telephone directory publishers of the termination or expiration of AD's right to use any telephone number and any regular, classified or other telephone directory listings associated with any Mark and to authorize transfer thereof to Franchisor or its designee. AD acknowledges that, as between it and Franchisor, Franchisor has the sole rights to and interest in all telephone, teletype or facsimile machine numbers and directory listings associated with any Mark. AD authorizes Franchisor, and hereby appoints Franchisor and any of its officers as AD's attorney-in-fact, to direct the telephone company and

all telephone directory publishers to transfer any telephone, telecopy or facsimile machine numbers and directory listings relating to AD's Business to Franchisor at its direction, should AD fail or refuse to do so, and the telephone company and all telephone directory publishers may accept such direction or this Agreement as conclusive evidence of Franchisor's exclusive rights in such telephone numbers and directory listings and Franchisor's authority to direct their transfer; and

h. Furnish Franchisor, within thirty (30) days after the effective date of termination or expiration, with evidence satisfactory to Franchisor of AD's compliance with the foregoing obligations.

17.4. Confidential Information. AD agrees that, upon termination or expiration of this Agreement, AD shall immediately cease to use any Confidential Information disclosed pursuant to this Agreement or as a result of its relationship with Franchisor in any business or otherwise (except in connection with the operation of a NICK-N-WILLY'S Store pursuant to a Franchise Agreement with Franchisor) and return to Franchisor all copies of the AD Manual and any other confidential materials which have been loaned to AD by Franchisor.

17.5. Covenant Not to Compete. During the term of this Agreement and upon termination or expiration of this Agreement, AD (and its shareholders, officers, directors, owners, members, managers or partners, and the spouses of these individuals and AD (collectively "Bound Parties")) agrees that, for the greater of (i) a period of two (2) years commencing on the effective date of termination or expiration, or (ii) the period of time after the termination or expiration during which AD is receiving any commissions pursuant to Section 6.5, neither AD nor any Bound Party shall have any direct or indirect interest (through an immediate family member of AD or any Bound Party or otherwise) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent or in any other capacity in any Competitive Business located in any Development Area in which Franchisor or its affiliates or Area Developers conduct business at the time of termination or expiration. The restrictions of this Section shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent five percent or less of the number of shares of that class of securities issued and outstanding. AD and each Bound Party expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section will not deprive them of their personal goodwill or ability to earn a living.

17.6. No Further Right to Payment. Upon expiration or termination of this Agreement, AD forfeits all fees paid to Franchisor and remains liable to Franchisor for all amounts due to Franchisor on the date of termination. AD shall have no further right to receive payment of Commissions or Royalty Fees from Franchisor, except for those Commissions or Royalty Fees which have been fully earned by AD up through the date of such termination and except for those commissions described in Section 6.6, if applicable. For purposes of this Agreement, "fully earned" commissions shall mean commissions due on franchise sales for which all conditions described in Section 6.1 have been met or fulfilled for the purchase of a franchise for a NICK-N-WILLY'S Store to be located within the Development Area by AD. "Fully earned" Commissions on Royalty Fees shall mean those Commissions on Royalty Fees accrued up through the date of termination which are otherwise owed to AD. Franchisor shall have the right to immediately assume control of and manage all franchise sales in the Development Area and to receive all Royalty Fees from Franchisees in the Development Area. Any fully earned commissions or Royalty Fees due to AD will be paid by Franchisor in accordance with the provisions of Article 6.

17.7. **Continuing Obligations.** All obligations of Franchisor and AD and the Bound Parties that expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied or by their nature expire.

17.8. **State and Federal Law.** The parties acknowledge that in the event that the terms of this Agreement regarding termination or expiration are inconsistent with applicable state or federal law, such law shall govern AD's rights regarding termination or expiration of this Agreement.

18. RELATIONSHIP OF THE PARTIES

18.1. Relationship of the Parties. It is understood and agreed by the parties that this Agreement does not create a fiduciary relationship between them, that the parties are independent contractors and that Franchisor appoints AD as its special agent for a particular purpose and that nothing in this Agreement is intended to make either party a general agent, subsidiary, joint venturer, partner, employee or servant of the other for any purpose. AD shall conspicuously identify itself in all dealings with Franchisees, prospective Franchisees, lessors, contractors, suppliers, public officials and others as the owner of its own business under an Area Developer Marketing Agreement with Franchisor, and shall place such other notices of independent ownership required by Franchisor on signs, forms, stationery, advertising and other materials.

18.2. Payment of Third Party Obligations. Neither Franchisor nor AD shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other or represent that their relationship is other than franchisor and special agent, and neither Franchisor nor AD shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder, nor shall Franchisor be obligated for any damages to any person or property directly or indirectly arising out of the operation of AD's business, unless (and then only to the extent) caused by Franchisor's negligent or willful action or failure to act.

18.3. Independent Contractors. AD may delegate its duties hereunder to independent contractors provided that AD receives written approval from Franchisor prior to any such delegation of duties and complies with all state laws requiring broker registration for such persons. Franchisor reserves the right to withdraw the approval of any independent contractor engaged by AD to fulfill its duties and obligations under this Agreement.

18.4. Indemnification. AD agrees to indemnify and reimburse Franchisor and its affiliates, and their respective stockholders, directors, officers, employees, agents and assignees (the "**Indemnified Parties**") for, and hold the Indemnified Parties harmless against, any loss, liability, taxes or damages (actual or consequential) and all reasonable costs and expenses of defending any claim brought against any of them or any action in which any of them is named as a party (including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses) which any of them may suffer, sustain or incur by reason of, arising from or in connection with any acts, omissions or activities of AD or any of its employees or independent contractors unless (and then only to the extent) caused by the Indemnified Party's negligence. Each Indemnified Party shall have the right to defend any such claim against it at AD's expense and agree to settlements or take any other remedial, corrective or other actions. This indemnity shall continue in full force and effect, subsequent to and notwithstanding the expiration or termination of this Agreement.

19. DISPUTES

19.1. Governing Law/Consent to Venue and Jurisdiction. Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051 *et seq.*) or other federal law, this Agreement shall be interpreted under the laws of the State of Colorado and any dispute between the parties, whether arising under this Agreement or from any other aspect of the parties' relationship, shall be governed by and determined in accordance with the substantive laws of the State of Colorado, which laws shall prevail in the event of any conflict of law. AD and Franchisor have negotiated regarding a

forum in which to resolve any disputes that may arise between them and have agreed to select a forum in order to promote stability in their relationship. Therefore, if a claim is asserted in any legal proceeding involving the AD or any Bound Party and Franchisor, the parties agree that the exclusive venue for disputes between them shall be in the District Court for the City & County of Denver, Colorado, or the United States District Court for the District of Colorado, and the parties each waive any objection they may have to the personal jurisdiction of or venue in such courts.

19.2. Waiver of Jury Trial. Franchisor, AD and the Bound Parties each waive their right to a trial by jury. AD, the Bound Parties, and Franchisor acknowledge that the parties' waiver of jury trial rights provides the parties with the mutual benefit of uniform interpretation of this Agreement and any dispute arising out of this Agreement or out of the parties' relationship created by this Agreement. AD, the Bound Parties and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit.

19.3. Limitation of Claims. AD and the Bound Parties agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Any claims between the parties must be commenced within one (1) year from the occurrence of the facts giving rise to such claim, or such claim shall be barred. The parties understand that such time limit may be shorter than otherwise allowed by law. AD and the Bound Parties agree that their sole recourse for claims arising between the parties shall be against Franchisor or its successors and assigns. AD and the Bound Parties agree that the shareholders, directors, officers, employees and agents of the Franchisor and its affiliates (other than AD) shall not be personally liable nor named as a party in any action between the Franchisor and AD or any Bound Party. The parties further agree that, in connection with any such proceeding, each must submit or file any claim which 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 which is not submitted or filed as described above will be forever barred. The parties agree that any proceeding will be conducted on an individual, not a class-wide, basis, and that a proceeding between Franchisor and AD or the Bound Parties may not be consolidated with any other proceeding between Franchisor and any other person or entity. No party will be entitled to an award of punitive or exemplary damages (provided that this limitation shall not apply to statutory penalties such as those set forth in 15 U.S.C. § 1117(a)). No previous course of dealing shall be admissible to explain, modify, or contradict the terms of this Agreement. No implied covenant of good faith and fair dealing shall be used to alter the express terms of this Agreement.

20. MISCELLANEOUS PROVISIONS

20.1. Invalidity. If any provision of this Agreement is held invalid by any tribunal in a final decision from which no appeal is or can be taken, such provision shall be deemed modified to eliminate the invalid element and, as so modified, such provision shall be deemed a part of this Agreement as though originally included. The remaining provisions of this Agreement shall not be affected by such modification. Specifically, if the restrictions concerning time duration, geographic scope, affected persons or breadth of activity contained in Article 17 of this Agreement are held to be unenforceable under any applicable law, the arbiter of any dispute regarding this Agreement is hereby authorized to and shall make only such limited changes as are necessary to make the restrictions enforceable.

20.2. Modification. No amendment, waiver or modification of this Agreement shall be effective unless it is in writing and signed by the party or parties against whom such amendment or waiver is to be enforced. AD acknowledges that Franchisor may modify its standards and specifications and operating and marketing techniques set forth in the AD Manual unilaterally under any conditions and

to the extent in which Franchisor deems necessary to protect, promote, or improve the Marks and the quality of the Licensed Methods.

20.3. Attorneys' Fees. In the event of any dispute between the parties to this Agreement, including any dispute involving an officer, director, employee or managing agent of a party to this Agreement, in addition to all other remedies, the non-prevailing party will pay the prevailing party all amounts due and all damages, costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in any legal action or other proceeding as a result of such dispute, plus interest at the lesser of two percent (2%) per month or the highest rate allowable by law, accruing from the first date such dispute was submitted to any dispute resolution process including mediation, arbitration or litigation.

20.4. Injunctive Relief. Nothing herein shall prevent Franchisor or AD from seeking injunctive relief in appropriate cases to prevent irreparable harm.

20.5. No Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by AD or Franchisor shall be considered to imply or constitute a further waiver by Franchisor or AD of the same or any other condition, covenant, right, or remedy.

20.6. No Right to Set Off. AD shall not be allowed to set off amounts owed to Franchisor for fees or other amounts due hereunder, against any monies owed to AD, which right of set off is hereby expressly waived by AD.

20.7. Effective Date. Regardless of the date first written above, this Agreement shall not be effective until executed by Franchisor as evidenced by dating and signing by an officer of Franchisor.

20.8. Review of Agreement. AD acknowledges that it had a copy of Franchisor's Uniform Franchise Offering Circular in its possession for a period of time not less than ten (10) full business days, and this Agreement in its possession for a period of time not less than five (5) full business days, during which time AD has had the opportunity to submit the same for review and advice by a professional of AD's choosing prior to freely executing this Agreement.

20.9. Entire Agreement. This Agreement (which includes the attachments and Exhibits expressly incorporated) contains the entire agreement between the parties and supersedes any and all prior agreements concerning the subject matter covered by this Agreement. AD agrees and understands that Franchisor shall not be liable or obligated for any oral representations or commitments made prior to the execution hereof or for claims of negligent or fraudulent misrepresentation and that no modifications of this Agreement shall be effective except those in writing and signed by both parties. Franchisor does not authorize and will not be bound by any representation of any nature other than those expressed in this Agreement. AD further acknowledges and agrees that no representations have been made to it by Franchisor regarding projected sales volumes, market potential, revenues, profits of AD's Business, or operational assistance other than as stated in this Agreement or in any disclosure document provided in connection with this Agreement. AD acknowledges and agrees that any delegation of Franchisor's duties and obligations to Area Developers does not assign or confer any rights under any Franchise Agreement (unless entered into between AD and Franchisor) upon Area Developer and that Area Developer is not a third party beneficiary of any Franchise Agreement between Franchisor and a Franchisee who is not also the AD. Any policies that Franchisor adopts and implements from time to time are subject to change, are not a part of this Agreement, and are not binding on Franchisor.

20.10. Notices. All notices required to be given under this Agreement shall be given in writing, by certified mail, return receipt requested, or by an overnight delivery service providing documentation of receipt, to addresses set forth in the first paragraph of this Agreement, or, with respect to notices to AD, to address of Area Developer Business, or at such other addresses as Franchisor or AD may designate from time to time, and shall be deemed delivered (a) on the date shown on the return receipt or in the courier's records as the date of delivery or (b) on the date of first attempted delivery, if actual delivery cannot for any reason be made.

20.11. Acknowledgment. BEFORE SIGNING THIS AGREEMENT, AD SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. AD ACKNOWLEDGES THAT:

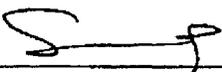
(A) THE SUCCESS OF THE BUSINESS VENTURE INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON AD'S ABILITY AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS, AND

(B) NO ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN GIVEN AS TO THE POTENTIAL SUCCESS OF SUCH BUSINESS VENTURE OR THE EARNINGS LIKELY TO BE ACHIEVED, AND

(C) NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS DOCUMENT, AND IN ANY OFFERING CIRCULAR SUPPLIED TO AD IS BINDING ON FRANCHISOR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed, sealed and delivered this Agreement in counterparts on the date first mentioned above.

NICK-N-WILLY'S FRANCHISE COMPANY,
LLC, a Colorado Limited Liability Company

By: 

Its: CEO

Date

AREA DEVELOPER:

Michael Moore
(Print Name)

By: 

Its: PRINCIPAL

7-14-05
Date

(Print Name)

By: _____

Its: _____

Date

EXHIBIT I

**RIDER
TO AREA DEVELOPER MARKETING AGREEMENT
BETWEEN NICK-N-WILLY'S FRANCHISE COMPANY, LLC**

Michael AND Moulle

DATED July 14th, 2005

1. **Development Area.** The Development Area referred to in Section 2.1 of the Agreement shall be the following geographic area:

Kings County, WA

- A. Total Population Estimate = 1,737,034
- B. Quarterly Advertising requirement = (\$30 per 100,000 population)
- C. Total Quarterly Advertising requirement = *\$10. —

2. **Initial Area Developer Fee.** The Initial Area Developer Fee payable to the Franchisor by the Area Developer under Section 5.1 of the Agreement shall consist of a fee equal to \$0.03 multiplied by the agreed upon estimated population within the Development Area according to the most recent population information available from the United States Census Bureau, calculated as follows:

- A. Population Estimate = 1,737,034
- B. Multiplied By Price Per Person x \$0.03
- C. TOTAL INITIAL AREA DEVELOPER FEE = \$ 52,111. —
(Minimum Fee \$50,000)

Notwithstanding the foregoing, the price per person in population may be adjusted if there are unopened Stores for which franchise agreements have been signed in the Development Area at the time the Area Developer signs the Agreement.

Unless otherwise agreed, the Initial Area Developer Fee is payable in cash, certified funds or by wire transfer. The Franchisor and the Area Developer agree that the Initial Area Developer Fee will not be subject to change for any reason, including subsequent revisions of the Bureau of Census population estimates.

3. **Development Quotas.** AD shall meet the following cumulative Development Quotas by the last day of each Sales Quarter during the term of this Agreement:

<u>Year</u>	<u>Sales Quarter</u>	<u>Cumulative Minimum Number of Effective NICK-N- WILLY'S Franchise Agreements in the Development Area.</u>	<u>Cumulative Minimum Number of NICK-N- WILLY'S Stores Open and in Operation in the Development Area.</u>
2005	First	<u>—</u>	<u>—</u>
	Second	<u>—</u>	<u>—</u>

<u>Year</u>	<u>Sales Quarter</u>	<u>Cumulative Minimum Number of Effective NICK-N- WILLY'S Franchise Agreements in the Development Area.</u>	<u>Cumulative Minimum Number of NICK-N- WILLY'S Stores Open and in Operation in the Development Area.</u>
	Third	—	—
	Fourth	—	—
2006	First	1	—
	Second	2	—
	Third	3	—
	Fourth	4	1
2007	First	5	2
	Second	6	3
	Third	7	4
	Fourth	8	5
2008	First	9	6
	Second	10	7
	Third	11	8
	Fourth	12	9
2009	First	13	10
	Second	14	11
	Third	15	12
	Fourth	15	13
2010	First	16	14
	Second	16	15
	Third	17	15
	Fourth	17	16
2011	First	17	16
	Second	17	17
	Third	17	17
	Fourth	17	17
2012	First	17	17
	Second	17	17
	Third	17	17

<u>Year</u>	<u>Sales Quarter</u>	<u>Cumulative Minimum Number of Effective NICK-N- WILLY'S Franchise Agreements in the Development Area.</u>	<u>Cumulative Minimum Number of NICK-N- WILLY'S Stores Open and in Operation in the Development Area.</u>
	Fourth	<u>17</u>	<u>17</u>

The first Sales Quarter commences on the first day of the Sales Quarter for which minimums have been indicated above. The sales made during the term of the Agreement are cumulative. Therefore, if the AD meets its total Development Quotas before the end of the final Sales Quarter, the AD's Development Quotas will be satisfied.

Company Owned Stores located in the Development Area count toward fulfillment of AD's cumulative Development Quotas but not Stores located in Captive Audience Facilities.

NICK-N-WILLY'S FRANCHISE COMPANY,
LLC, a Colorado Limited Liability Company

AREA DEVELOPER

By: [Signature]
Its: CEO
Date

Michael Moore
(Print Name)
By: [Signature]
Its: Principal
7-14-05
Date

EXHIBIT II

GUARANTY AND ASSUMPTION OF AREA DEVELOPER'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the above Area Developer Marketing Agreement (the "Agreement") by NICK-N-WILLY'S FRANCHISE COMPANY, LLC ("Franchisor"), each of the undersigned ("Guarantors") personally and unconditionally (1) guarantees to Franchisor and its affiliates and their successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that Area Developer, as defined in the Agreement ("AD"), shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and (2) agrees personally to be bound by, and personally liable for the breach of, each and every provision in the Agreement.

1. **Waiver.** Each of the undersigned waives:

- a. acceptance and notice of acceptance by Franchisor and its affiliates of the foregoing undertakings;
- b. notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
- c. protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed;
- d. any right he or she may have to require that an action be brought against AD or any other person as a condition of liability; and

2. **Consents.** Each of the undersigned consents and agrees that:

- a. his or her direct and immediate liability under this guaranty shall be joint and several;
- b. he or she shall render any payment or performance required under the Agreement upon demand if AD fails or refuses punctually to do so;
- c. such liability shall not be contingent or conditioned upon pursuit by Franchisor or its affiliates of any remedies against AD or any other person;
- d. such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor or its affiliates may from time to time grant to AD or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement; and
- e. he or she shall be bound by the restrictive covenants and confidentiality provisions contained in Sections 11 and 12 and Sections 17.4 and 17.5 of the Agreement, and the indemnification provisions contained in Section 18.4 of the Agreement; and
- f. the provisions contained in Section 19 and the costs and attorneys fees provision contained in Section 20.3 of the Agreement shall govern this Guaranty and such provisions are incorporated into this Guaranty by this reference.

IN WITNESS WHEREOF, each of the undersigned has affixed his or her signature, effective as of the _____ day of _____, 200__.

PERCENTAGE OF OWNERSHIP
INTEREST IN AREA DEVELOPER

GUARANTOR(S)

Michael Moore
(Print Name)

[Signature]
Signature

460 E 950 N
SPRINGVILLE, UT 84663

Address

801 592-9883
Telephone Number

(Print Name)

Signature

Address

Telephone Number

(Print Name)

Signature

Address

Telephone Number

EXHIBIT III

STATEMENT OF OWNERSHIP

Area Developer: Michael Mowle

Trade name (if different from above): _____

Form of Ownership
(Check One)

Individual _____ Partnership _____ Corporation _____ Limited Liability Co. _____ Other (explain)

If a Partnership, provide name and address of each partner showing percentage owned, whether active in management, and indicate the state in which the partnership was formed.

If a Corporation, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.

If a Limited Liability Company, give the state and date of formation, the name and address of the manager, list the names and addresses of every member and the percentage of membership interest held by each member.

AD acknowledges that this Statement of Ownership applies to the NICK-N-WILLY'S Area Developer Business authorized under the Area Developer Marketing Agreement. Use additional sheets if necessary. Any and all changes to the above information must be reported to Franchisor in writing.

7-14-05
Date

[Signature]
Name

Date

Name

EXHIBIT IV

CLOSING ACKNOWLEDGEMENT

In order to ensure that your decision to purchase a NICK-N-WILLY'S area development franchise is based upon your own independent investigation and judgment, please complete and sign this Closing Acknowledgement.

1. I have not received any information, either oral or written, regarding the sales, revenues, earnings, income or profits of the NICK-N-WILLY'S Stores ("Stores") nor the NICK-N-WILLY'S Area Developer Business ("AD Business") nor any assurances, promises or predictions of how well my NICK-N-WILLY'S AD Business will perform financially from any officer, employee, agent or area sales representative of Nick-N-Willy's Franchise Company, LLC ("NWFC"), except as set forth in Item 19 of NWFC's Offering Circular.

2. I have made my own independent determination that I have adequate working capital to develop and operate my AD Business.

3. I am not relying on any promises of NWFC which are not contained in the NWFC area developer marketing agreement.

4. I understand that my investment in a NICK-N-WILLY'S AD Business contains substantial business risks and that there is no guarantee that it will be profitable.

5. I have been advised by NWFC and its representatives to seek professional legal and financial advice in all matters concerning the purchase of my NICK-N-WILLY'S AD Business.

6. I acknowledge that the success of my NICK-N-WILLY'S AD Business depends in large part upon my ability as an independent business person and my active participation in the day-to-day operation of the business.

7. The name(s) of the person(s) with whom I dealt in the purchase of my NICK-N-WILLY'S AD Business is/are DALLY SOLTROT.

Dated: _____

AREA DEVELOPER

Print Name: MICHAEL MOORE

Entity Name _____

By: [Signature]

Title: PRINCIPAL

EXHIBIT V

NONDISCLOSURE AND NONCOMPETITION AGREEMENT

This Nondisclosure and Noncompetition Agreement (the "Agreement") is made and entered into effective the 14th day of July, 2005 by and between NICK-N-WILLY'S FRANCHISE COMPANY, LLC, a Colorado limited liability company ("Company"), located at 9777 S. Yosemite Street, Suite 230, Lone Tree, Colorado 80124 and MICHAEL MOORE ("Associate"), who resides at 460 E 950 N
SPRINGVILLE, UT 84663.

RECITALS

A. The Company is engaged in the business of selling franchises for the operation of restaurants and outlets known as "NICK-N-WILLY'S Stores" or "Stores," featuring pizza, salads, desserts and other complementary foods, beverages and related items and the Company also sells franchises for Area Developer Businesses that market, assist and provide on-going support to Store franchisees in a designated geographic area ("Franchised Business"). The Stores and Franchised Businesses are operated under the Company's service mark "NICK-N-WILLY'S" and other service marks, trademarks, logo types, architectural designs, trade dress and other commercial symbols (collectively "Marks");

B. The Company has developed methods for establishing, operating and promoting NICK-N-WILLY'S Stores pursuant to the Company's distinctive business format, plans, methods, data, processes, marketing systems, manuals, formulas, recipes, techniques, electronic communication systems, designs, layouts, operating procedures, trademarks, proprietary marks and information and know-how ("Confidential Information") and such Confidential Information as may be further developed from time to time by the Company;

C. The Company and its affiliates have established substantial goodwill and an excellent reputation with respect to the quality of products and services available, which goodwill and reputation have been and will continue to be of major benefit to the Company;

D. Associate is or will become involved with the Company in the capacity of an officer, partner, director, agent, employee or as a beneficial owner of the Franchised Business, or as an immediate family member of the Area Developer or a principal of the Area Developer and will become privileged as to certain Confidential Information; and

E. Associate and the Company have reached an understanding with regard to nondisclosure by Associate of Confidential Information and with respect to noncompetition by Associate with the Company.

NOW THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Associate and the Company, intending legally to be bound, agree as follows:

1. **Confidential Information.** Associate and the Company acknowledge that the distinctive business format, plans, methods, data, processes, marketing systems, manuals, formulas, recipes, techniques, electronic communication systems, designs, layouts, operating procedures, trademarks, proprietary marks and information and know-how of the Company which are developed and utilized in connection with the operation of the Franchised Business are the Company's Confidential Information. Such Confidential Information is unique, exclusive property and a trade secret of the Company. Associate acknowledges that any unauthorized disclosure or use of the Confidential Information would be wrongful and would cause irreparable injury and harm to the Company. Associate further acknowledges that

the Company has expended a great amount of effort and money in obtaining and developing the Confidential Information, that the Company has taken numerous precautions to guard the secrecy of the Confidential Information and that it would be very costly for competitors to acquire or duplicate the Confidential Information.

2. **Recipes and Operations Manuals as Trade Secrets.** It is understood that Confidential Information, constituting "trade secrets", as used in this Agreement is deemed to include, without limitation, formulas, recipes, lists of customers and any and all information contained in the Company's Operations Manual, which may be provided as one or more separate manuals, electronic information or written instructional guides, as the same are changed or supplemented from time to time, and any information of whatever nature which gives the Company and its affiliates an opportunity to obtain an advantage over its competitors who do not have access to, know or use such lists, written materials, electronic information, formulas or information.

3. **Nondisclosure of Confidential Information.** Associate shall not at any time, publish, disclose, divulge or in any manner communicate to any person, firm, corporation, association, partnership or any other entity whatsoever or use, directly or indirectly, for its own benefit or for the benefit of any person, firm, corporation or other entity other than for the use of the Company or the Franchised Business, any of the Confidential Information of the Company or its affiliates.

4. **Noncompetition Covenant.** Associate hereby covenants and agrees that, during the term of the Area Developer Marketing Agreement governing the establishment and operation of the Franchised Business, except while associated with or operating the Franchised Business in a manner authorized by the Company, neither Associate nor any member of Associate's immediate family, shall:

- a. have any direct or indirect controlling interest as a disclosed or beneficial owner in a Competitive Business;
- b. perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business; or
- c. divert or attempt to divert any business related to, or any customer or account of the NICK-N-WILLY'S Franchised Business, the Company's business or any other NICK-N-WILLY'S franchisee's Store or area developer business, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of Company or another franchisee licensed by Company, to any Competitive Business by any direct inducement or otherwise.
- d. directly or indirectly solicit or employ any person who is employed by Franchisor.

The term "Competitive Business" as used in this Agreement shall mean any business operating, or granting franchises or licenses to others to operate, a restaurant or other food service business deriving more than ten (10%) of its gross receipts, excluding gross receipts relating to the sale of alcoholic beverages, from the sale of pizza (other than a NICK-N-WILLY'S Store operated by Area Developer); provided, however, that Associate shall not be prohibited from owning securities in a Competitive Business if such securities are listed on a stock exchange or traded on the over-the-counter market and represent five percent (5%) or less of that class of securities issued and outstanding.

The term "immediate family" as used in this Agreement shall mean and include spouses, domestic partners, children, parents and siblings.

5. **Post-Termination Covenant Not to Compete.** Associate covenants and agrees that, for a period of two years commencing on the effective date of termination, transfer or expiration of the NICK-N-WILLY'S Area Developer

Marketing Agreement for the Franchised Business, or for a period of two years after termination or cessation of Associate's relationship with the Franchised Business, whichever occurs last, neither Associate, nor any member of Associate's immediate family, shall have any direct or indirect interest as a disclosed or a beneficial owner, investor, partner, director, officer, manager, employee, consultant, representative or agent or in any other capacity in any Competitive Business located in any Development Area in which Company or its affiliates or Area Developers conduct business at the time of termination or expiration. The restrictions of this paragraph shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 5% or less of the number of shares of that class of securities issued and outstanding. Associate and its officers, directors, shareholders, members, managers and/or partners expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of this covenant will not deprive them of their personal goodwill or ability to earn a living.

6. **Injunction.** Associate hereby acknowledges and agrees that in the event of any breach or threatened breach of this Agreement, the Company shall be authorized and entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief in addition to any other rights or remedies to which the Company may be entitled. Associate agrees that the Company may obtain such injunctive relief, without posting a bond or bonds totaling \$500 or more. Associate's sole remedy in the event of the entry of such injunctive relief shall be dissolution of such injunctive relief, if warranted, upon hearing duly had; provided, however, that all claims for damages by reason of the wrongful issuance of any such injunction are hereby expressly waived by Associate.

7. **Effect of Waiver.** The waiver by Associate or the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

8. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Associate and the Company and their respective heirs, executors, representatives, successors and assigns.

9. **Entire Agreement.** This instrument contains the entire agreement of Associate and the Company relating to the matters set forth herein. It may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

10. **Governing Law.** This instrument shall be governed by and construed under the laws of the state of Colorado.

11. **Jurisdiction and Venue.** In the event of a breach or threatened breach by Associate of this Agreement, Associate hereby irrevocably submits to the jurisdiction of the state and federal courts of Colorado, and irrevocably agrees that venue for any action or proceeding shall be in the state and federal courts of Colorado. Both parties waive any objection to the jurisdiction of these courts or to venue in the state and federal courts of Colorado. Notwithstanding the foregoing, in the event that the laws of the state where the Associate resides prohibit the aforesaid designation of jurisdiction and venue, then such other state's laws shall control.

12. **Severability and Interpretation.** If any provision of this Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason, by any court of competent jurisdiction, government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect. If the restrictions concerning time duration, geographic scope, affected persons or breadth of activity contained in Paragraphs 4 and 5 of this Agreement are held to be unenforceable under any applicable law, the arbiter of any dispute regarding this Agreement is hereby authorized to and shall make only such limited changes as are necessary to make the restrictions enforceable.

13. **Attorneys' Fees.** In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party in such litigation, as determined by the court in a final judgment or decree, shall pay the successful party or parties all costs, expenses and reasonable attorneys' fees incurred therein by such party or parties (including without limitation such costs, expenses and fees on any appeals), and if such successful party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included as part of such judgment.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

COMPANY:
NICK-N-WILLY'S FRANCHISE COMPANY, LLC

By: _____
Title: _____

ASSOCIATE:

Print Name: _____

CAPACITY WITH FRANCHISED BUSINESS

AREA DEVELOPER

DEVELOPMENT AREA

NONDISCLOSURE AND NONCOMPETITION AGREEMENT

This Nondisclosure and Noncompetition Agreement (the "Agreement") is made and entered into effective the 12 day of September, 2005 by and between NICK-N-WILLY'S FRANCHISE COMPANY, LLC, a Colorado limited liability company ("Company"), located at 9777 S. Yosemite Street, Suite 230, Lone Tree, Colorado 80124 and PAH, MOORE ("Associate"), who resides at 13402 432nd AVE SE North Bend WA 98045

RECITALS

A. The Company is engaged in the business of selling franchises for the operation of restaurants and outlets known as "NICK-N-WILLY'S Stores" or "Stores," featuring pizza, salads, desserts and other complementary foods, beverages and related items ("Franchised Business"). The Stores are operated under the Company's service mark "NICK-N-WILLY'S" and other service marks, trademarks, logo types, architectural designs, trade dress and other commercial symbols (collectively "Marks");

B. The Company has developed methods for establishing, operating and promoting NICK-N-WILLY'S Stores pursuant to the Company's distinctive business format, plans, methods, data, processes, marketing systems, manuals, formulas, recipes, techniques, electronic communication systems, designs, layouts, operating procedures, trademarks, proprietary marks and information and know-how ("Confidential Information") and such Confidential Information as may be further developed from time to time by the Company;

C. The Company and its affiliates have established substantial goodwill and an excellent reputation with respect to the quality of products and services available, which goodwill and reputation have been and will continue to be of major benefit to the Company;

D. Associate is or will become involved with the Company in the capacity of an officer, partner, director, agent, employee or as a beneficial owner of the Franchised Business, or as an immediate family member of the Franchisee or a principal of the Franchisee and will become privileged as to certain Confidential Information; and

E. Associate and the Company have reached an understanding with regard to nondisclosure by Associate of Confidential Information and with respect to noncompetition by Associate with the Company.

NOW THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Associate and the Company, intending legally to be bound, agree as follows:

1. **Confidential Information.** Associate and the Company acknowledge that the distinctive business format, plans, methods, data, processes, marketing systems, manuals, formulas, recipes, techniques, electronic communication systems, designs, layouts, operating procedures, trademarks, proprietary marks and information and know-how of the Company which are developed and utilized in connection with the operation of the Franchised Business are the Company's Confidential Information. Such Confidential Information is unique, exclusive property and a trade secret of the

Company. Associate acknowledges that any unauthorized disclosure or use of the Confidential Information would be wrongful and would cause irreparable injury and harm to the Company. Associate further acknowledges that the Company has expended a great amount of effort and money in obtaining and developing the Confidential Information, that the Company has taken numerous precautions to guard the secrecy of the Confidential Information and that it would be very costly for competitors to acquire or duplicate the Confidential Information.

2. **Recipes and Operations Manuals as Trade Secrets.** It is understood that Confidential Information, constituting "trade secrets", as used in this Agreement is deemed to include, without limitation, formulas, recipes, lists of customers and any and all information contained in the Company's Operations Manual, which may be provided as one or more separate manuals, electronic information or written instructional guides, as the same are changed or supplemented from time to time, and any information of whatever nature which gives the Company and its affiliates an opportunity to obtain an advantage over its competitors who do not have access to, know or use such lists, written materials, electronic information, formulas or information.

3. **Nondisclosure of Confidential Information.** Associate shall not at any time, publish, disclose, divulge or in any manner communicate to any person, firm, corporation, association, partnership or any other entity whatsoever or use, directly or indirectly, for its own benefit or for the benefit of any person, firm, corporation or other entity other than for the use of the Company or the Franchised Business, any of the Confidential Information of the Company or its affiliates.

4. **Noncompetition Covenant.** Associate hereby covenants and agrees that, during the term of the Franchise Agreement governing the establishment and operation of the Franchised Business, except while associated with or operating the Franchised Business in a manner authorized by the Company, neither Associate nor any member of Associate's immediate family, shall:

- a. have any direct or indirect controlling interest as a disclosed or beneficial owner in a Competitive Business;
- b. perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business; or
- c. divert or attempt to divert any business related to, or any customer or account of the NICK-N-WILLY'S Franchised Business, the Company's business or any other NICK-N-WILLY'S franchisee's business, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of Company or another franchisee licensed by Company, to any Competitive Business by any direct inducement or otherwise.
- d. directly or indirectly solicit or employ any person who is employed by Franchisor.

The term "**Competitive Business**" as used in this Agreement shall mean any business operating, or granting franchises or licenses to others to operate, a restaurant or other food service business deriving more than ten (10%) of its gross receipts, excluding gross receipts relating to the sale of alcoholic beverages, from the sale of pizza (other than another NICK-N-WILLY'S Store operated by Franchisee); provided, however, that Associate shall not be prohibited from owning securities in a Competitive Business if such securities are listed on a stock exchange or traded on the over-the-counter market and represent five percent (5%) or less of that class of securities issued and outstanding.

The term "immediate family" as used in this Agreement shall mean and include spouses, domestic partners, children, parents and siblings.

5. **Post-Termination Covenant Not to Compete.** Associate covenants and agrees that, for a period of two years commencing on the effective date of termination, transfer or expiration of the NICK-N-WILLY'S Franchise Agreement for the Franchised Business, or for a period of two years after termination or cessation of Associate's relationship with the Franchised Business, whichever occurs last, neither Associate, nor any member of Associate's immediate family, shall have any direct or indirect interest as a disclosed or a beneficial owner, investor, partner, director, officer, manager, employee, consultant, representative or agent or in any other capacity in any Competitive Business located or operating within a 5-mile radius of the location of the Franchised Business or within 5 miles of any other franchised, corporate or affiliate-owned NICK-N-WILLY'S Store. The restrictions of this paragraph shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 5% or less of the number of shares of that class of securities issued and outstanding. Associate and its officers, directors, shareholders, members, managers and/or partners expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of this covenant will not deprive them of their personal goodwill or ability to earn a living.

6. **Injunction.** Associate hereby acknowledges and agrees that in the event of any breach or threatened breach of this Agreement, the Company shall be authorized and entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief in addition to any other rights or remedies to which the Company may be entitled. Associate agrees that the Company may obtain such injunctive relief, without posting a bond or bonds totaling \$500 or more. Associate's sole remedy in the event of the entry of such injunctive relief shall be dissolution of such injunctive relief, if warranted, upon hearing duly had; provided, however, that all claims for damages by reason of the wrongful issuance of any such injunction are hereby expressly waived by Associate.

7. **Effect of Waiver.** The waiver by Associate or the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

8. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Associate and the Company and their respective heirs, executors, representatives, successors and assigns.

9. **Entire Agreement.** This instrument contains the entire agreement of Associate and the Company relating to the matters set forth herein. It may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

10. **Governing Law.** This instrument shall be governed by and construed under the laws of the state of Colorado.

11. **Jurisdiction and Venue.** In the event of a breach or threatened breach by Associate of this Agreement, Associate hereby irrevocably submits to the jurisdiction of the state and federal courts of Colorado, and irrevocably agrees that venue for any action or proceeding shall be in the state and federal courts of Colorado. Both parties waive any objection to the jurisdiction of these courts or to venue in the state and federal courts of Colorado. Notwithstanding the foregoing, in the event that the laws of the

state where the Associate resides prohibit the aforesaid designation of jurisdiction and venue, then such other state's laws shall control.

12. **Severability and Interpretation.** If any provision of this Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason, by any court of competent jurisdiction, government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect. If the restrictions concerning time duration, geographic scope, affected persons or breadth of activity contained in Paragraphs 4 and 5 of this Agreement are held to be unenforceable under any applicable law, the arbiter of any dispute regarding this Agreement is hereby authorized to and shall make only such limited changes as are necessary to make the restrictions enforceable.

13. **Attorneys' Fees.** In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party in such litigation, as determined by the court in a final judgment or decree, shall pay the successful party or parties all costs, expenses and reasonable attorneys' fees incurred therein by such party or parties (including without limitation such costs, expenses and fees on any appeals), and if such successful party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included as part of such judgment.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

COMPANY:
NICK-N-WILLY'S FRANCHISE COMPANY, LLC

By: _____
Title: President/CEO

ASSOCIATE:
Patti Moore
Print Name: _____

CAPACITY WITH FRANCHISED BUSINESS

Owner

FRANCHISEE

STORE LOCATION

EXHIBIT VI

AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS
(DIRECT DEBITS)

The undersigned depositor ("Depositor") hereby (1) authorizes Nick-N-Willy's Franchise Company, LLC ("Company") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account indicated below and (2) authorizes the depository designated below ("Depository") to debit such account pursuant to Company's instructions.

_____		_____
Depository		Branch
_____		_____
City	State	Zip Code
_____		_____
Bank Transit/ABA Number		Account Number

This authority is to remain in full force and effect until Depository has received joint written notification from Company and Depositor of the Depositor's termination of such authority in such time and in such manner as to afford Depository a reasonable opportunity to act on it. Notwithstanding the foregoing, Depository shall provide Company and Depositor with 30 days' prior written notice of the termination of this authority. If an erroneous debit entry is initiated to Depositor's account, Depositor shall have the right to have the amount of such entry credited to such account by Depository, if (a) within 15 calendar days following the date on which Depository sent to Depositor a statement of account or a written notice pertaining to such entry or (b) 45 days after posting, whichever occurs first, Depositor shall have sent to Depository a written notice identifying such entry, stating that such entry was in error and requesting Depository to credit the amount thereof to such account. These rights are in addition to any rights Depositor may have under federal and state banking laws.

Michael Moele
DEPOSITOR (Print Name)
By: [Signature]
Its: Principal
Date: 7-14-05

DEPOSITORY (Print Name)
By: _____
Its: _____
Date: _____

**ADDENDUM TO THE NICK-N-WILLY'S FRANCHISE COMPANY, LLC
AREA DEVELOPER MARKETING AGREEMENT
REQUIRED BY THE STATE OF WASHINGTON**

This Addendum to the Area Developer Marketing Agreement by and between Nick-N-Willy's Franchise Company, LLC and Area Developer is dated July 14th, 2005.

These states have statutes which may supersede the Franchise Agreement in your relationship with us, including the areas of termination and renewal of your franchise: ARKANSAS [Stat. Sections 4-72-201 to 4-72-210], CALIFORNIA [Bus. & Prof. Code Sections 20000-20043], CONNECTICUT [Gen. Stat. Ch. 739, Sections 42-133e to 42-133h], DELAWARE [Title 6, Ch. 25, Code Sections 2551-2556], HAWAII [Title 26, Rev. Stat. Section 482E-6], ILLINOIS [ILCS, Ch. 815, Sections 705/1-705/44], INDIANA [Code Section 23-2-2.7-1 to 7], IOWA [Title XX, Code Sections 523H.1-523H.17], MARYLAND [MD. CODE ANN., BUS. REG. Sections 14-201 to 14-233 (2004 Repl. Vol.)], MICHIGAN [1979 Comp. Laws, Section 445.1527], MINNESOTA [1996 Stat. Section 80C.14], MISSISSIPPI [Code Sections 75-24-51 to 75-24-63], MISSOURI [Rev. Stat. Sections 407.400-407.410, 407.413, 407.420], NEBRASKA [Rev. Stat. Sections 87-401 to 87-410], NEW JERSEY [Rev. Stat. Sections 56:10-1 to 56:10-12], SOUTH DAKOTA [Codif. L. Section 37-5A-51], VIRGINIA [Code Sections 13.1-557-574], WASHINGTON [Rev. Code Sections 19.100.180, 19.100.190], WISCONSIN [Stat. Sections 135.01-135.07], DISTRICT OF COLUMBIA [Code Sections 29-1201 to 29-1208], PUERTO RICO [Ann. Laws, Title 10, Ch. 14, Sections 278-278d], VIRGIN ISLANDS [Code Ann., Title 12A, Ch. 2, Subch. III, Sections 130-139]. These and other states may have court decisions which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your franchise.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Washington Addendum concurrently with the execution of the Area Developer Marketing Agreement on the day and year first above written.

**NICK-N-WILLY'S FRANCHISE
COMPANY, LLC**

By: [Signature]

Its: CSD

AREA DEVELOPER

Michael Moore
(Print Name)

By: [Signature]

Its: Principal