

# FRANCHISE AGREEMENT

between

**AMERICINN INTERNATIONAL, LLC**

250 Lake Drive East  
Chanhassen, MN 55317  
(952) 294-5000

and

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NAME(S) OF FRANCHISEE

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STREET

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CITY, STATE, ZIP CODE

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(AREA CODE) TELEPHONE NUMBER

FRANCHISED LOCATION:

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STREET

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CITY, STATE, ZIP CODE

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(AREA CODE) TELEPHONE NUMBER

DATE OF FRANCHISE AGREEMENT:

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**AMERICINN INTERNATIONAL, LLC  
FRANCHISE AGREEMENT**

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## **AMERICINN INTERNATIONAL, LLC FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (hereinafter referred to as the "AGREEMENT"), made, entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as the "Effective Date"), by and between AmericInn International, LLC, a Minnesota limited liability company (hereinafter referred to as the "FRANCHISOR"), and \_\_\_\_\_ (hereinafter referred to as the "FRANCHISEE");

### **WITNESSETH:**

WHEREAS, the FRANCHISOR has developed a business concept for providing the public with lodging services of a distinctive character under the names "AmericInn<sup>®</sup>," "AmericInn Lodge & Suites<sup>®</sup>," "AmericInn Hotel & Suites<sup>®</sup>," "AmericInn Motel & Suites<sup>®</sup>" and "AmericInn Motel<sup>®</sup>" (hereinafter referred to as the "Business System") and has publicized the names "AmericInn<sup>®</sup>," "AmericInn Lodge & Suites<sup>®</sup>," "AmericInn Hotel & Suites<sup>®</sup>," "AmericInn Motel & Suites<sup>®</sup>," "AmericInn Motel<sup>®</sup>" and certain other trademarks, trade names, service marks, copyrights, decor, motif, graphics, slogans, signs, logos, interior and exterior building designs, commercial symbols and color combinations (hereinafter referred to collectively as the "Existing Marks") to the public and other businesses as an organization of motels, hotels and lodges operating under the Business System; and

WHEREAS, the FRANCHISEE desires to operate a motel, hotel or lodge using one or more of the Existing Marks and/or the New Marks (as hereinafter defined), if any, at the single location set forth in ARTICLE 1 which will conform to the Business System and the standards of quality and uniformity established and promulgated from time to time by the FRANCHISOR (hereinafter referred to as the "AmericInn"); and

WHEREAS, the FRANCHISEE has had a full and adequate opportunity to be thoroughly advised of the terms and conditions of this AGREEMENT by legal counsel or a personal advisor, and has had sufficient time to evaluate and investigate both the Business System and the financial investment associated with the Business System; and

WHEREAS, the FRANCHISOR is willing to provide the FRANCHISEE with marketing, advertising, operational and other business information and know-how concerning the Business System that has been developed by the FRANCHISOR over time and at a significant cost to the FRANCHISOR; and

WHEREAS, the FRANCHISEE acknowledges that it would take substantial capital and human resources to develop a motel, hotel or lodge similar to an AmericInn and, as a result, desires to acquire the right to use one or more of the Existing Marks and the New Marks (hereinafter referred to collectively as the "Marks") and the Business

System from the FRANCHISOR on the terms and conditions set forth in this AGREEMENT; and

WHEREAS, the FRANCHISEE acknowledges that the FRANCHISOR would not provide the FRANCHISEE with any information or know-how about an AmericInn or the Business System unless the FRANCHISEE agreed to comply in all respects with the terms and conditions of this AGREEMENT;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby contract as follows:

#### ARTICLE 1: FRANCHISED LOCATION; GRANT OF FRANCHISE

(A) **Franchised Location.** The FRANCHISOR hereby grants to the FRANCHISEE a nonexclusive and personal license to operate one (1) AmericInn in conformity with the Business System and further grants the FRANCHISEE a nonexclusive and personal license to operate such AmericInn using the Marks at the following single location:

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Street Address (if the exact street address is not known at the time this AGREEMENT is signed, the street address should be left blank at time of execution and inserted by the parties later when it is known)

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City, State, Zip Code

(hereinafter referred to as the "FRANCHISED LOCATION"). Until the expiration or earlier termination of this AGREEMENT, FRANCHISOR shall not, so long as the FRANCHISEE'S AmericInn contains at least \_\_\_\_ guest rooms and the FRANCHISEE is not in default hereunder, grant a franchise to operate another AmericInn in the following area:

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(hereinafter referred to as the "Protected Area"). "Nonexclusive", for the purposes of this provision, shall mean that the FRANCHISOR has granted or will grant franchises to other franchisees authorizing such franchisees to operate AmericInns in conformity with the Business System using the Marks outside of the Protected Area some of which, depending upon their locations, may compete with the FRANCHISEE'S AmericInn for customers within the Protected Area. In addition, the FRANCHISOR or its affiliates may

license or operate other lodging properties using trade names other than "AmericInn<sup>®</sup>", either within the Protected Area, or outside of the Protected Area, even if such lodging properties offer services similar to those offered in the FRANCHISEE'S AmericInn.

(B) **Franchised Name.** The FRANCHISEE will operate its AmericInn under the name \_\_\_\_\_ (the "Franchised Name"), and will not change the Franchised Name of its AmericInn or use any other Marks except with the FRANCHISOR'S prior written permission. The FRANCHISEE'S AmericInn shall conform to the requirements for the use of the Franchised Name set forth in the FRANCHISOR'S Minimum Design Standards Manual (as the same may be revised, modified and/or supplemented from time to time by FRANCHISOR in its sole discretion, the "Design Manual") and/or Confidential Operations Guide, (as the same may be revised, modified and/or supplemented from time to time by FRANCHISOR in its sole discretion, (the "Operations Guide").

(C) **Conditions.** The FRANCHISEE hereby undertakes the obligation to operate an AmericInn at the FRANCHISED LOCATION under the Business System using the Marks in strict compliance with the terms and conditions of this AGREEMENT for the entire term of this AGREEMENT. The rights and privileges granted to the FRANCHISEE by the FRANCHISOR under this AGREEMENT are applicable only to the single location designated as the FRANCHISED LOCATION, are personal in nature, and may not be used elsewhere or at any other location by the FRANCHISEE.

## ARTICLE 2: TERM OF FRANCHISE; FRANCHISEE'S RIGHT OF FIRST REFUSAL TO REACQUIRE FRANCHISE

(A) **Term.** The term of this AGREEMENT shall commence on the Effective Date and shall continue thereafter until the date which is twenty (20) years after the date the FRANCHISEE'S AmericInn opens for business, subject to earlier termination as set forth herein. This AGREEMENT will not be enforceable until it has been signed by both the FRANCHISEE and the FRANCHISOR, and until the signed AGREEMENT has been delivered to the FRANCHISEE.

(B) **Rights Upon Expiration.** At the expiration of the term of this AGREEMENT, the FRANCHISEE will not have the right to renew or to extend the term of this AGREEMENT. Notwithstanding the foregoing and subject to the provisions of ARTICLE 2(C) hereof, at the end of the term of this AGREEMENT, the FRANCHISEE will have a right of first refusal to reacquire the franchise for the FRANCHISED LOCATION under the same terms and conditions then being offered to other franchisees by the FRANCHISOR under the FRANCHISOR'S then-current standard Franchise Agreement provided that the FRANCHISEE has agreed to and complied in all material respects with each of the following conditions:

(1) The FRANCHISEE has given the FRANCHISOR written notice at least one hundred eighty (180) days prior to the end of the term of this

AGREEMENT of its intent to reacquire the franchise for the FRANCHISED LOCATION.

(2) Throughout the term of this AGREEMENT, the FRANCHISEE has complied with the terms and conditions of this AGREEMENT in all material respects.

(3) The monetary obligations owed by the FRANCHISEE to the FRANCHISOR have been paid or satisfied prior to the end of the term of this AGREEMENT, and have been timely paid or satisfied throughout the term of this AGREEMENT.

(4) The FRANCHISEE pays to the FRANCHISOR at the time it executes the FRANCHISOR'S then-current standard Franchise Agreement the inspection fee provided for in ARTICLE 7(Q) hereof and has agreed, in writing, to make the reasonable capital expenditures necessary to remodel, modernize, redecorate and renovate its AmericInn and to replace and modernize the furniture, fixtures, supplies and equipment used in the FRANCHISEE'S AmericInn so that the FRANCHISEE'S AmericInn will reflect the then-current image intended to be portrayed by AmericInns. All such remodeling, modernizing, redecorating and renovating shall be conducted in accordance with ARTICLE 7(F) hereof.

(5) As of the date the FRANCHISEE exercises its right of first refusal to reacquire the franchise for the FRANCHISED LOCATION, the FRANCHISEE establishes to the reasonable satisfaction of FRANCHISOR that the FRANCHISEE owns the FRANCHISED LOCATION.

(6) The FRANCHISEE agrees to execute and comply with the then-current standard Franchise Agreement then being offered to new franchisees by the FRANCHISOR.

(7) The FRANCHISEE pays to the FRANCHISOR at the time it executes the FRANCHISOR'S then-current standard Franchise Agreement a reacquisition fee in the amount of seventy percent (70%) of the initial fee payable by new franchisees as specified in such then-current standard Franchise Agreement.

(8) The FRANCHISEE submits to the FRANCHISOR such documents and information as the FRANCHISOR may reasonably request, including (i) copies of the organizational documents of FRANCHISEE, and (ii) reasonably current financial statements for FRANCHISEE and the Personal Guarantors of the FRANCHISEE'S under the then-current standard Franchise Agreement to be executed by the FRANCHISEE in connection with the reacquisition of the franchise.

(C) **Terms Of Right Of First Refusal.** If the FRANCHISEE exercises its right to reacquire the franchise for the FRANCHISED LOCATION and executes the

FRANCHISOR'S then-current standard Franchise Agreement, the FRANCHISEE will not be required to pay the initial fee specified in the then-current standard Franchise Agreement. However, the FRANCHISEE will be required to pay FRANCHISOR the reacquisition fee described above and to make the local advertising expenditures and pay the Continuing Fees, Marketing Fees and all other fees at the rates specified in the FRANCHISOR'S then-current standard Franchise Agreement, plus any additional fees not provided for in this AGREEMENT, but which are required to be paid to the FRANCHISOR or others by the terms of the FRANCHISOR'S then-current standard Franchise Agreement. The FRANCHISEE acknowledges that the terms, conditions and economics of the then-current standard Franchise Agreement of the FRANCHISOR may, at that time, vary in substance and form from the terms, conditions and economics of this AGREEMENT. Specifically, and without limiting the manner in which the terms, conditions and economics of the FRANCHISOR'S then-current standard Franchise Agreement may vary from this AGREEMENT, the FRANCHISEE acknowledges and agrees that (1) the Continuing Fees, Marketing Fees, training fees, inspection fees, transfer fees and other fees payable to the FRANCHISOR under such then-current standard Franchise Agreement may be greater than that provided for herein, (2) such then-current standard Franchise Agreement may provide for the payment of fees by the FRANCHISEE to the FRANCHISOR which are not provided for herein, and (3) such then-current standard Franchise Agreement may require the FRANCHISEE to spend more for local advertising, marketing and promotion than provided for herein.

### ARTICLE 3: FRANCHISOR'S RIGHT TO LICENSE THE MARKS

(A) **Right To Franchise Marks.** The FRANCHISOR warrants that it has the right, except as provided herein, to license the Marks to the FRANCHISEE. Any and all improvements made by or on behalf of the FRANCHISEE relating to the Marks or the Business System will become the sole and absolute property of the FRANCHISOR which will have the sole and exclusive right to register and protect all such improvements in its name. FRANCHISEE shall assign and transfer its rights in and to any such improvements to the FRANCHISOR pursuant to a bill of sale or assignment in such form as FRANCHISOR may reasonably require. FRANCHISEE will not be entitled to, and hereby expressly waives, any right that it may have to be compensated by the FRANCHISOR for any such improvements to the Marks and/or Business System. The FRANCHISEE'S right to use and identify with the Marks and the Business System will exist concurrently with the term of this AGREEMENT and such use by the FRANCHISEE will inure exclusively to the benefit of the FRANCHISOR.

(B) **Conditions To License Of Marks.** The FRANCHISEE'S nonexclusive and personal right to use the Franchised Name as the name of the FRANCHISEE'S AmericInn and its right to use the Marks and the Business System applies only to the FRANCHISED LOCATION and such rights will exist only so long as the FRANCHISEE fully performs and complies with all of the terms and conditions of this AGREEMENT. The FRANCHISEE will not have or acquire any rights in any of the Marks or the Business System other than the right of use as provided herein. The FRANCHISEE will have the right to use the Marks and the Business System only in the manner

prescribed, directed and approved by the FRANCHISOR in writing. If, in the judgment of the FRANCHISOR, the acts of the FRANCHISEE infringe upon or demean the goodwill, standards of quality or uniformity, or business standing associated with the Marks or the Business System, then the FRANCHISEE will, upon written notice from the FRANCHISOR, immediately modify its use of the Marks and the Business System in the manner prescribed by the FRANCHISOR in writing. The FRANCHISEE expressly understands and acknowledges that the FRANCHISOR is the owner of all rights, title and interest in and to the Marks and the Business System, and the goodwill associated with and symbolized by the Marks and the Business System. The Marks are valid and serve to identify the FRANCHISOR as the source of origin of the goods and services provided under the Business System. Any and all goodwill associated with the Marks and the Business System will inure exclusively to the FRANCHISOR'S benefit, and upon the expiration or termination of this AGREEMENT, no monetary amount will be assigned as attributable to any goodwill associated with the FRANCHISEE'S use of the Marks and the Business System. The FRANCHISEE will at no time take any action whatsoever to contest the FRANCHISOR'S Marks and Business System and the goodwill associated therewith and will not allege any ownership in the Marks or the Business System.

(C) **Substitution of Marks.** The FRANCHISOR reserves the right to modify the Marks or to substitute new or different trademarks, trade names, service marks, copyrights, decor, motif, graphics, slogans, signs, logos, interior and exterior building designs, commercial symbols and/or color combinations (hereinafter referred to collectively as the "New Marks") to identify the Americlnns operating under the Business System, if the FRANCHISOR, in its sole discretion, determines that the modification of the Marks or substitution of New Marks will be beneficial to the Business System. In that event, upon receipt of written notice from the FRANCHISOR, the FRANCHISEE will, at its expense, immediately make all modifications to the Marks specified by the FRANCHISOR in the written notice, and if so specified, the FRANCHISEE will cease using the Marks and commence using the New Marks.

(D) **Adverse Claims.** If there is a claim by any party that its rights to any or all of the Marks are superior to those of the FRANCHISOR and if the FRANCHISOR'S attorneys are of the opinion that such claim is legally meritorious, or if there is an adjudication by a Court of competent jurisdiction that any party's rights to any or all of the Marks (hereinafter referred to as the "Conflicting Marks") are superior to those of the FRANCHISOR, then upon receiving written notice from the FRANCHISOR, the FRANCHISEE will, at its expense, immediately discontinue use of the Conflicting Marks and, if so specified, the FRANCHISEE will as soon as reasonably possible, commence using the New Marks designated by the FRANCHISOR in writing in connection with the operation of the FRANCHISEE'S Americlnn, including on all signs, and in connection with all advertising, marketing and promotion thereof. In the event the FRANCHISEE is required by FRANCHISOR to change its exterior sign faces bearing the name Americlnn or any of the other Marks pursuant to ARTICLE 3(C) or this ARTICLE 3(D), the FRANCHISOR shall reimburse the FRANCHISEE for the undepreciated value (i.e., "book value") of such sign faces. The FRANCHISEE will not make any changes or



amendments whatsoever to the Marks or the Business System unless approved by the FRANCHISOR in writing.

(E) **Defense Or Enforcement Of Rights To Marks.** The FRANCHISEE will have no right to and will not, without the written consent of the FRANCHISOR, defend or enforce any rights associated with the Marks or the Business System in any Court or other proceedings for or against imitation, infringement, prior use, or for any other claim or allegation. The FRANCHISEE will give the FRANCHISOR prompt written notice of any and all claims or complaints made against or associated with the Marks and the Business System and will, without compensation for its time and at its expense, cooperate in all respect with the FRANCHISOR in any lawsuits or other proceedings involving the Marks or the Business System. The FRANCHISOR will have the sole and absolute right to determine whether it will commence any action against or defend any action by any third party involving the Marks or the Business System and the cost and expense of all such actions incurred by the FRANCHISOR, including attorneys' fees, specifically relating to the Marks or the Business System will be paid by the FRANCHISOR.

(F) **Franchisee's Right To Participate In Litigation.** The FRANCHISEE may, at its expense, retain an attorney to represent it individually in all litigation and Court proceedings involving the Marks or the Business System, and will do so with respect to matters involving only the FRANCHISEE (i.e. not involving the FRANCHISOR or its interests); however, the FRANCHISOR and its legal counsel will control and conduct all litigation involving the Marks or the Business System. Except as expressly provided for herein, the FRANCHISOR will have no liability to the FRANCHISEE for any costs that the FRANCHISEE may incur in any litigation or other proceedings involving the Marks or the Business System and the FRANCHISEE will pay for all costs, including attorneys' fees, that it may incur in any litigation or proceedings arising as a result of matters referred to under this ARTICLE.

(G) **Tender Of Defense.** If the FRANCHISEE is named as a defendant or party in any action involving the Marks or the Business System and if the FRANCHISEE is named as a defendant or party solely because the plaintiff or claimant is alleging that the FRANCHISEE does not have the right to use the Marks or the Business System licensed by the FRANCHISOR to the FRANCHISEE at the FRANCHISED LOCATION pursuant to this AGREEMENT, then the FRANCHISEE will have the right to tender the defense of the action to the FRANCHISOR within ten (10) days of receiving service of the Summons and Complaint in the action and, provided that the FRANCHISEE timely tenders the defense of the action, the FRANCHISOR will, at its expense, defend the FRANCHISEE in the action. The FRANCHISOR will indemnify and hold the FRANCHISEE harmless from any damages assessed against the FRANCHISEE in any such actions resulting solely from the FRANCHISEE'S use of the Marks and the Business System at the FRANCHISED LOCATION if the FRANCHISEE has tendered the defense of the action to the FRANCHISOR within ten (10) days of receiving service of the Summons and Complaint.

#### ARTICLE 4: INITIAL FEE; APPROVAL OF FRANCHISEE

(A) **Initial Fee.** The FRANCHISEE will pay the FRANCHISOR an initial fee of Thirty-Five Thousand Dollars (\$35,000) (the "Initial Fee"), all of which will be due and payable on the date this AGREEMENT is executed by the FRANCHISEE.

(B) **Franchisor's Unilateral Right To Reject Franchisee.** The FRANCHISOR will have the absolute right to reject the FRANCHISEE and terminate this AGREEMENT at any time within one hundred twenty (120) days of the Effective Date if: (1) the FRANCHISOR determines that any financial, personal or other information provided by or on behalf of the FRANCHISEE to the FRANCHISOR is materially false, misleading, incomplete or inaccurate; (2) the FRANCHISOR reasonably determines that the FRANCHISEE or the FRANCHISEE'S Manager is not qualified or competent to properly manage or operate the FRANCHISEE'S AmericInn because he or she has not successfully completed the FRANCHISOR'S management training program or is deemed by the FRANCHISOR to be incapable of successfully completing the FRANCHISOR'S management training program; (3) the FRANCHISEE fails to purchase or contract to purchase a suitable site for the FRANCHISED LOCATION; or (4) the FRANCHISEE fails to provide the FRANCHISOR with evidence acceptable to FRANCHISOR in its sole discretion of the fact that FRANCHISEE has obtained any and all financing necessary to develop, construct and operate its AmericInn. The FRANCHISEE shall not sign a purchase agreement for the FRANCHISED LOCATION unless the enforceability of the purchase agreement is conditioned upon the FRANCHISEE being approved by the FRANCHISOR and is subject to cancellation in the event that the FRANCHISEE is rejected and/or this AGREEMENT is terminated by the FRANCHISOR pursuant to this ARTICLE 4(B). The FRANCHISEE will be promptly notified by the FRANCHISOR in writing if the FRANCHISEE is rejected or this AGREEMENT is terminated pursuant to this ARTICLE 4(B).

(C) **Termination By Franchisee.** The FRANCHISEE will have the absolute right to terminate this AGREEMENT at any time within ninety (90) days of the Effective Date by giving written notice of such termination to FRANCHISOR if: (1) the FRANCHISEE fails to purchase or contract to purchase a suitable site for the FRANCHISED LOCATION; or (2) FRANCHISEE fails to obtain any and all financing which it may require to develop, construct and operate its AmericInn.

(D) **Refund Of Initial Fee.** If the FRANCHISEE is rejected, or this AGREEMENT is terminated by the FRANCHISOR pursuant to ARTICLE 4(B) or by the FRANCHISEE pursuant to ARTICLE 4(C), then the Initial Fee will be refunded to the FRANCHISEE after the FRANCHISOR deducts all reasonable administrative and out-of-pocket expenses incurred by the FRANCHISOR in processing the application of the FRANCHISEE, including, but not limited to, executives' and employees' salaries, salespersons' commissions, training costs, marketing costs, attorneys' fees, accountants' fees, travel expenses and long distance telephone calls. The FRANCHISOR will provide the FRANCHISEE with a written accounting of the administrative and out-of-pocket expenses that were incurred by the FRANCHISOR and deducted from the Initial Fee.

(E) **Disclosure Of Information.** To enable FRANCHISOR to evaluate FRANCHISEE and its proposed AmericInn, the FRANCHISEE shall be required to promptly disclose and supply to the FRANCHISOR such information as the FRANCHISOR may reasonably request concerning (1) the financial condition, net worth and income of the FRANCHISEE and any personal guarantors of FRANCHISEE'S debts, liabilities and obligations to the FRANCHISOR (hereinafter the "Personal Guarantors"); (2) the terms and conditions of any financing the FRANCHISEE may obtain to enable it to develop, construct and/or operate its AmericInn; (3) the FRANCHISEE'S proposed expenditures in developing, constructing and/or operating its AmericInn; and (4) the owners of the FRANCHISEE if it is an entity.

## ARTICLE 5: CONTINUING FEES

(A) **Amount Of Continuing Fees.** In addition to the Initial Fee, the FRANCHISEE shall, for the entire term of this AGREEMENT, pay to the FRANCHISOR monthly continuing fees (the "Continuing Fees") equal to five percent (5%) of the FRANCHISEE'S monthly Gross Revenues (as hereinafter defined). For purposes of this AGREEMENT, "Gross Revenues" mean the gross total dollar revenues which are received, billed or generated by, as a result of, or from the FRANCHISEE'S AmericInn, whether the transactions are cash, credit or charge sales, attributable to room rentals (including meeting, pool and other room rentals) and/or admission or other similar fees for use of any water park at the FRANCHISEE'S AmericInn, including the equivalent value thereof in the case of room rentals the consideration for which is other than cash such as, but not limited to, trade-outs for goods and services supplied to the FRANCHISEE, but excluding the provision of rooms to persons for promotional purposes. This definition will be applicable regardless of whether such sales, receipts or revenues are produced or received by the FRANCHISEE, by any permitted subfranchisee, tenant or agent of the FRANCHISEE, or by any other business associate of the FRANCHISEE who or which is associated with the FRANCHISEE in order to receive the benefits of the rights granted hereunder to the FRANCHISEE. Gross Revenues will not include (1) any sales, use or gross receipts tax imposed by any federal, state, municipal or other governmental authority directly upon sales, if: (a) the amount of the tax is added to the selling price and is expressly charged to the customer; (b) a specific record is made at the time of each sale of the amount of such tax; and (c) the amount thereof is paid over to the appropriate taxing authority by the FRANCHISEE, (2) any sales, receipts or revenues produced by vending machines, coin-operated machines or telephones operated on or about the FRANCHISED LOCATION, or (3) any sales, receipts or revenues received or generated by or as a result of the resale of telecommunication services provided by others. In no event shall Gross Revenues be reduced by or due to any payments by FRANCHISEE to FRANCHISOR provided for in this AGREEMENT, including, but not limited to, payments to the FRANCHISOR pursuant to ARTICLE 7(C) hereto with respect to the INN-Pressive Club®, or by reason of any bad debts or uncollected accounts receivable of FRANCHISEE.

(B) **Franchisee's Obligation To Pay.** The FRANCHISEE'S obligation to pay the FRANCHISOR the Continuing Fees under the terms of this AGREEMENT will be

absolute and unconditional and will remain in full force and effect until the term of this AGREEMENT has expired or until this AGREEMENT is terminated by FRANCHISEE in strict accordance with the terms and conditions set forth in this AGREEMENT and applicable law. Notwithstanding any provision of this AGREEMENT to the contrary, the FRANCHISOR shall have the right to commence a legal action against the FRANCHISEE in a court of competent jurisdiction to collect any amounts due and payable by the FRANCHISEE to the FRANCHISOR hereunder, including, but not limited to, Continuing Fees, without terminating this AGREEMENT.

(C) **Date Payable.** The monthly Continuing Fees payable by the FRANCHISEE must be paid to and received by the FRANCHISOR on or before the tenth (10th) day of each month for the preceding month and must be submitted with the FRANCHISEE'S monthly report of Gross Revenues required under ARTICLE 17(C) hereof.

(D) **Electronic Funds Transfer.** At the option of FRANCHISOR, Continuing Fees, Marketing Fees, amounts due for purchases by FRANCHISEE from FRANCHISOR and other amounts which FRANCHISEE owes to FRANCHISOR shall be paid through electronic funds transfer, direct debit of account or other similar technology as FRANCHISOR may designate from time to time in the Operations Guide (collectively, a "Bank Draft Arrangement"). Immediately following request by FRANCHISOR, FRANCHISEE shall set up a Bank Draft Arrangement and FRANCHISOR shall have access to FRANCHISEE'S bank account for the purpose of receiving payment for Continuing Fees, Marketing Fees, amounts due for purchases by FRANCHISEE from FRANCHISOR and any other amounts which FRANCHISEE owes to FRANCHISOR. Every month FRANCHISEE shall make deposits to the account sufficient to cover amounts owed to FRANCHISOR, in accordance with the procedures set forth in the Operations Guide.

## ARTICLE 6: ADVERTISING

(A) **Required Local Advertising Expenditures.** Each month during the term of this AGREEMENT, the FRANCHISEE will spend an amount which is not less than one percent (1%) of its monthly Gross Revenues for the preceding month for approved local media advertising, marketing and promotion. All advertising, marketing and promotion conducted by the FRANCHISEE, including, but not limited to, billboards and other outdoor and out-of-home advertising, must have the prior written approval of the FRANCHISOR, which approval shall not be unreasonably withheld. On or before the tenth (10th) day of each month, the FRANCHISEE will furnish to the FRANCHISOR, in the form prescribed by the FRANCHISOR, an accurate accounting of the FRANCHISEE'S previous month's expenditures for approved local media advertising, marketing and promotion. If the FRANCHISEE has failed to spend at least one percent (1%) of its monthly Gross Revenues for approved local media advertising, marketing and promotion during any month as required under this ARTICLE, then the FRANCHISEE will be required to deposit with the FRANCHISOR the difference between one percent (1%) of its monthly Gross Revenues and what it actually spent

during such month for approved local advertising, marketing or promotion and the FRANCHISOR shall spend such deposit in such manner as the FRANCHISOR deems, in its sole discretion, to be in the best interest of the FRANCHISEE'S AmericInn. Amounts spent by the FRANCHISEE for approved local media advertising, marketing and promotion shall not, in any event, be offset against the Marketing Fees payable to the FRANCHISOR under ARTICLE 6(C) below.

(B) **Local Advertising Group.** At such time as there are two (2) or more AmericInn® franchisees (including the FRANCHISEE) with AmericInns located within a geographic region designated by the FRANCHISOR in its sole discretion (the "Designated Region"), the FRANCHISOR shall have the right, at its option, to require all of such franchises, including the FRANCHISEE, to become a member of and to participate in a local advertising group that will conduct and administer local media advertising, marketing and promotion within the Designated Region. The cost of the advertising, marketing and promotion approved by a majority of the franchisees constituting the local advertising group will be allocated among and billed to all of the franchisees with AmericInns located within the Designated Region and each franchisee's share will be in proportion to the number of guest rooms in each franchisee's AmericInn; provided, however, that FRANCHISEE shall not be allocated or billed for such approved local advertising, marketing or promotion expenses in an amount in excess of one percent (1%) of FRANCHISEE'S monthly Gross Revenues. Each local advertising group will have a membership with equal representation for each AmericInn located within the Designated Region. Payments to the local advertising group by the FRANCHISEE may be offset against the local media advertising, marketing and promotion expenditures required under ARTICLE 6(A) above, but shall not be offset against the Marketing Fees payable to the FRANCHISOR under ARTICLE 6(C) below.

(C) **Amount Of Marketing Fees; Use Of Funds.** Each month during the term of this AGREEMENT, the FRANCHISEE will pay the FRANCHISOR marketing fees equal to two percent (2%) of the FRANCHISEE'S monthly Gross Revenues for the preceding month (the "Marketing Fees") for deposit in a Marketing Fund. All Marketing Fees received by FRANCHISOR from FRANCHISEE and other AmericInn® franchisees which are not utilized by FRANCHISOR for the purposes set forth herein within forty-five (45) days of receipt by the FRANCHISOR will be held by the FRANCHISOR in a separate, interest-bearing account which, together with any interest thereon, shall be dedicated exclusively to the purposes set forth in this ARTICLE 6(C). The FRANCHISOR shall not be required to immediately spend all Marketing Fees which it receives but may, in its discretion, maintain such reserve or reserves for such purpose or purposes set forth herein as FRANCHISOR deems necessary or advisable. The Marketing Fund will be administered and controlled by the FRANCHISOR. An Advisory Board, consisting of members designated by FRANCHISOR or nominated and elected in such manner as FRANCHISOR may from time to time determine in its sole discretion, will have the right to provide recommendations and advice to the FRANCHISOR regarding the use and application of the monies in the Marketing Fund. However, the FRANCHISOR will have the right to determine when, how and where the Marketing Fees and other amounts deposited in the Marketing Fund will be spent. This will

include the right of the FRANCHISOR to purchase and pay for product research and development, production materials, ad slicks, brochures, video tapes, radio research, media time and space advertising (including radio, television, Internet, newspaper, magazine and other print advertising), promotions, marketing, public relations, national conventions, telemarketing and national, regional and local advertising, marketing and promotion that the FRANCHISOR deems appropriate and in the best interests of all AmericInn® franchisees and the Business System. The Marketing Fees and other amounts deposited in the Marketing Fund may also be utilized by FRANCHISOR to develop, produce, reproduce and distribute AmericInn® system directories and brochures and other materials for use in connection with FRANCHISOR'S INN-Pressive Club® and/or other promotional programs sponsored by FRANCHISOR from time to time. Although the FRANCHISOR will endeavor to utilize the Marketing Fund to develop advertising and marketing materials and programs, and place advertising that will benefit the AmericInn® Business System, the FRANCHISOR is not obligated to insure that expenditures by the Marketing Fund in or affecting any geographic area are proportionate or equivalent to the contributions to the Marketing Fund by AmericInn's operating in that geographic area or that any AmericInn will benefit directly or in proportion to its contributions to the Marketing Fund. The FRANCHISOR will not be required to pay Marketing Fees; however, any AmericInns that are owned and operated by the FRANCHISOR will be required to pay Marketing Fees in accordance with the terms of their respective Franchise Agreements.

(D) **Date Payable.** The Marketing Fees will be paid directly to the FRANCHISOR on or before the tenth (10th) day of each month for the preceding month.

(E) **Right To Borrow Funds.** If the Marketing Fund does not contain sufficient funds to make the expenditures determined by the FRANCHISOR to be necessary or advisable, then the FRANCHISOR will have the right, but not the obligation, to loan funds to the Marketing Fund in an amount sufficient to cover such expenditures, and the loan (plus interest as provided for herein) will be repaid from future Marketing Fees paid by all AmericInn® franchisees pursuant to their Franchise Agreements with the FRANCHISOR. The FRANCHISOR will have the right and option to either use its own funds, or borrow the necessary funds in the name of the FRANCHISOR or in the name of the Marketing Fund from one or more financial institutions. The unpaid balance of any loan made by the FRANCHISOR to the Marketing Fund will be subject to interest at either: (1) a rate equal to the rate of interest established by U.S. Bank National Association as its "Reference Rate" at the time of the loan, if the FRANCHISOR utilized its own funds for the loan; or (2) if the FRANCHISOR borrowed the funds for the loan from a financial institution, a rate equal to the rate of interest being charged to the FRANCHISOR by such financial institution.

(F) **Telephone Directory Listings.** During the term of this AGREEMENT, the FRANCHISEE must advertise in the Yellow Pages of the local telephone directories under the listings of "Motels" and "Hotels", using formats and content approved in writing from time to time by the FRANCHISOR. Expenditures for Yellow Pages advertising will be in addition to all other advertising, marketing and promotional requirements set forth in this AGREEMENT. Upon the termination or expiration of this

AGREEMENT, FRANCHISOR shall have the right to notify and instruct the publishers of any and all telephone and other directories which contain a listing for FRANCHISEE'S AmericInn to remove any reference to the name "AmericInn<sup>®</sup>" in FRANCHISEE'S listings.

#### ARTICLE 7: QUALITY CONTROL, UNIFORMITY AND STANDARDS REQUIRED OF THE FRANCHISEE

The FRANCHISOR will promulgate, from time to time, standards of quality, uniformity and service regarding the business operations of the FRANCHISEE'S AmericInn so as to protect and maintain (for the benefit of all AmericInn<sup>®</sup> franchisees and the FRANCHISOR), the distinction, valuable goodwill and uniformity represented and symbolized by the Marks and the Business System. Accordingly, to ensure that all AmericInn<sup>®</sup> franchisees will maintain uniformity requirements and quality standards for the products and services associated with the Marks and the Business System, the FRANCHISEE agrees to maintain the standards of quality and uniformity required by the FRANCHISOR for all products and services and agrees to the following terms and conditions to assure that all AmericInns will be uniform in nature and will sell and dispense quality products and services to the public:

(A) **Identification Of Business.** The FRANCHISEE will operate its AmericInn so that it is clearly identified by and advertised under the Franchised Name. However, the use, style and form of the word "AmericInn<sup>®</sup>" or other registered trademarks or variations of marks (e.g., Splash Bay Adventure<sup>®</sup>, INN-Pressive Club<sup>®</sup>, etc.) in any advertising, marketing, Internet website or Electronic Presence (as hereinafter defined), public relations, telemarketing or promotional campaign or program must have the prior written approval of the FRANCHISOR. The FRANCHISEE will use the Marks which now or hereafter may form a part of the Business System, on all telephone face plates, face and bathsoaps, shampoo and conditioner bottles, ice buckets, waste baskets, Plexiglas information racks or information folders, lobby showcase maps, AmericInn<sup>®</sup> system directories, comment cards, INN-Pressive Club<sup>®</sup> brochures and/or other articles and supplies used in connection with the FRANCHISEE'S AmericInn in the identical combination and manner prescribed by the FRANCHISOR in the FRANCHISOR'S Crisis Management Guide, Design Manual, Operations Guide, INN-Pressive Club<sup>®</sup> Operations Guide and such other guides and manuals as the FRANCHISOR may publish from time to time (collectively the "Manuals") or otherwise in writing. The FRANCHISEE will, at its expense, comply with all notices of registration required by the FRANCHISOR and will, at its expense, comply with any other trademark, trade name, service mark, copyright, patent and other notice marking requirements required by applicable law or by the FRANCHISOR.

(B) **Franchisee's Name.** The FRANCHISEE will not use the word "AmericInn<sup>®</sup>" in its corporate, partnership, limited liability company or sole proprietorship name and FRANCHISEE will not attempt to register or otherwise obtain an interest in any Internet domain name containing any of the Marks or any other word, name or symbol which is similar to or likely to cause confusion with any of the Marks. The

FRANCHISEE will hold itself out to the public as an independent contractor operating its AmericInn pursuant to a franchise granted by the FRANCHISOR. Whenever practical, the FRANCHISEE will clearly indicate on the FRANCHISEE'S business checks, stationery, purchase orders, folios, business cards, invoices, receipts, promotional materials and other written materials, as well as on any home page, Internet website, or other Electronic Presence, that the FRANCHISEE is an AmericInn® franchisee and an independent licensee of AmericInn International, LLC. FRANCHISEE will take all necessary steps, including those from time to time reasonably requested by FRANCHISOR to minimize the chance of a claim being made against FRANCHISOR for anything that occurs at the FRANCHISEE'S AmericInn, or for acts, omissions or obligations of FRANCHISEE or anyone associated or affiliated with FRANCHISEE or the FRANCHISEE'S AmericInn. Such steps, for example, include displaying a sign at the front desk of the FRANCHISEE'S AmericInn and in each guest room which is clearly visible to the general public indicating that the FRANCHISEE'S AmericInn is independently owned and operated as a franchised business. The FRANCHISEE will file for a Certificate of Assumed Name in the manner required by law so as to notify the public that the FRANCHISEE is operating its AmericInn as an independent business pursuant to this AGREEMENT.

(C) **INN-Pressive Club®.** At all times during the term of this AGREEMENT, the FRANCHISEE shall, at its expense, participate in all programs now or at any time hereafter sponsored by the FRANCHISOR to promote and reward the frequent and regular guests of AmericInns. All such programs shall be set forth in the FRANCHISOR'S Manuals. Under the FRANCHISOR'S current program, the INN-Pressive Club®, participating guests of AmericInns receive, among other things, a refund from the FRANCHISOR or credit against their bill for the eleventh (11th) night they spend at an AmericInn, in the amount of Forty and No/100 Dollars (\$40.00) for each ten (10) nights spent at an AmericInn. If the guest elects to receive a credit against their bill, the FRANCHISOR will credit Forty and No/100 Dollars (\$40.00) to the affected franchisee upon the submission of appropriate documentation. The FRANCHISOR then charges, and the franchisees whose AmericInns were patronized by the guest must pay FRANCHISOR, Four and No/100 Dollars (\$4.00) for each of the ten (10) nights the guest stayed at each such franchisee's AmericInn. Such amounts are payable by FRANCHISEE to FRANCHISOR within thirty (30) days of receiving FRANCHISOR'S invoice for the same. The FRANCHISOR reserves the right, at any time and from time to time, to modify the terms of its INN-Pressive Club® program, discontinue the INN-Pressive Club® program, and/or establish or implement one or more new programs for frequent and regular guests. The FRANCHISEE acknowledges that the cost of its participation in any such modified or new program may be different or greater than that incurred by the FRANCHISEE under the current INN-Pressive Club®.

(D) **Guest Referral.** The FRANCHISEE will, whenever possible, refer guests and customers to another AmericInn, and will use every reasonable means to encourage the use of AmericInns by the public, including, but not limited to, displaying on the premises of the FRANCHISEE'S AmericInn all brochures, including INN-Pressive Club® brochures, system directories, display boards, lobby showcase maps and promotional materials supplied by the FRANCHISOR for use at AmericInns.



**(E) Compliance With Standards And Specifications.** The FRANCHISED LOCATION must conform to (1) the FRANCHISOR'S then-current approved standard plans and specifications consisting of conceptual drawings, including floor plans, elevations and general details for the development of working drawings for an AmericInn (hereinafter referred to as the "Then-Current Standard Plans"), (2) the FRANCHISOR'S minimum design standards and specifications (hereinafter referred to as the "Minimum Design Standards") set forth in FRANCHISOR'S Design Manual, and (3) the detailed building plans and specifications prepared by or on behalf of the FRANCHISEE and approved by FRANCHISOR'S Board of Review in writing pursuant to ARTICLE 19(C) hereof. The FRANCHISEE will not add any guest rooms or make any architectural, structural, design or decorating changes to the interior or exterior of the FRANCHISED LOCATION without the FRANCHISOR'S prior written approval, which approval shall not be unreasonably withheld. The furniture, fixtures and equipment used in the FRANCHISEE'S AmericInn must conform to the FRANCHISOR'S minimum design standards and specifications set forth in the Design Manual, and must conform to the standards of quality and uniformity established by the FRANCHISOR from time to time. Unless otherwise authorized by the FRANCHISOR in its sole discretion, all guest rooms within the FRANCHISED LOCATION must have a minimum width of fourteen (14) feet.

**(F) Remodeling And Redecoration Of Business.** The FRANCHISEE will, from time to time, make the reasonable capital expenditures necessary to remodel, modernize, redecorate and renovate its AmericInn and to replace and modernize the furniture, fixtures, supplies and equipment used in FRANCHISEE'S AmericInn so that the FRANCHISEE'S AmericInn will reflect the then-current image intended to be portrayed by AmericInns. FRANCHISEE will be required to complete such remodeling, modernization, redecoration and renovation of its AmericInn as may be identified by the FRANCHISOR in connection with the reacquisition of the franchise for the FRANCHISED LOCATION pursuant to ARTICLE 2(B) and in connection with the sale, assignment or other transfer by the FRANCHISEE or its shareholders, partners or members of this AGREEMENT, shares of capital stock, partnership interests, membership interests or other ownership interests in FRANCHISEE or the Business Assets (as hereinafter defined) of the FRANCHISEE pursuant to ARTICLE 18(D) hereof. All remodeling, modernization, redecoration and renovation of the FRANCHISEE'S AmericInn must be done in accordance with the Minimum Design Standards and with the prior written approval of the FRANCHISOR. All replacements for the furniture, fixtures, supplies and equipment must conform to the FRANCHISOR'S then-current standards and specifications set forth in the Design Manual and must be approved by the FRANCHISOR in writing, which approval shall not be unreasonably withheld. The FRANCHISEE will commence remodeling, modernizing, redecorating and renovating its AmericInn within six (6) months of the date that the FRANCHISEE receives written notice specifying the required remodeling, modernization, redecoration and renovation from the FRANCHISOR, and will diligently complete such remodeling within a reasonable time after its commencement. Except as provided in ARTICLE 7(K) hereof, the FRANCHISEE will not be required to extensively remodel, modernize, redecorate and renovate its AmericInn or to replace and modernize its furniture, fixtures,

supplies and equipment more than once every six (6) years during the term of this AGREEMENT.

(G) **Compliance With Standards.** The FRANCHISEE will use the Marks and the Business System, and will operate its AmericInn, in strict compliance with the standards, operating procedures, specifications, requirements and instructions required by the FRANCHISOR of all AmericInns, which may be amended and supplemented by the FRANCHISOR from time to time. The FRANCHISEE will conform to all guest service procedures and standards prescribed by the FRANCHISOR in the Manuals or otherwise in writing. The FRANCHISEE shall only use the form of guest registration card prescribed by FRANCHISOR in the Operations Guide in the operation of its AmericInn. The FRANCHISEE shall comply with the FRANCHISOR'S policies and procedures concerning comment cards received from guests contained in the Operations Guide, as the same may change from time to time. FRANCHISEE will at all times fully participate in the FRANCHISOR'S electronic customer satisfaction programs and follow all procedures related to these programs as the same may be changed from time to time by the FRANCHISOR.

(H) **Limitations On Products And Services.** The FRANCHISEE will sell only those products and services at its AmericInn approved by the FRANCHISOR in writing and will offer for sale at its AmericInn all products and services prescribed from time to time by the FRANCHISOR. Without limiting the generality of the foregoing, the FRANCHISEE must provide its guests each day with a free continental breakfast consisting of such food and beverage items as the FRANCHISOR may prescribe from time to time. The FRANCHISEE will have the absolute right to sell all products and services at its AmericInn at whatever prices and on whatever terms it deems appropriate.

(I) **Compliance With Manuals.** The FRANCHISOR will provide the FRANCHISEE with one copy of each of the FRANCHISOR'S Manuals. The FRANCHISEE will conform to the common image and identity created by the products and services associated with AmericInns which are portrayed and described by the Manuals and the FRANCHISEE will conform to all changes and modifications to the Manuals made by the FRANCHISOR and provided to the FRANCHISEE that are deemed by the FRANCHISOR necessary to: (1) improve the standards of service or the products offered for sale under the Business System; (2) protect the goodwill associated with the Marks; (3) improve the operation or efficiency of the FRANCHISEE'S AmericInn; and/or (4) market the products and services associated with the Business System.

(J) **Approved Suppliers.** The FRANCHISEE will purchase from suppliers approved in writing by the FRANCHISOR all products, goods, merchandise, supplies, sundries, machinery, uniforms, signs, furniture, fixtures, equipment and services (sometimes referred to herein as "goods and services") to be used or sold at the FRANCHISEE'S AmericInn which the FRANCHISOR determines meet the standards of quality and uniformity required to protect the valuable goodwill and uniformity symbolized by and associated with the Marks and the Business System. The

FRANCHISOR shall have the right to provide the FRANCHISEE with a written schedule of the names of approved suppliers of goods and services, and with any modifications and additions to any such schedule of approved suppliers thereafter. The FRANCHISOR shall have the right to require that the FRANCHISEE purchase certain goods and services from one or more vendors or suppliers designated by the FRANCHISOR. Except for goods and services which the FRANCHISEE must purchase from a designated supplier or vendor, the FRANCHISEE will have the right and option to purchase goods and services from other outside suppliers provided that such goods and services conform in quality and uniformity to the FRANCHISOR'S standards. If the FRANCHISEE desires to purchase any goods and services from such other suppliers, then the FRANCHISEE shall submit representative samples to the FRANCHISOR who will determine whether they comply with the FRANCHISOR'S standards. The written approval of the FRANCHISOR must be obtained by the FRANCHISEE prior to the time that any unapproved goods or services are sold or used at the FRANCHISEE'S Americinn, which approval will not be unreasonably withheld. The FRANCHISEE will generally receive written notification from the FRANCHISOR of the FRANCHISOR'S determination regarding the unapproved supplier within thirty (30) days of receipt of the FRANCHISEE'S request. Upon request by the FRANCHISEE or a supplier, the FRANCHISOR will provide information regarding its standards. The FRANCHISOR shall have the right to receive and retain marketing allowances, royalties, commissions and/or other payments or consideration from approved suppliers and vendors in connection with the sale of goods and services to the FRANCHISOR and/or the FRANCHISOR'S franchisees, including the FRANCHISEE. The FRANCHISOR may, in its discretion, deposit all or part of such allowances, royalties, commissions and/or other payments and consideration into the Marketing Fund and/or use the same to offset all or part of the costs and expenses incurred by the FRANCHISOR in producing and/or sponsoring its national convention.

(K) **Maintenance.** The FRANCHISEE will, at its expense, maintain, repair, paint and keep in a clean and sanitary condition the interior, the exterior and the grounds of the FRANCHISED LOCATION, and will replace all floor coverings, wall coverings, light fixtures, curtains, sheets, bedspreads, pillows, linens, room furnishings, wall hangings, fixtures and other decor items as such items become worn-out, soiled or in disrepair. All mechanical equipment must meet the FRANCHISOR'S quality standards. Any replacement equipment, decor items and supplies must comply with the FRANCHISOR'S then-current standards and specifications.

(L) **Vending And Gaming Machines; Tickets.** The FRANCHISEE will not permit any jukebox, video and electronic games, vending machines, or coin or token operated machines (including pinball and slot machines) to be used on or at any location within the premises of the FRANCHISED LOCATION other than those approved by the FRANCHISOR in writing. The FRANCHISEE will not keep or offer for sale or allow employees to offer for sale at or near the FRANCHISED LOCATION any tickets, subscriptions, pools, chances or raffles, lottery, tickets or pull tabs.

(M) **Compliance With Applicable Law.** The FRANCHISEE will, at its expense, comply with all applicable federal, state, city, local and municipal laws,

ordinances, rules and regulations pertaining to the purchase, construction, renovation, remodeling and/or operation of the FRANCHISEE'S AmericInn, including, but not limited to, the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et. seq.) (the "ADA") and any and all applicable federal and state laws, codes and regulations relating to employees and/or the environment. The FRANCHISEE will, at its expense, be absolutely and exclusively responsible for determining the licenses and permits required by law for the construction, renovation and/or operation of FRANCHISEE'S AmericInn, for qualifying for and obtaining all such licenses and permits, and for maintaining all such licenses and permits in full force and effect. In the event FRANCHISEE receives any complaint, claim or other notice alleging a failure to comply with the ADA, FRANCHISEE shall provide FRANCHISOR with a copy of such notice within five (5) days after receipt thereof.

**(N) Payment Of Taxes.** The FRANCHISEE will be absolutely and exclusively responsible and liable for the prompt payment of all federal, state, city, and local taxes, including, but not limited to, individual and corporate income taxes, sales and use taxes, franchise taxes, gross receipt taxes, employee withholding taxes, FICA taxes, unemployment taxes, inventory taxes, personal property taxes, real estate taxes and all other taxes payable in connection with the FRANCHISEE'S AmericInn (hereinafter referred to as "taxes"). The FRANCHISOR will have no liability for any taxes that arise or result from the operation of the FRANCHISEE'S AmericInn, and the FRANCHISEE will indemnify the FRANCHISOR for any such taxes that may be assessed or levied against the FRANCHISOR.

**(O) Reimbursement Of Franchisor For Taxes.** If any sales, use, franchise, gross receipts, privilege, doing business, business and occupation or other tax is imposed upon the FRANCHISOR by any taxing authority based upon the Gross Revenues, receipts, sales, business activities or operations generated by the FRANCHISEE'S AmericInn or upon the Initial Fee, Continuing Fees and/or Marketing Fees payable to the FRANCHISOR hereunder, then the FRANCHISEE will reimburse the FRANCHISOR for the amount of such taxes. However, in no event will the FRANCHISEE be required to reimburse the FRANCHISOR for any income tax imposed upon the FRANCHISOR. The FRANCHISEE will be notified in writing when the FRANCHISOR is entitled to reimbursement for the payment of such taxes and, in that event, the FRANCHISEE will pay the FRANCHISOR the amount specified within ten (10) days of receipt by the FRANCHISEE of written notice from the FRANCHISOR.

**(P) Business Hours; Personnel.** The FRANCHISEE'S AmericInn will be open for business twenty-four (24) hours a day, 365 days a year, unless the FRANCHISOR, in its sole discretion, authorizes the FRANCHISEE to be open less hours because of economic or other business considerations. The FRANCHISEE will, between the hours of 8:00 a.m. and 5:00 p.m., have a "manager" on duty who is responsible for supervising the employees and the business operations of the FRANCHISEE'S AmericInn. The FRANCHISEE will have a sufficient number of adequately trained and competent personnel on duty at all times to guarantee efficient service to the FRANCHISEE'S customers. All persons employed by the FRANCHISEE must practice good personal hygiene and must wear clean and neat standard attire or

uniforms approved by the FRANCHISOR. FRANCHISEE shall not recruit or hire any employee or former employee of FRANCHISOR or Three Rivers Hospitality, LLC without obtaining the prior written consent of FRANCHISOR or Three Rivers Hospitality, LLC, respectively, unless at least six (6) months shall have elapsed since the last day of such employee's employment with FRANCHISOR or Three Rivers Hospitality, LLC, as the case may be.

**(Q) Franchisor's Inspection Rights.** The FRANCHISOR will have the absolute right to examine, inspect and take photographs and videotapes of the interior and exterior of the FRANCHISEE'S AmericInn, including the FRANCHISEE'S AmericInn® Free Standing Sign at all reasonable times, to examine representative samples, goods and paper products sold or used at the FRANCHISEE'S AmericInn and to evaluate the quality of the products and services provided by the FRANCHISEE to its customers. The FRANCHISOR will have the right to use all photographs and videotapes of the FRANCHISEE'S AmericInn for such purposes as the FRANCHISOR deems appropriate, including, but not limited to, use in advertising, marketing and promotional materials. The FRANCHISEE will not be entitled to, and hereby expressly waives any right that it may have, to be compensated by the FRANCHISOR, its advertising agencies, and other AmericInn® franchisees for the use of such photographs or video tapes for advertising, marketing and promotion of the FRANCHISOR or the AmericInn Business System. The FRANCHISOR shall have the right to inspect the FRANCHISEE'S AmericInn prior to the reacquisition of the franchise for the FRANCHISED LOCATION pursuant to ARTICLE 2(B) hereof and in connection with the sale, assignment or other transfer by the FRANCHISEE or its shareholders, partners or members of this AGREEMENT, shares of capital stock, partnership interests, membership interests or other ownership interests in FRANCHISEE or the FRANCHISEE'S Business Assets for purposes of identifying the reasonable capital expenditures which are necessary to remodel, modernize, redecorate and renovate the AmericInn or any furniture, fixtures, supplies and equipment used in the AmericInn which must be replaced so that the AmericInn will reflect the then-current image intended to be portrayed by AmericInns. In connection with any such inspection, or an inspection by FRANCHISOR at the request of FRANCHISEE, the FRANCHISEE shall pay the FRANCHISOR an inspection fee in the amount of Five Thousand Dollars (\$5,000) prior to the reacquisition or transfer or within ten (10) days of receiving FRANCHISOR'S invoice, as applicable.

**(R) Credit Cards.** The FRANCHISEE will honor all credit, charge and cash cards required or approved by the FRANCHISOR. Prior to honoring any unapproved credit, charge or cash cards, the FRANCHISEE must obtain the written approval of the FRANCHISOR, which approval shall not be unreasonably withheld.

**(S) Default Notices.** The FRANCHISEE will immediately deliver to FRANCHISOR a copy of any notice of default received from any mortgagee, trustee under any deed of trust, contract for deed vendor, lessor or any other party with respect to the real estate for the FRANCHISED LOCATION, and copies of all written notifications of any lawsuits, consumer claims, employee claims, federal or state administrative or agency proceedings or investigations, or other claims, actions or

proceedings relating to the FRANCHISEE'S AmericInn and, upon request from the FRANCHISOR, the FRANCHISEE will provide such additional information as may be required by the FRANCHISOR regarding the alleged default, lawsuit, claim, action or proceeding or any subsequent action or proceeding in connection with the alleged default, lawsuit, claim, action or proceeding.

(T) **Sale Of Securities To The Public.** If the FRANCHISEE is an entity and intends to sell any of its securities to the public pursuant to either federal or state securities laws, then the FRANCHISEE will provide the FRANCHISOR with a copy of the proposed offering circular or prospectus for its review at least ten (10) days prior to the time that the offering circular or prospectus is first filed with any state securities commission or the United States Securities and Exchange Commission or is distributed to members of the investing public. The FRANCHISOR will have the absolute right to attend all "due diligence" meetings held in preparation for the offer to sell the FRANCHISEE'S securities to the public, and the FRANCHISEE will give the FRANCHISOR at least two (2) business days prior written notice of such meetings. The FRANCHISEE will not offer its securities using the name "AmericInn<sup>®</sup>", or any names deceptively similar thereto. The FRANCHISEE will not have the right to sell any of its securities to the public or to any other person or entity until the FRANCHISEE has complied in all respects with all applicable provisions of this AGREEMENT, including the applicable provisions of ARTICLE 18.

(U) **Meeting Attendance.** FRANCHISEE shall, at its sole cost and expense, attend such meetings sponsored by the FRANCHISOR as FRANCHISOR may from time to time reasonably require. Such meetings shall include FRANCHISOR'S national convention and such training and motivational programs conducted by the FRANCHISOR that are designed to generate employee awareness, sensitivity and responsiveness to the customers who patronize the FRANCHISEE'S AmericInn. The FRANCHISEE shall pay the FRANCHISOR the registration fees for such meetings and conventions reasonably imposed by FRANCHISOR regardless of whether the FRANCHISEE attends the meetings or conventions.

(V) **Property Ownership and Management.** The FRANCHISEE shall at all times during the term of this AGREEMENT own (as opposed to lease) the FRANCHISED LOCATION, including the real property and the improvements thereto. The FRANCHISEE will obtain the prior written approval of the FRANCHISOR, and will submit copies of proposed management agreements to the FRANCHISOR, prior to the appointment of a management company to operate the FRANCHISEE'S AmericInn.

(W) **Central Reservation System-Dedicated Phone Lines and High Speed Internet Access.** The FRANCHISEE must participate in all of the reservation systems which the FRANCHISOR may establish and maintain from time-to-time in accordance with ARTICLE 13(B) hereof. To facilitate such participation, the FRANCHISEE shall, at its sole expense, maintain at all times during the term of this AGREEMENT, high speed Internet access, including all specifications for static IP addresses and such number of telephone and facsimile transmission lines dedicated exclusively for use with such reservation systems as the FRANCHISOR may prescribe from time to time. If the

FRANCHISOR, in its sole discretion, believes that there are a significant number of telephone calls or data transfers to the FRANCHISEE'S AmericInn which are not being answered or delivered in a timely fashion, the FRANCHISEE shall, upon being notified in writing by the FRANCHISOR, add additional telephone lines, call waiting, voicemail and/or other features to resolve the problem.

**(X) Computerized Property Management System.** The FRANCHISEE must purchase, lease or otherwise acquire, at the FRANCHISEE'S expense, a computerized hospitality property management system/computer (the "PMS") which has been designated by the FRANCHISOR and must install all upgrades and patches according to the timetables and specifications established by the FRANCHISOR from time to time. The FRANCHISEE must enter into an Intellectual Property Site License and Support Agreement (and/or other required agreements) in a form approved by the FRANCHISOR with a vendor designated by the FRANCHISOR in connection with the software and support for the PMS. The FRANCHISEE will at all times permit the FRANCHISOR to access and use the records and information on the FRANCHISEE'S PMS, either by direct access, by telephonic modem access, by providing disk copies, or by such other means as may be prescribed from time to time by the FRANCHISOR. FRANCHISEE will, at its sole expense, obtain and maintain at all times during the term of this AGREEMENT, such other computer or information processing equipment as may from time to time be required by the FRANCHISOR for use in the FRANCHISEE'S AmericInn. All such computer equipment, both hardware and software, must meet the then-current standards and specifications established by the FRANCHISOR without deviation. FRANCHISEE must purchase and maintain all hardware and components designed by FRANCHISOR from time to time without substitution. The firewall and related components must be connected and operating at all times to protect the integrity of the system and may not be modified, allowed to be altered, reconfigured or reset. FRANCHISEE acknowledges that FRANCHISOR does not provide support for the hardware, software, firewall and/or related components.

FRANCHISOR and its affiliates expressly disclaim and FRANCHISEE expressly waives all warranties, express or implied, with respect to the CRS and PMS, including the software, hardware, Internet connection, Internet service provider, two-way interface and other hardware, software and connectivity function. Further FRANCHISOR does not warrant that the software, hardware, Internet connection, Internet service provider, central reservation system ("CRS") provider, two-way interface or other hardware, software or connectivity functions of the PMS will be uninterrupted or error-free. FRANCHISOR does not guarantee that errors in the software will be corrected and it is understood and agreed that all licensed software is provided in its "as is" condition. FRANCHISOR shall not have any liability for interruption or loss of two-way interface due to software, hardware or any third party provider. Warranties and support are available and provided by specific third party hardware and software vendors.

Neither FRANCHISEE nor its agents or affiliates may modify, reverse engineer, decompile, decrypt or disassemble any confidential or proprietary information concerning the use or function of the CRS, PMS, Opera customer information system

("OCIS"), Interface, AmericInn Customer Satisfaction System, frequent stayer program or other programs or services.

All guest and franchisee information that is obtained as part of the CRS, PMS, OCIS, Interface, AmericInn Customer Satisfaction System, frequent stayer program or other programs or services must remain confidential. Neither the FRANCHISOR nor FRANCHISEE may transfer, sell, copy, disclose, or allow any person(s), firm or entity to view or access this information for any reason, except as may be required by a court of law. Guest information may be used by the FRANCHISOR or the FRANCHISEE for the purpose of marketing as allowed under applicable laws.

Guest data and credit card information must be protected and safeguarded to insure privacy, protected from theft, piracy or unauthorized use. FRANCHISEE will inform all of its employees of their obligations concerning this requirement. FRANCHISOR must be notified immediately upon discovery of any prohibited use or disclosure of confidential or proprietary information or any breach of these obligations; and will cooperate fully to prevent further prohibited use.

Guest information and data may be used for legitimate business purposes by FRANCHISOR to provide analysis of guest history, buying patterns, and for marketing and sales purposes. Guest data and information remains the property and responsibility of the FRANCHISEE, but must be made available to the FRANCHISOR.

(Y) **Security.** Notwithstanding any provision of this AGREEMENT, the Then-Current Standard Plans, the Minimum Design Standards and/or any of the Manuals to the contrary, (1) the FRANCHISEE shall be solely responsible for all safety and security measures taken at FRANCHISEE'S AmericInn and for ensuring the safety and security of FRANCHISEE'S guests, customers, agents, employees and invitees, and (2) FRANCHISOR shall have no control over any such safety or security measures taken or not taken by FRANCHISEE.

(Z) **Internet.** FRANCHISEE shall not be permitted to use any of the Marks or other word, name, symbol or logo which is confusingly similar to any of the Marks in any website, home page or other presence on the Internet (collectively, an "Electronic Presence") without FRANCHISOR'S prior, express written consent, which may be granted or denied in FRANCHISOR'S sole discretion. FRANCHISOR'S official website is protected by copyrights and FRANCHISEE is not authorized to utilize its contents, in whole or in part, in the development of other websites or an Electronic Presence. If FRANCHISOR approves FRANCHISEE'S Electronic Presence, such Electronic Presence will be subject to ongoing review by FRANCHISOR for content, proper trademark usage, accuracy, quality, currency and consistency. FRANCHISOR reserves the right to require changes to or removal of an Electronic Presence or postings that do not meet the above review criteria. In addition, FRANCHISOR may require that FRANCHISEE include in any such Electronic Presence a hypertext or other direct link to any Electronic Presence maintained by FRANCHISOR. FRANCHISEE agrees that it shall not attempt to register or otherwise obtain any interest in any Internet domain name containing any of the Marks or any other word, name, symbol or devise which is



likely to cause confusion with any of the Marks. FRANCHISEE must purchase, lease or otherwise acquire, at the FRANCHISEE'S expense, the hardware, software, maintenance and support for hospitality grade High Speed Internet Access ("HSIA"). FRANCHISEE shall make complimentary HSIA available in all of the guest rooms, meeting rooms and hospitality rooms, and shall also provide a station with a personal computer in the lobby or business center for complimentary guest use, all as set forth in greater detail in the Design Manual. The HSIA which is made available by FRANCHISEE must satisfy the FRANCHISOR'S requirements, standards and specifications as set forth in the Design Manual and system operating requirements which may be changed by the FRANCHISOR from time-to-time in its sole discretion. FRANCHISEE must register and actively use the FRANCHISOR'S Hospitality Information Portal ("HIP") and acknowledges that this electronic media is the primary method for chainwide communications. Time sensitive information and important correspondence may be provided through the HIP and, therefore, must be actively accessed on at least a daily basis by the FRANCHISEE or FRANCHISEE'S manager or staff.

#### ARTICLE 8: CONFIDENTIAL OPERATIONS GUIDE AND OTHER INFORMATION

(A) **Compliance With Manuals.** In order to protect the reputation and goodwill of the FRANCHISOR and to maintain uniform operating standards under the Marks and the Business System, the FRANCHISEE will construct, renovate and operate its AmericInn in accordance with the FRANCHISOR'S Manuals, one copy of each the FRANCHISEE acknowledges having received from the FRANCHISOR.

(B) **Confidentiality Of Manuals.** The FRANCHISEE will at all times during the term of this AGREEMENT and thereafter treat the Manuals, any other manuals created for or approved for use in the construction, renovation and/or operation of the FRANCHISEE'S AmericInn, and the information contained therein as secret and confidential, and the FRANCHISEE will use all reasonable means to keep such information secret and confidential. The FRANCHISEE will not make any copy, duplication, record or reproduction of the Manuals or any portion thereof available to any unauthorized person. Upon expiration or termination of this AGREEMENT, FRANCHISEE shall promptly return all Manuals to FRANCHISOR. Similarly, all Manuals and other training materials provided by FRANCHISOR to FRANCHISEE'S Manager or other employees must be promptly returned to FRANCHISOR following their termination or resignation.

(C) **Revisions To Manuals.** The Manuals and all revisions and supplements thereto will at all times remain the sole and exclusive property of the FRANCHISOR. The FRANCHISOR may at any time and from time to time during the term of this AGREEMENT revise and/or supplement any or all of the Manuals and adopt new Manuals and provide copies of such revisions and/or supplements to the Manuals and/or new Manuals to the FRANCHISEE in such manner as the FRANCHISOR may in its discretion elect. The FRANCHISEE expressly agrees to construct, renovate and operate its AmericInn in accordance with all such revised, supplemented and new

Manuals. The FRANCHISEE will at all times keep the Manuals current and up-to-date, and in the event of any dispute, the terms of the master copies of the Manuals maintained by the FRANCHISOR will be controlling in all respects.

(D) **Confidentiality Of Other Information.** The FRANCHISOR will be disclosing and providing to the FRANCHISEE certain confidential and proprietary information concerning the Business System and the procedures, operations and data used in connection with the Business System. Accordingly, the FRANCHISEE will not, during the term of this AGREEMENT or thereafter, communicate, divulge or use for the benefit of itself or any other person or entity any confidential information, knowledge or know-how concerning the Business System or the methods of operation of an AmericInn which may be communicated to the FRANCHISEE, or of which the FRANCHISEE may be apprised by virtue of this AGREEMENT. The FRANCHISEE will divulge such confidential information only to its employees that must have access to it in order to manage and/or operate the FRANCHISEE'S AmericInn. Any and all information, knowledge and know-how, including, without limitation, drawings, materials, equipment, methods, procedures, specifications, techniques, computer programs, systems and other data which the FRANCHISOR copyrights or designates as confidential and proprietary, including, but not limited to, the Then-Current Standard Plans and the Manuals (collectively, the "Confidential Information"), will be deemed confidential and proprietary for purposes of this AGREEMENT, may not be duplicated, and must be returned to FRANCHISOR upon request or upon any expiration or termination of this AGREEMENT.

(E) **Confidentiality Agreements.** The FRANCHISEE shall require all of its managerial and supervising employees, including FRANCHISEE'S Manager and Assistant Manager, who have access to the Manuals or other Confidential Information, to agree in writing to maintain the confidentiality, during the course of their employment and thereafter, of all Confidential Information. Copies of all executed agreements will be submitted to the FRANCHISOR upon request.

## ARTICLE 9: FRANCHISOR'S TERMINATION RIGHTS

(A) **Conditions Of Breach.** In addition to the other rights of termination contained herein, the FRANCHISOR will have the right and privilege to terminate this AGREEMENT if: (1) the FRANCHISEE fails to open and commence operations of its AmericInn when it is ready for the FRANCHISEE'S occupancy; (2) the FRANCHISEE violates any material term or condition of (i) this AGREEMENT, including, but not limited to, failure to timely pay any Continuing Fees, Marketing Fees or other monetary obligations or fees to the FRANCHISOR, (ii) any of the Manuals, or (iii) any other agreement between FRANCHISOR on the one hand and FRANCHISEE or any of its affiliates on the other hand; (3) the FRANCHISEE or any of its managers, partners, members, directors, governors, officers or majority stockholders are convicted of, or plead guilty to or no contest to a charge of violating any law relating to the FRANCHISEE'S AmericInn, or any felony; (4) the FRANCHISEE fails to conform to the Business System or the standards of quality and uniformity for the products and

services promulgated by the FRANCHISOR in connection with the Business System; (5) the FRANCHISEE fails to timely pay any of its uncontested obligations or liabilities due and owing to any of its creditors, including FRANCHISOR, or any federal, state or municipal governmental authority (including, if applicable, federal and state taxes); (6) the FRANCHISEE is deemed insolvent within the meaning of any state or federal law or the FRANCHISEE or any of the Personal Guarantors voluntarily file, or have filed against it/him involuntarily a petition under the United States Bankruptcy Code; (7) the FRANCHISEE makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors; (8) any check issued by the FRANCHISEE is dishonored because of insufficient funds (except where the check is dishonored because of an error in bookkeeping or accounting) or closed accounts; (9) the FRANCHISEE voluntarily or otherwise commits any act of omission or commission, indicating a willingness, desire or intent of the FRANCHISEE to discontinue operating its AmericInn in accordance with the quality standards, uniformity requirements and Business System as set forth in this AGREEMENT and the Manuals (hereinafter referred to as "Abandons"); (10) the FRANCHISEE is involved in any act or conduct which materially impairs the goodwill associated with any of the Marks or the Business System; (11) construction or conversion of the FRANCHISEE'S AmericInn has not commenced at the FRANCHISED LOCATION within nine (9) months of the Effective Date; or (12) remodeling, modernizing, redecorating and renovating of the FRANCHISEE'S AmericInn has not commenced within six (6) months of the date that the FRANCHISEE receives the FRANCHISOR'S notice specifying the required remodeling, modernization, redecorating and renovation; (13) the FRANCHISEE fails for whatever reason to complete construction or conversion and open its AmericInn for business within nine (9) months of the commencement of construction or conversion; (14) the FRANCHISEE defaults on any mortgage, contract for deed, deed of trust, lease or other similar instrument relating to the FRANCHISED LOCATION, or otherwise loses possession of all or a significant portion of the FRANCHISED LOCATION; (15) the FRANCHISEE fails to spend the amounts for approved local media advertising, marketing and promotion at the times required by ARTICLE 6(A) hereof; and/or (16) FRANCHISEE or any of its shareholders, partners, members or other owners attempt to sell, assign or otherwise transfer this AGREEMENT, the FRANCHISEE'S Business Assets (as hereinafter defined) and/or shares of capital stock, partnership interests, membership interests or other ownership interests in FRANCHISEE in violation of the requirements of ARTICLE 18.

(B) **Notice Of Breach.** The FRANCHISOR will not have the right to terminate this AGREEMENT unless and until: (1) written notice setting forth the nature of the alleged breach has been delivered to the FRANCHISEE by the FRANCHISOR; and (2) after receiving the notice the FRANCHISEE fails to correct the alleged breach within the period of time specified by applicable law. In the event that applicable law does not specify a time period to correct an alleged breach, then the FRANCHISEE will have thirty (30) days after receipt of notice to correct the alleged breach, except where such notice states that the FRANCHISEE is delinquent in the payment of any fees or other payments payable to the FRANCHISOR pursuant to this AGREEMENT or otherwise, in which case the FRANCHISEE will have ten (10) days after receipt of such notice to correct the breach by making full payment (including interest as provided for herein) to

the FRANCHISOR. If the FRANCHISEE fails to correct the alleged breach set forth in the notice within the applicable period of time, then this AGREEMENT may be terminated by the FRANCHISOR as provided in this AGREEMENT. For the purposes of this AGREEMENT, an alleged breach of this AGREEMENT by the FRANCHISEE will be deemed to be "corrected" if both the FRANCHISOR and the FRANCHISEE agree in writing that the alleged breach has been corrected.

(C) **Notice Of Termination.** If the FRANCHISOR has timely complied with the notice provisions of ARTICLE 9(B) hereof and if the FRANCHISEE has not corrected the alleged breach set forth in the written notice within the time period specified in ARTICLE 9 (B), then the FRANCHISOR will have the absolute right to terminate this AGREEMENT by giving the FRANCHISEE written notice that this AGREEMENT is terminated and in that event the effective date of termination of this AGREEMENT will be the day the written notice of termination is received by the FRANCHISEE.

(D) **Grounds For Immediate Termination.** Notwithstanding any provision of this AGREEMENT to the contrary, the FRANCHISOR will have the absolute right and privilege, unless precluded by applicable law, to immediately terminate this AGREEMENT if: (1) the FRANCHISEE or any of its managers, partners, members, directors, governors, officers, or shareholders or other owners are convicted of, or plead guilty to or no contest to a charge of violating any law relating to the FRANCHISEE'S AmericInn, or any felony; (2) the FRANCHISEE voluntarily or otherwise Abandons its AmericInn; or (3) the FRANCHISEE is involved in any act or conduct which materially impairs the goodwill associated with any of the Marks or the Business System, and the FRANCHISEE fails to correct the breach within twenty-four (24) hours of receipt of written notice from the FRANCHISOR of the breach.

(E) **Notice Of Immediate Termination.** If this AGREEMENT is terminated by the FRANCHISOR pursuant to ARTICLE 9(D) above, the FRANCHISOR will give the FRANCHISEE written notice that this AGREEMENT is terminated and in that event the effective date of termination of this AGREEMENT will be the day the written notice of termination is received by the FRANCHISEE.

(F) **Liquidated Damages.** If (i) this AGREEMENT is terminated by the FRANCHISOR pursuant to this ARTICLE 9, (ii) FRANCHISEE breaches this AGREEMENT by attempting to terminate this AGREEMENT other than in full compliance with the terms and conditions of ARTICLE 10 hereof, or (iii) FRANCHISEE shall operate its AmericInn other than in accordance with the Business System (collectively, a "Liquidated Damages Event"), FRANCHISEE acknowledges that FRANCHISOR will be substantially damaged and that the actual amount of such damages will be difficult to ascertain. Therefore, upon the occurrence of a Liquidated Damages Event, FRANCHISEE shall pay to FRANCHISOR upon demand as liquidated damages and not as a penalty (hereinafter referred to as the "Liquidated Damages") the amount calculated by dividing the aggregate amount of the Continuing Fees and Marketing Fees payable by the FRANCHISEE to the FRANCHISOR pursuant to ARTICLES 5(A) and 6(C), hereof, respectively, with respect to the period of twelve (12)

months immediately preceding the date of such Liquidated Damages Event by twelve (12) and by multiplying the resulting quotient by the lesser of the number of full calendar months remaining in the term of this Agreement as of the Liquidated Damages Event or thirty-six (36); provided, however, if the FRANCHISEE'S AmericInn has been open for business less than twelve (12) months as of the date of such Liquidated Damages Event, then the amount of the Liquidated Damages shall be calculated by dividing the aggregate amount of the Continuing Fees and Marketing Fees payable by the FRANCHISEE to the FRANCHISOR pursuant to ARTICLES 5(A) and 6(C) hereof, respectively, with respect to the period commencing on the date such AmericInn opens for business and ending on the date of such Liquidated Damages Event by the number of full calendar months that the FRANCHISEE'S AmericInn was open for business prior to the date of such Liquidated Damages Event and by multiplying the resulting quotient by thirty-six (36); provided further, however, in no event shall the amount of the Liquidated Damages payable by the FRANCHISEE to the FRANCHISOR hereunder upon the occurrence of a Liquidated Damages Event be less than the amount calculated by multiplying the number of guest rooms in the FRANCHISEE'S AmericInn by Two Thousand and No/100 Dollars (\$2,000.00). FRANCHISEE acknowledges that the amount of the Liquidated Damages provided for herein is a reasonable estimate of the probable loss and damage to be sustained by the FRANCHISOR as a result of a Liquidated Damages Event. The payment of Liquidated Damages to the FRANCHISOR shall not affect the FRANCHISEE'S obligation to pay all Continuing Fees, Marketing Fees and other amounts that have accrued prior to the effective date of the Liquidated Damages Event or the FRANCHISEE'S obligations under ARTICLES 11, 16(B), 19(D) and 20 of this AGREEMENT. Some states prohibit franchisors from requiring their franchisees to pay liquidated damages. In such states, this Article 9(F) shall not be applicable and the FRANCHISEE shall pay to the FRANCHISOR all damages and other amounts provided for under applicable law upon the occurrence of a Liquidated Damages Event.

#### **ARTICLE 10: FRANCHISEE'S TERMINATION RIGHTS**

(A) **Conditions Of Breach.** In addition to the rights of termination contained in ARTICLE 4(C), the FRANCHISEE will have the right and privilege to terminate this AGREEMENT, if: (1) the FRANCHISOR violates any material provision, term or condition of this AGREEMENT; (2) the FRANCHISOR fails to timely pay any material noncontested and liquidated obligations due and owing to FRANCHISEE; (3) the FRANCHISOR voluntarily files or has filed against it involuntarily, a petition under the United States Bankruptcy Code ; or (4) the FRANCHISOR makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors.

(B) **Notice Of Breach.** The FRANCHISEE will not have the right to terminate this AGREEMENT or to commence an action or lawsuit against the FRANCHISOR for breach of this AGREEMENT, injunctive relief, violation of any state, federal or local law, violation of common law (including allegations of fraud and misrepresentation), rescission, general or punitive damages, or termination, unless and until: (1) written

notice setting forth the nature of the alleged breach has been delivered to the FRANCHISOR by the FRANCHISEE; and (2) the FRANCHISOR fails to correct the alleged breach or violation within thirty (30) days after receipt of the written notice. If the FRANCHISOR fails to correct the alleged breach within thirty (30) days after receiving written notice, then this AGREEMENT may be terminated by the FRANCHISEE as provided for in this AGREEMENT. For purposes of this AGREEMENT, an alleged breach or violation of this AGREEMENT by the FRANCHISOR will be deemed to be "corrected" if both the FRANCHISOR and the FRANCHISEE agree in writing that the alleged breach or violation has been corrected.

(C) **Notice Of Termination.** If the FRANCHISEE has timely complied with the notice provisions of ARTICLE 10(B) hereof and if the FRANCHISOR has not corrected the alleged breach set forth in the written notice within the time period specified in ARTICLE 10(B), then the FRANCHISEE will have the absolute right to terminate this AGREEMENT by giving the FRANCHISOR written notice that this AGREEMENT is terminated and in that event the effective date of termination of this AGREEMENT will be the day the written notice of termination is received by the FRANCHISOR.

#### ARTICLE 11: FRANCHISEE'S OBLIGATIONS UPON TERMINATION OR EXPIRATION

(A) **Termination Of Use Of Marks; Other Obligations.** If this AGREEMENT expires or is terminated for any reason, then the FRANCHISEE will: (1) within five (5) days after expiration or termination, pay all amounts due and owing to the FRANCHISOR under this AGREEMENT or otherwise; (2) immediately return to the FRANCHISOR by first class prepaid United States mail all Manuals, advertising materials, Confidential Information and all other printed materials pertaining to the operation of an AmericInn; (3) within ten (10) days after expiration or termination, discontinue the use of all items bearing the name "AmericInn<sup>®</sup>" or any of the other Marks, including, but not limited to, stationery, paper products, business cards, business checks, purchase orders, registration forms, reservation forms, pens, door hang tags, flags, cups and/or glasses, room keys, paper supplies, napkins, uniforms, furnishings, signs, matches, ashtrays, telephone face plates, ice buckets and/or trays, wastebaskets, face and bath soap and shampoo and conditioner bottles, shower curtains, and any and all other materials, supplies, forms and articles that display or contain any of the Marks or that otherwise identify or relate to an AmericInn<sup>®</sup>; (4) within ten (10) days after expiration or termination, remove all signs containing any of the Marks, including the standard AmericInn<sup>®</sup> Free Standing Sign as well as the canister on such Free Standing Sign to the extent containing the FRANCHISOR'S distinctive shape; (5) take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to the name "AmericInn" or any of the other Marks; (6) terminate or assign to FRANCHISOR, as FRANCHISOR may elect, any Internet website or domain name that identifies FRANCHISEE as currently or formally associated with FRANCHISOR or that displays any of the Marks; (7) comply with all other applicable provisions of this AGREEMENT; and (8) furnish to FRANCHISOR,

within thirty (30) days after the effective date of termination or expiration, evidence satisfactory to FRANCHISOR of FRANCHISEE'S compliance with the post-termination or post-expiration obligations contained in this AGREEMENT. Upon expiration or termination of this AGREEMENT for any reason, the FRANCHISEE'S right to use the Marks and Business System and to participate in any AmericInn® reservation system will terminate immediately. Following the expiration or termination of this AGREEMENT for any reason, FRANCHISEE shall honor all reservations made for the FRANCHISEE'S AmericInn prior to the effective date of such expiration or termination and will honor all rates quoted at the time such reservations were made. In addition, upon expiration or termination of this AGREEMENT for any reason, the FRANCHISEE shall not thereafter operate the FRANCHISED LOCATION under any name which includes the words "American," "America," "AmericInn" or any roots or derivations thereof.

**(B) Alteration Of Franchised Location.** If this AGREEMENT expires or is terminated for any reason or if the FRANCHISED LOCATION ever ceases to be used as an AmericInn, then the FRANCHISEE will, at its expense, promptly alter, modify and change both the exterior and interior appearance and trade dress of the FRANCHISED LOCATION so that it will be easily distinguished from the standard appearance and trade dress of an AmericInn. At a minimum, such changes and modifications to the FRANCHISED LOCATION will include: (1) repainting and, where applicable, recovering both the exterior and interior of the FRANCHISED LOCATION with colors which are not identified with AmericInns, including removing any distinctive colors and designs from the walls; (2) removing any and all fixtures and other decor items which are unique to AmericInns and replacing them with decor items not of the general type and appearance customarily used in AmericInns; (3) removing all exterior and interior AmericInn® signs; and (4) immediately discontinuing use of the approved graphics, employee uniforms, wall decor items and window decals, and refraining from using any items which are confusingly similar.

**(C) Transfer Of Telephone Directory Listings.** Upon the expiration or termination of this AGREEMENT by FRANCHISOR, the FRANCHISOR will have the absolute right to notify the telephone company and all listing agencies of the expiration or termination of FRANCHISEE'S right to use all telephone numbers and all classified and other directory listings under the "AmericInn®" name and to authorize the telephone company and all listing agencies to transfer to the FRANCHISOR or its assignee all telephone numbers and directory listings for the FRANCHISEE'S AmericInn. The FRANCHISEE acknowledges that the FRANCHISOR has the absolute right and interest in and to all telephone numbers and directory listings associated with the Marks, and the FRANCHISEE hereby authorizes the FRANCHISOR to direct the telephone company and all listing agencies to transfer all telephone numbers and directory listings to the FRANCHISOR or its assignee if this AGREEMENT expires or is terminated for any reason whatsoever. The telephone company and all listing agencies may accept this AGREEMENT as evidence of the exclusive rights of the FRANCHISOR to such telephone numbers and directory listings and this AGREEMENT will constitute the authority from the FRANCHISEE for the telephone company and listing agency to transfer all telephone numbers and directory listings to the FRANCHISOR upon

expiration or termination of this AGREEMENT. The FRANCHISEE will not make any claims or commence any actions against the telephone company or the listing agencies for complying with this provision.

## ARTICLE 12: TRAINING PROGRAM; OPENING ASSISTANCE

(A) **Training.** The FRANCHISOR will provide the management training program (described in the Manuals) for the FRANCHISEE or the FRANCHISEE'S Manager at such location or locations as may be designated by FRANCHISOR to educate, familiarize and acquaint him or her with the operations of an AmericInn. The management training program will include both classroom and on-the-job instruction on basic operations, purchasing management, cost control management and other topics selected by the FRANCHISOR. The training program will be scheduled by the FRANCHISOR in its sole discretion and must be completed no more than 120 days prior to the opening of FRANCHISEE'S AmericInn. Either the FRANCHISEE or the FRANCHISEE'S Manager must successfully complete the management training program, including the AmericInn Certified Lodging Trainer ("ACLT") class and PMS training, prior to commencing to operate the FRANCHISEE'S AmericInn unless the successful completion of such program is waived by FRANCHISOR in writing in its sole discretion. FRANCHISEE must at its expense provide its Manager and all front desk staff with a minimum of seven days training from the third party PMS provider; and this training must be completed approximately two weeks prior to the opening of FRANCHISEE'S AmericInn.

(B) **Changes In Management Personnel.** The FRANCHISEE will promptly notify the FRANCHISOR in writing of any personnel changes in the management positions of the FRANCHISEE'S AmericInn. If the FRANCHISEE hires a new Manager who has not successfully completed the FRANCHISOR'S management training program, then unless the successful completion of such program is waived by FRANCHISOR in writing in its sole discretion, the FRANCHISOR will require the new Manager to register to attend the FRANCHISOR'S ACLT class prior to the time that he or she will be allowed to manage the FRANCHISEE'S AmericInn and to thereafter successfully complete the ACLT class as soon as reasonably practicable. The FRANCHISEE must pay the FRANCHISOR a management training fee of One Thousand Dollars (\$1,000) for each such person who attends the FRANCHISOR'S ACLT class within thirty (30) days of receiving FRANCHISOR'S invoice for the same.

(C) **Payment Of Salaries And Expenses.** Except as provided in Article 12(D), during the management training program, the FRANCHISOR will pay all salary, expenses and other costs incurred by FRANCHISOR'S personnel arising in connection with the training program. All wages, salary, expenses and other costs, including room, board and travel expenses, incurred by FRANCHISEE or its personnel in connection with the training program will be paid by FRANCHISEE.

(D) **Opening Assistance.** After the FRANCHISEE or its Manager has successfully completed the FRANCHISOR'S management training program, the



FRANCHISOR will furnish one or more of its representatives for a period of up to five (5) days who will provide opening assistance to FRANCHISEE at its AmericInn, including, but not limited to, assistance with organizing and coordinating the opening of the FRANCHISEE'S AmericInn. FRANCHISOR will provide up to four (4) additional days of on-site training on the designated PMS. As part of such on-site training, the FRANCHISOR will assist with the training of the FRANCHISEE'S staff and at least eighty percent (80%) of the FRANCHISEE'S front desk and housekeeping staff must pass a written examination administered by the FRANCHISOR before the FRANCHISEE may open its AmericInn for business. FRANCHISEE must provide FRANCHISOR with a copy of the Certificate of Occupancy ("CO") for its AmericInn at least seventy-two hours before the FRANCHISOR'S representatives are scheduled to arrive at the FRANCHISEE'S AmericInn for on-site training. Training and opening approval will occur only after all conditions set forth in ARTICLE 19(F) are satisfied and a copy of the CO is received by the FRANCHISOR. FRANCHISEE shall be required to pay all lodging expenses incurred by the FRANCHISOR'S personnel in connection with providing opening assistance and on-site training. In addition, in the event the FRANCHISEE'S AmericInn is not ready to be opened for business when the FRANCHISOR'S representatives arrive to provide such opening assistance and on-site training, the FRANCHISEE shall reimburse the FRANCHISOR upon demand for all salary, expenses and other costs incurred by the FRANCHISOR and its personnel while they are delayed in providing such opening assistance and on-site training.

#### ARTICLE 13: FRANCHISOR'S OTHER OBLIGATIONS

(A) **Business System.** Consistent with the FRANCHISOR'S standards of quality and uniformity, the FRANCHISOR or its authorized representative will: (1) provide the FRANCHISEE with a written schedule of all furniture, fixtures, supplies and equipment required for the operation of the FRANCHISEE'S AmericInn; (2) provide the FRANCHISEE with an list of approved suppliers of the furniture, fixtures, supplies and equipment, including the standard AmericInn® Free Standing Sign required for the FRANCHISEE'S AmericInn; (3) furnish a list of approved sources from whom the FRANCHISEE'S can purchase products, printed materials, items, goods and services; (4) make available to the FRANCHISEE accounting and business procedures for the FRANCHISEE'S use in its AmericInn; (5) inspect the FRANCHISEE'S AmericInn as often as the FRANCHISOR deems necessary and render written reports to the FRANCHISEE as deemed appropriate by the FRANCHISOR; (6) legally protect the Marks and the Business System for the benefit of all AmericInn® franchisees; (7) render, upon the written request of the FRANCHISEE, advisory services pertaining to guest service and operation of the FRANCHISEE'S AmericInn (however, all reasonable administrative and out-of-pocket expenses incurred by the FRANCHISOR in rendering such advisory service will be paid for by the FRANCHISEE); (8) provide the FRANCHISEE with the Manuals and any continuing supplements and modifications thereto; and (9) provide the FRANCHISEE with a copy of the FRANCHISOR'S Then-Current Standard Plans.

**(B) Reservation Systems.** The FRANCHISOR has entered into an agreement with a third-party vendor which provides centralized reservation services, including voice reservation services, Global Distribution Service ("GDS"), Internet and americinn.com reservation services for AmericInns (including the FRANCHISEE'S AmericInn). The FRANCHISEE is required to enter into a Reservation Services Agreement (in a form approved by the FRANCHISOR) with, and purchase centralized reservation services from this designated vendor. The FRANCHISEE must provide all un-sold or un-reserved rooms for sale through the CRS and may only close out inventory according to the procedures established from time to time by the FRANCHISOR. FRANCHISEE must at all times follow all operating rules and procedures related to the CRS. The FRANCHISOR reserves the right to modify or replace its current and any future new reservation systems at any time and from time to time during the term of this AGREEMENT upon ninety (90) days prior written notice to the FRANCHISEE. The FRANCHISOR shall also have the right to discontinue any of its current or any future reservation systems at any time so long as the FRANCHISOR continues to maintain a reservation system or establishes and implements a new reservation system. Such a modification or discontinuation is anticipated if any then current system becomes inadequate or obsolete for any reason, if the expenses incurred by FRANCHISOR or the third-party vendor in providing and/or operating any then current system increase materially or if technological advancements make a new or modified reservation system desirable in the FRANCHISOR'S judgment. Without limiting the manner in which the FRANCHISOR may modify a reservation system, FRANCHISOR reserves the right to impose charges to use or participate in the system so long as the amount of such charges is determined in a manner applied uniformly among the FRANCHISOR'S franchisees. The FRANCHISEE shall participate in any new or modified reservation system established or implemented by the FRANCHISOR, will pay the fees or other charges required to be paid by all franchisees to the FRANCHISOR and third-parties to use or participate in the new or modified reservation system and will purchase, install and maintain, at the FRANCHISEE'S expense, the equipment required by the FRANCHISOR in connection with any such new or modified reservation system, including a two-way interface between the PMS and the CRS. The FRANCHISEE must follow all requirements established by FRANCHISOR from time to time for the use of the two-way interface. The FRANCHISEE acknowledges that the FRANCHISOR does not provide support for the two-way interface, firewall or related hardware and software. The FRANCHISEE acknowledges that the cost of its participation in any such new or modified reservation system may be different or greater than that incurred by the FRANCHISEE under the current systems. The FRANCHISOR shall have no liability whatsoever to FRANCHISEE if any current or any future reservation system becomes inoperable or ceases to function for any period of time due to equipment failure or any other reason or cause. Notwithstanding any other provision of this AGREEMENT to the contrary, so long as the FRANCHISOR or a third-party designated by FRANCHISOR maintains a toll-free telephone number for use in making reservations at AmericInns (including the FRANCHISEE'S AmericInn), the FRANCHISEE shall not use any toll-free telephone number other than such toll-free telephone number maintained by FRANCHISOR in the advertising and marketing materials utilized by the FRANCHISEE with respect to its AmericInn. Upon the

occurrence of an event which entitles the FRANCHISOR to terminate this Agreement under Article 9(A) or 9(D) hereof, the FRANCHISOR may terminate the FRANCHISEE's participation in all reservation systems and services sponsored or maintained by the FRANCHISOR if the FRANCHISEE fails to correct the breach following receipt of notice thereof from FRANCHISOR within the period of time provided for herein.

#### ARTICLE 14: AMERICINN® SIGN

(A) **Approved Sign.** During the term of this AGREEMENT, the FRANCHISEE will, at its expense, either lease or purchase the standard AmericInn® Free Standing Sign (hereinafter referred to as the "Sign") which will be displayed at the FRANCHISED LOCATION from a vendor approved by the FRANCHISOR in writing. The FRANCHISEE will pay for all costs incurred in connection with the erection and installation of the Sign, including all electrical work, construction of the base and foundation, relocation of the power lines and all required soil preparation work. The Sign must conform exactly to the FRANCHISOR'S standard Sign plans and specifications, must be purchased from and/or manufactured by one of FRANCHISOR'S approved vendors, and must be installed at the FRANCHISED LOCATION in the precise place, location and manner specified by the FRANCHISOR in writing. The FRANCHISEE will display only the approved AmericInn® Sign purchased from and/or manufactured by one of the FRANCHISOR'S approved vendors, and will not use or display any other signs of any kind or nature at the FRANCHISED LOCATION without obtaining the express written approval of the FRANCHISOR prior to their installation or use.

(B) **Payment Of Costs And Expenses.** The FRANCHISEE will, at its expense, be responsible for any and all permits, licenses, repairs, maintenance, utilities, insurance, taxes, assessments and levies in connection with the erection or use of the Sign.

(C) **Modification And Replacement.** The FRANCHISEE may not alter, remove, change, modify or redesign the Sign unless approved by this FRANCHISOR in writing. The FRANCHISOR will have the right, in its sole discretion, (1) to redesign the Sign plans and specifications from time to time during the term of this AGREEMENT, without the approval or consent of the FRANCHISEE, and (2) to require the FRANCHISEE, at its expense, to either modify or replace the Sign so that the Sign displayed at the FRANCHISED LOCATION complies with the FRANCHISOR'S redesigned Sign plans and specifications; provided, however, that if the FRANCHISEE is required by the FRANCHISOR to replace its Sign pursuant to this ARTICLE 14(C) under circumstances which are not covered by ARTICLE 3(D) at any time during the period of five (5) years commencing on the Effective Date or at any time during any period of five (5) years commencing on the date, if any, the FRANCHISEE was previously required by the FRANCHISOR to replace its Sign pursuant to this ARTICLE 14(C), then the FRANCHISOR shall reimburse the FRANCHISEE for the undepreciable value (i.e., "book value") of the Sign being replaced.

## ARTICLE 15: INSURANCE

(A) **General Liability Insurance.** The FRANCHISEE must procure and maintain in full force and effect, at its sole cost and expense, an insurance policy or policies insuring the FRANCHISEE, the FRANCHISOR, and their respective officers, manager, directors, governors and employees from and against any loss, liability, claim or expense of any kind whatsoever, including bodily injury, personal injury, death, property damage, products liability and all other occurrences resulting from the condition, operation, use, business and occupancy of the FRANCHISED LOCATION, including the surrounding premises, the parking area and the sidewalks of the FRANCHISED LOCATION.

(B) **Automobile Insurance.** The FRANCHISEE must also procure and maintain in full force and effect, at its sole cost and expense, automobile liability coverage insuring the FRANCHISEE, the FRANCHISOR, and their respective officers, managers, directors, governors and employees from any and all loss, liability, claim or expense of any kind whatsoever resulting from the use, operation or maintenance of any automobile or vehicle used by the FRANCHISEE or any of its employees in connection with the FRANCHISEE'S AmericInn.

(C) **Coverage Limits.** Liability coverage for both the general liability coverage and the automobile liability coverage must have limits of Five Million Dollars (\$5,000,000) combined single limit. The FRANCHISEE must also maintain "all risks" property insurance coverage for the building, machinery, equipment, fixtures, furnishings and signs at the FRANCHISED LOCATION (including fire and extended coverage) with limits equal to at least "replacement" cost. FRANCHISOR may, in its discretion, periodically change the types of insurance and/or increase the limits of coverage of the insurance that FRANCHISEE is required to maintain hereunder.

(D) **Additional Insured.** All insurance policies must name the FRANCHISOR as an additional insured, must contain endorsements by the insurance companies waiving all rights of subrogation against the FRANCHISOR, and must stipulate that the FRANCHISOR will receive copies of all notices of cancellation, nonrenewal or coverage reduction or elimination at least thirty (30) days prior to the effective date of such cancellation, nonrenewal or coverage change.

(E) **Insurance Companies; Evidence Of Coverage.** All insurance companies providing coverage to the FRANCHISEE must have an "A," "A+" or "A-" rating by A.M. Best & Co. and must be licensed in the state where the coverage is provided. The FRANCHISEE will provide the FRANCHISOR with certificates of insurance evidencing the required insurance coverage no later than the date the FRANCHISEE takes possession of the FRANCHISED LOCATION and annually thereafter in connection with the renewal of the FRANCHISEE'S insurance policies.

(F) **Other Insurance.** The FRANCHISEE will, at its sole cost and expense, procure and pay for all other insurance required by state or federal law, including workers' compensation insurance for its employees, together with all insurance required

under any lease, mortgage, deed of trust, contract for deed or other legal contract in connection with the FRANCHISED LOCATION or the FRANCHISEE'S American.

(G) **Defense Of Claims.** All liability insurance policies procured and maintained by the FRANCHISEE will require the insurance companies to provide and pay for legal counsel to defend any covered legal actions, lawsuits or claims brought against the FRANCHISEE, the FRANCHISOR, and their respective officers, managers, directors, governors and employees.

(H) **Material Breach.** If the FRANCHISEE fails to comply with the provisions of this ARTICLE 15, the FRANCHISOR will have the right, but not the obligation, to procure on behalf of the FRANCHISEE any and all insurance required under this AGREEMENT with the agent and insurance company of the FRANCHISOR'S choice. FRANCHISEE agrees to cooperate fully with FRANCHISOR in its effort to obtain such insurance policies, promptly execute all forms or instruments required to obtain or maintain any such insurance, and allow any inspections of the FRANCHISED LOCATION that are required to obtain or maintain any such insurance. The FRANCHISOR will invoice the FRANCHISEE for all costs and expenses incurred by the FRANCHISOR to procure the required insurance coverage on behalf of the FRANCHISEE and the FRANCHISEE shall pay any such invoice in full within ten (10) days of its receipt of the same from the FRANCHISOR. FRANCHISOR shall be under no duty to ascertain the existence of or to examine any such policy or to advise FRANCHISEE in the event any such policy shall not comply with the requirements of this ARTICLE 15.

#### ARTICLE 16: INDEPENDENT CONTRACTORS; INDEMNIFICATION

(A) **Independent Contractors.** The FRANCHISOR and the FRANCHISEE are each independent contractors and, as a consequence, there is no employer-employee or principal-agent relationship between the FRANCHISOR and the FRANCHISEE. The FRANCHISEE will not have the right to and will not make any agreements, representations or warranties in the name of or on behalf of the FRANCHISOR or represent that their relationship is other than that of franchisor and franchisee. Neither the FRANCHISOR nor the FRANCHISEE will be obligated by or have any liability to the other under any agreements or representations made by the other to any third parties.

(B) **Indemnification.** The FRANCHISEE shall indemnify the FRANCHISOR against and shall reimburse the FRANCHISOR upon demand for any and all losses, costs, expenses (including without limitation, reasonable attorneys' fees, disbursements of counsel, investigation expenses, expert witness fees, court costs, deposition expenses and travel and living expenses), liabilities, damages, fines, penalties, charges, assessments, judgments, settlements, claims, causes of action and other obligations of any nature whatsoever that the FRANCHISOR may at any time, directly or indirectly, suffer, sustain or incur, arising out of, based upon or resulting from (i) the breach by the FRANCHISEE of its obligations hereunder, (ii) the design, construction and/or operation

of the FRANCHISEE'S Americlnn, and/or (iii) any act, omission, event or occurrence taking place on or about the FRANCHISED LOCATION. The FRANCHISOR will always have the right to defend any claim made against it with respect to which it is entitled to indemnification hereunder and the FRANCHISEE shall reimburse the FRANCHISOR upon demand for any and all costs and expenses, including reasonable attorneys' fees incurred by the FRANCHISOR in connection therewith.

(C) **Continuation Of Obligations.** The indemnification and other obligations contained in this ARTICLE will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this AGREEMENT.

#### ARTICLE 17: FINANCIAL STATEMENTS, SALES REPORTS, FORMS AND ACCOUNTING

(A) **Monthly, Year To Date And Annual Financial Statements.** The FRANCHISEE will, at its expense, provide the FRANCHISOR with annual financial statements for the FRANCHISEE'S Americlnn (which exclude from the balance sheet, income statement and statement of cash flow items which are unrelated to such Americlnn) and, upon request by FRANCHISOR, for the FRANCHISEE (which include all balance sheet, income statement and statement of cash flow items of FRANCHISEE). In addition, the FRANCHISEE will, at its expense and upon the written request by the FRANCHISOR, provide the FRANCHISOR with monthly and year to date financial statements for FRANCHISEE'S Americlnn and/or FRANCHISEE. All such financial statements will (1) consist of a balance sheet, income statement, statement of cash flows and explanatory footnotes, (2) be verified by the FRANCHISEE, (3) be presented in the exact form and format prescribed by the FRANCHISOR in writing, and (4) will be categorized according to the chart of accounts prescribed by the FRANCHISOR. All such financial statement will be prepared in accordance with generally accepted accounting principles applied on a consistent basis. The monthly and year to date financial statements for the preceding month will be delivered to the FRANCHISOR within ten (10) days of receiving the FRANCHISOR'S request and the annual financial statements for FRANCHISEE and/or its Americlnn will be delivered to the FRANCHISOR within ninety (90) days of the FRANCHISEE'S fiscal year end.

(B) **Tax Returns.** FRANCHISEE will, within thirty (30) days of receiving a request from the FRANCHISOR, furnish the FRANCHISOR with signed copies of the FRANCHISEE'S annual federal, and if applicable, state income tax returns for the FRANCHISEE'S most recent fiscal year end.

(C) **Reports Of Gross Revenues.** The FRANCHISEE will maintain an accurate written record of daily Gross Revenues for the FRANCHISEE'S Americlnn and will remit a signed and verified statement of the FRANCHISEE'S monthly Gross Revenues using such forms as the FRANCHISOR may prescribe in writing. The monthly statement of Gross Revenues will accompany the FRANCHISEE'S monthly Continuing Fees and, thus, will be delivered to the FRANCHISOR on or before the tenth (10th) day of each month for the preceding month. FRANCHISOR may, at its election,

gather daily Gross Revenues, occupancy and other related information through any computerized or automated information reporting system that FRANCHISOR may establish. FRANCHISEE shall participate in all computerized or automated information reporting programs that FRANCHISOR may adopt for use by AmericInns. FRANCHISEE shall purchase any computer hardware, computer software and related high speed Internet access or telephone services necessary to participate in such programs.

(D) **Franchisor's Audit Rights.** The FRANCHISEE and the FRANCHISEE'S accountants will make all of its books, records, ledgers, work papers, accounts and financial information, including state and local sales tax reports and federal, state and local income tax returns (collectively "Financial Records") available to the FRANCHISOR at all reasonable times for review and audit by the FRANCHISOR or its designee, and the Financial Records for each fiscal year will be kept in a secure place by the FRANCHISEE and will be available for audit by the FRANCHISOR for at least five (5) years. If FRANCHISEE is a partnership, limited liability company, corporation or other entity, Financial Records shall include all records and income tax returns of the partners, members, shareholders, or other owners holding at least a ten (10%) percent equity interest in the FRANCHISEE. If an audit by the FRANCHISOR results in a determination that the FRANCHISEE'S Gross Revenues were understated for any period by more than three percent (3%), or that the FRANCHISEE has underpaid the monthly Continuing Fees, Marketing Fees or any other financial obligation to FRANCHISOR or to the Marketing Fund by an aggregate of more than One Thousand Dollars (\$1,000) during any twelve (12) month period, then the FRANCHISEE will, within ten (10) days of receipt of an invoice from the FRANCHISOR indicating the amounts owed, pay to the FRANCHISOR all costs and expenses (including salaries of the FRANCHISOR'S employees, travel costs, room and board, and audit fees) that it has incurred as a result of the audit of the FRANCHISEE'S Financial Records. If the FRANCHISEE has understated Gross Revenues or has underpaid the FRANCHISOR or Marketing Fund, then the FRANCHISEE will within ten (10) days of receipt of an invoice from the FRANCHISOR indicating the amounts owed, pay to the FRANCHISOR or Marketing Fund, as the case may be, with interest in accordance with ARTICLE 20(K), any deficiency in Continuing Fees, Marketing Fees or other amounts owed to the FRANCHISOR or the Marketing Fund, as the case may be. The relief granted to FRANCHISOR under this ARTICLE 17(D) is intended to provide certain rights to the FRANCHISOR in addition to, and not as a limitation upon, the rights and remedies available to FRANCHISOR under this AGREEMENT and/or applicable law.

(E) **Waiver By Franchisee.** The FRANCHISOR will have the right to review the books and records maintained by the vendors or suppliers that supply products, goods or services to the FRANCHISEE regarding the purchases made by the FRANCHISEE. This AGREEMENT will serve as evidence of the FRANCHISOR'S right to review such information and will constitute the authority from the FRANCHISEE for its vendors and suppliers to provide such information to the FRANCHISOR.

(F) **Construction Cost Summary.** Within sixty (60) days of the opening of the FRANCHISEE'S AmericInn for business, the FRANCHISEE shall submit to the

FRANCHISOR (attention Vice President – Construction) a summary of all costs and expenses incurred by the FRANCHISEE in acquiring the FRANCHISED LOCATION and in designing and constructing the FRANCHISEE'S AmericInn in such form as the FRANCHISOR may prescribe in writing.

(G) **Organizational Documents.** The FRANCHISEE shall, within ten (10) days of receiving a written request from the FRANCHISOR, provide the FRANCHISOR with true, correct and complete copies of the FRANCHISEE'S Articles of Incorporation, Articles of Organization, Bylaws, Operating Agreement, Member Control Agreement, Shareholder Control Agreement, Partnership Agreement or comparable governing documents or instruments, as well as all amendments thereto. In addition, the FRANCHISEE shall, within ten (10) days of receiving a written request from the FRANCHISOR, provide the FRANCHISOR with a list of all of the shareholders, members, partners or other equity owners of the FRANCHISEE showing the number of shares of stock, percentage interest or other ownership interest of each such shareholder, member, partner or other equity owner in the FRANCHISEE which is certified as being true, correct and complete by the President, Chief Executive Officer, Managing Partner or comparable officer or manager of the FRANCHISEE.

#### ARTICLE 18: ASSIGNMENT

(A) **Assignment By Franchisor.** This AGREEMENT may be unilaterally assigned and transferred by the FRANCHISOR without the approval or consent of the FRANCHISEE and will inure to the benefit of the FRANCHISOR'S successors and assigns. The FRANCHISOR will provide the FRANCHISEE with written notice of any such assignment or transfer, and the assignee will be required to fulfill the FRANCHISOR'S obligations under this AGREEMENT.

(B) **Assignment By Franchisee To Owned Or Controlled Entity.** If the FRANCHISEE is an individual, partnership, limited liability company or corporation, this AGREEMENT may be transferred or assigned by the FRANCHISEE to a partnership, limited liability company or corporation which is owned or controlled by the FRANCHISEE or its partners, members or shareholders, as the case may be, provided that the FRANCHISEE, if an individual, or all of the partners, members or shareholders of the FRANCHISEE, if a partnership, limited liability company or corporation, as the case may be, and all of the partners, members or shareholders, as the case may be, of the assignee partnership, limited liability company or corporation sign or have signed the personal guaranty included as part of this AGREEMENT and agree to be unconditionally bound by the terms and conditions of this AGREEMENT, and further provided that the FRANCHISEE furnishes prior written proof to the FRANCHISOR substantiating that the assignee partnership, limited liability company or corporation will be financially able to perform all of the terms and conditions of this AGREEMENT. For purposes of this provision, a partnership, limited liability company or corporation will be considered to be owned or controlled by the FRANCHISEE or the partners, members or shareholders of the FRANCHISEE if the transferee (1) is a limited partnership of which the FRANCHISEE or all of its partners, members or shareholders is/are general



partner(s), (2) is a general partnership of which the FRANCHISEE is a managing partner, (3) is a limited liability company of which the FRANCHISEE or its partners, members or shareholders hold a controlling membership interest and are responsible for its management and operations, or (4) is a corporation of which the FRANCHISEE or its partners, members or shareholders own beneficially and of record more than fifty percent (50%) of each class and series of capital stock of the transferee corporation. The FRANCHISEE will give the FRANCHISOR fifteen (15) days written notice prior to the proposed date of assignment or transfer of this AGREEMENT to such an owned or controlled partnership, limited liability company or corporation.

**(C) Assignment Upon Death Or Disability Of Franchisee.** If the FRANCHISEE is an individual, then in the event of the death or permanent disability of the FRANCHISEE, this AGREEMENT may, subject to compliance with ARTICLES 18(D), (E) and (G) hereof, be assigned, transferred or bequeathed by the FRANCHISEE to any designated person or beneficiary. However, the assignment of this AGREEMENT to the transferee, assignee or beneficiary of the FRANCHISEE will not be valid or effective until the transferee, assignee or beneficiary sign or have signed the personal guaranty included as part of this AGREEMENT and agrees to be unconditionally bound by the terms and conditions of this AGREEMENT.

**(D) Approval Of Transfer.** Subject to the provision of ARTICLE 18(B), (C), (E), (F) and (G) hereof, this AGREEMENT, shares of capital stock, partnership interests, membership interests or other ownership interests in FRANCHISEE or the material assets associated with the FRANCHISEE'S AmericInn (the "Business Assets") may be sold, assigned or otherwise transferred by the FRANCHISEE or its shareholders, partners or members only with the prior written approval of the FRANCHISOR. Any such purported sale, assignment or other transfer without the prior written consent of the FRANCHISOR shall be void and constitute a material breach of the material provisions of this AGREEMENT and good cause for the termination of this AGREEMENT by FRANCHISOR. Unless the FRANCHISOR exercises its rights of first refusal under ARTICLE 18(F) hereof, the FRANCHISOR will not unreasonably withhold its consent to any sale, assignment or other transfer of this AGREEMENT, shares of capital stock, partnership interests, membership interest or other ownership interests in the FRANCHISEE or any of the Business Assets provided that the FRANCHISEE and the transferee comply with any and all reasonable conditions imposed by the FRANCHISOR in its sole discretion, including, but not limited to, the following: (1) all of the FRANCHISEE'S monetary obligations due to the FRANCHISOR have been paid in full, and the FRANCHISEE is not otherwise in default under this AGREEMENT; (2) the transferee must demonstrate to the FRANCHISOR'S reasonable satisfaction that he, she or it meets the FRANCHISOR'S managerial standards, financial resources standards, and business standards for new franchisees, possesses a good business reputation and credit rating, and possesses the aptitude and ability to conduct the franchised business (as may be evidenced by prior related business experience or otherwise); (3) the transferee must execute, and cause all parties having a legal or beneficial interest in the transferee to execute, the FRANCHISOR'S then-current standard Franchise Agreement (the "New Franchise Agreement") and such other ancillary agreements as the FRANCHISOR may require for the FRANCHISEE'S

AmericInn for a term of the duration provided for in the New Franchise Agreement; (4) the transferee and all of its shareholders, partners, members or other owners sign or have signed the personal guaranty included as part of the New Franchise Agreement and agree to be unconditionally bound by the terms and conditions of the New Franchise Agreement; (5) the transferee must assume (i) the FRANCHISEE'S obligations to the FRANCHISOR with respect to the INN-Pressive Club<sup>®</sup>, including, without limitation, the FRANCHISEE'S obligation to reimburse the FRANCHISOR for payments made by the FRANCHISOR under the INN-Pressive Club<sup>®</sup> after the effective date of the transfer with respect to nights spent in the FRANCHISEE'S AmericInn prior to such effective date, and (ii) the FRANCHISEE'S obligations with respect to any gift certificates sold or issued by FRANCHISEE prior to the effective date of the transfer; (6) unless otherwise agreed by FRANCHISOR in writing, prior to the date of transfer, the transferee (or its Manager) have successfully completed the FRANCHISOR'S ACLT class and, in connection therewith, the transferee will pay the salaries, fringe benefits, payroll taxes, unemployment compensation, workers' compensation insurance, travel costs and all other expenses for all persons sent to the training programs, and will pay a training fee to the FRANCHISOR in the amount of One Thousand Dollars (\$1,000) for each person attending the ACLT class; (7) the transferee must purchase the real estate and building at the FRANCHISED LOCATION; (8) except to the extent prohibited by applicable law, the FRANCHISEE and the Personal Guarantors must execute a general release in such form as FRANCHISOR may require releasing and waiving any and all claims which FRANCHISEE and/or the Personal Guarantors may have against FRANCHISOR, its members, managers, governors, employee, agents and affiliates; (9) the transferee must agree, in writing, to make the reasonable capital expenditures necessary to remodel, modernize, redecorate and renovate its AmericInn and to replace and modernize the furniture, fixtures, supplies and equipment used in the transferee's AmericInn so that the transferee's AmericInn will reflect the then-current image intended to be portrayed by AmericInns; all such remodeling, modernizing, redecorating and renovating shall be conducted in accordance with ARTICLE 7(F) hereof; and (10) the transferee must demonstrate to the FRANCHISOR'S reasonable satisfaction that the material terms and conditions of the transfer or assignment, including, without limitation, the price and terms of payment, are not so burdensome as to adversely affect the subsequent operation or financial results of the FRANCHISEE'S AmericInn<sup>®</sup>. While the transferee will not be required to pay the initial fee, if any, specified in the New Franchise Agreement, the transferee will be required to make the local advertising expenditures and pay the Continuing Fees, Marketing Fees and all other fees at the rates specified in the New Franchise Agreement, plus any additional fees not provided for in this AGREEMENT but which are required to be paid to the FRANCHISOR or others by the terms of the New Franchise Agreement. The FRANCHISEE acknowledges that the terms, conditions and economics of the New Franchise Agreement may, at that time, vary in substance and form from the terms, conditions and economics of this AGREEMENT. Specifically, and without limiting the manner in which the terms, conditions and economics of the New Franchise Agreement may vary from this AGREEMENT, the FRANCHISEE acknowledges and agrees that (1) the Continuing Fees, Marketing Fees, training fees, transfer fees and other fees payable to the FRANCHISOR under the New Franchise Agreement may be greater than that provided

for herein, (2) the New Franchise Agreement may provide for the payment of fees by the transferee to the FRANCHISOR which are not provided for herein, and (3) the New Franchise Agreement may require the transferee to spend more for local advertising, marketing and promotion than provided for herein. The FRANCHISEE further acknowledges and agrees that FRANCHISOR'S consent to a transfer or assignment shall not constitute a waiver of any claims that FRANCHISOR may have against FRANCHISEE or the Personal Guarantors of its obligations hereunder, nor shall it be deemed a waiver of FRANCHISOR'S right to demand full compliance with all of the terms and conditions of this AGREEMENT by the transferee or assignee. Acceptance by FRANCHISOR of any Continuing Fees, Marketing Fees or any other amounts due and payable hereunder from any third party, including, but not limited to, any transferee or assignee of this AGREEMENT or the Business Assets, shall not constitute FRANCHISOR'S consent or approval to such assignment or transfer.

(E) **Transfer Fee.** Except in the event of an assignment pursuant to ARTICLE 18(B) hereof, if, pursuant to the terms of this ARTICLE 18, this AGREEMENT or the Business Assets is/are directly or indirectly sold, assigned, transferred or bequeathed to another person or entity, or if the FRANCHISEE'S shareholders, partners or members transfer over fifty percent (50%) of their capital stock, partnership interests, membership interests, or other ownership interests respectively, to another person or entity, then the FRANCHISEE will pay the FRANCHISOR a transfer fee of Five Thousand Dollars (\$5,000). This fee is to cover the costs incurred by the FRANCHISOR for attorneys' fees, accountants' fees, out-of-pocket expenses, long distance telephone calls, and the time of its employees and officers.

(F) **Franchisor's Rights Of First Refusal.** Notwithstanding any provisions of this AGREEMENT to the contrary, neither FRANCHISEE nor its shareholders, partners, members or other owners shall, except as provided in ARTICLES 18(B) and/or (C) hereof, directly or indirectly sell, assign or otherwise transfer in one or a series of related transactions this AGREEMENT, all or substantially all of the Business Assets and/or over fifty percent (50%) of the issued and outstanding shares of capital stock, partnership interests, membership interests or other ownership interests in FRANCHISEE unless it/he/they shall have first (1) given the FRANCHISOR a written notice setting forth all of the material terms and conditions of the proposed transaction, and (2) offered to sell, assign or otherwise transfer this AGREEMENT or such Business Assets, capital stock, partnership interests, membership interests or ownership interests to the FRANCHISOR, as the case may be, on the same terms and conditions. The FRANCHISOR shall have thirty (30) days from its receipt of the FRANCHISEE'S notice to exercise its rights of first refusal contained in this ARTICLE 18(F) by giving written notice of such exercise to the FRANCHISEE. If the FRANCHISOR does not exercise its rights of first refusal contained in this ARTICLE 18(F), FRANCHISEE shall remain subject to the terms and conditions of ARTICLE 18(D), (E) and (G) and shall have ninety (90) days within which to consummate the transaction on the terms and conditions set forth in the notice to the FRANCHISOR.

(G) **Documentation.** Notwithstanding any provision of this AGREEMENT to the contrary, no transfer or assignment of this AGREEMENT or the Business Assets will

be valid or effective until the FRANCHISOR has received the duly signed legal documents which its legal counsel deems necessary to properly and legally document the transfer or assignment of this AGREEMENT as provided for in this ARTICLE 18.

(H) **Security Interest.** This AGREEMENT and the franchise granted to the FRANCHISEE hereunder may not be the subject of a security interest, lien, levy, attachment or execution by the FRANCHISEE'S creditors or any financial institution, except with the prior written approval of the FRANCHISOR.

#### ARTICLE 19: SITE SELECTION, BUILDING PLANS AND SPECIFICATIONS

(A) **Site Selection.** The FRANCHISEE will be solely responsible for selecting the site for the FRANCHISED LOCATION, and for purchasing the real estate and constructing or remodeling the building for the FRANCHISED LOCATION, obtaining a lease for the FRANCHISED LOCATION, or otherwise acquiring possession of or access to the FRANCHISED LOCATION, for a term equal to the term of this AGREEMENT. Accordingly, no provision of this AGREEMENT may be construed or interpreted to impose any obligation upon the FRANCHISOR to locate a suitable site for the FRANCHISED LOCATION, to assist the FRANCHISEE in the selection of a suitable site for the FRANCHISED LOCATION, or to provide any assistance to the FRANCHISEE in the purchase or rental of the FRANCHISED LOCATION.

(B) **Site Approval; Feasibility Study.** The FRANCHISEE will not purchase, lease or otherwise acquire possession of a site for the FRANCHISED LOCATION until the proposed site has been approved by the FRANCHISOR. The FRANCHISEE acknowledges that neither the FRANCHISOR'S approval of the proposed site for the FRANCHISED LOCATION nor any assistance that may be provided by the FRANCHISOR in the selection or review of the site will be deemed to be a representation, warranty or guaranty by the FRANCHISOR regarding the potential financial success of the FRANCHISEE'S AmericInn operated at that site, and the FRANCHISEE assumes all business and economic risks associated with the site. The FRANCHISOR will have the right to require the FRANCHISEE to obtain, at the FRANCHISEE'S expense, an economic feasibility study for the proposed site of the FRANCHISED LOCATION. Any feasibility study required by the FRANCHISOR will be completed by an expert mutually agreed upon by the FRANCHISOR and the FRANCHISEE.

(C) **Compliance With Plans And Specifications.** The FRANCHISEE shall take any and all action necessary to cause the development, construction, renovation, furnishing and equipping of its AmericInn (collectively, "Construction Work") to be performed in strict compliance with: (1) the FRANCHISOR'S Then-Current Standard Plans (2) the FRANCHISOR'S Minimum Design Standards; (3) the Detailed Plans (as hereinafter defined); and (4) all applicable federal, state and local laws, codes and regulations, including, but not limited to, the applicable provisions of the ADA. The FRANCHISOR will provide to the FRANCHISEE a copy of the FRANCHISOR'S Then-Current Standard Plans and Design Manual. The FRANCHISOR'S Then-Current

Standard Plans and Design Manual do not contain all of the requirements of any federal, state or local law, code or regulation, including those concerning the ADA or similar rules governing public accommodations for persons with disabilities. In addition, such Then-Current Standard Plans and Design Manual do not contain the requirements of, and shall not be used for, construction drawings or other documentation necessary to obtain permits or authorization for the Construction Work. Rather, the FRANCHISEE shall, at its sole cost and expense, cause complete and detailed building plans and specifications for the Construction Work, including, but not limited to, site plans, civil engineering plans, structural, mechanical and electrical plans, and the FRANCHISEE'S proposed furnishings, fixtures, equipment, signs, furniture and building finishes (collectively, the "Detailed Plans") to be prepared and certified by a licensed architect. Prior to submission of the Detailed Plans to FRANCHISOR as hereinafter provided, FRANCHISEE shall furnish FRANCHISOR with the resume of the architect whom FRANCHISEE desires to retain to prepare the Detailed Plans and such additional information and detail concerning the architect's training, experience and financial responsibility as FRANCHISOR may request. The FRANCHISEE may not use an architect to prepare its Detailed Plans who is not willing and able to provide the certification of ADA compliance hereinafter provided for. The Detailed Plans shall not be approved and the Construction Work shall not be commenced until FRANCHISOR has approved the architect who is to prepare the Detailed Plans and such architect has provided FRANCHISOR with such certification of ADA compliance. Prior to commencement of the Construction Work, FRANCHISEE shall submit to FRANCHISOR the resume of the general contractor and/or any major subcontractors for the Construction Work and such additional information concerning their experience and financial responsibility as FRANCHISOR shall request. The FRANCHISEE may not use a general contractor to perform the Construction Work who is not willing to provide the certification of ADA compliance hereinafter provided for. Construction Work, including the ordering of furniture, fixtures, and/or equipment, shall not commence until FRANCHISOR has approved such contractors, which approval may be conditioned on bonding of such contractors. The FRANCHISEE shall require all proposed contractors to submit bids on the FRANCHISOR'S approved bid tabulation form. Within ten (10) days of the date bids are due from the proposed contractors, the FRANCHISEE will submit the bid proposed to be accepted to the FRANCHISOR, attention Vice-President – Construction, on the FRANCHISOR'S approved bid tabulation form. The FRANCHISEE will submit a copy of the signed contract with the approved contractor upon the completion of the contract to the FRANCHISOR, attention Vice President – Construction. If the FRANCHISEE is acting as its own general contractor, it shall submit a project schedule of values on the FRANCHISOR'S approved bid tabulation form. The FRANCHISEE shall cause its architect to (i) provide the FRANCHISOR with three (3) copies of all preliminary and final Detailed Plans for the FRANCHISEE'S AmericInn for review and approval by FRANCHISOR'S Board of Review, and (ii) certify to FRANCHISOR, in accordance with the ADA certification in the form attached hereto as Attachment 1, that such Detailed Plans comply with the ADA and all other related or similar federal, state or local laws, codes and regulations. Within fifteen (15) days of receipt of such Detailed Plans and certification of ADA compliance, the FRANCHISOR'S Board of Review will review the same to determine if they are

consistent with the FRANCHISOR'S Then-Current Standard Plans and whether they comply with the FRANCHISOR'S Minimum Design Standards, and will provide the FRANCHISEE with written comments and a list of any recommended and/or required changes. If FRANCHISOR'S Board of Review requires the FRANCHISEE to make changes to its Detailed Plans, the FRANCHISEE shall prepare or cause to be prepared revised Detailed Plans to incorporate such required changes. The FRANCHISEE shall submit three (3) copies of such revised Detailed Plans to the FRANCHISOR and FRANCHISOR'S Board of Review will, within fifteen (15) days of receipt thereof, review the same and provide the FRANCHISEE with any further written comments and recommended and/or required changes which it may have. The FRANCHISEE shall not retain a contractor or commence any Construction Work until its Detailed Plans have been reviewed and approved by FRANCHISOR'S Board of Review in writing. FRANCHISOR'S review and approval of the FRANCHISEE'S Detailed Plans shall be limited to determining whether such plans comply with the Then-Current Plans and Minimum Design Standards. Such review is not designed to assess compliance of the Detailed Plans with applicable federal, state or local laws, codes or regulations, including the ADA, or for ensuring the safety and security of FRANCHISEE'S AmericInn since the FRANCHISEE is solely responsible for ensuring that its Detailed Plans are, and Construction Work is in full compliance with all federal, state and local laws, codes and regulations, including the ADA, and that FRANCHISEE'S AmericInn is safe and secure. FRANCHISEE'S architect shall accept this AGREEMENT as FRANCHISEE'S consent, authorization and instruction for such architect to provide three (3) copies of all preliminary and final Detailed Plans for the FRANCHISEE'S AmericInn to the FRANCHISOR and to discuss the same with FRANCHISOR'S employees or other representatives. In the design and construction of the FRANCHISEE'S AmericInn, the FRANCHISEE shall not deviate or vary from the Then-Current Standard Plans, the Minimum Design Standards or the FRANCHISEE'S Detailed Plans which have been approved by the FRANCHISOR without, in each instance, the prior written approval of the FRANCHISOR'S Board of Review, which approval shall not be unreasonably withheld. Any such variances approved by FRANCHISOR'S Board of Review shall only apply with respect to FRANCHISEE'S AmericInn at the FRANCHISED LOCATION and in no event may FRANCHISEE incorporate any such variances into any future AmericInn which it may construct pursuant to a separate Franchise Agreement with FRANCHISOR, unless such variance is again approved by FRANCHISOR'S Board of Review pursuant to such Franchise Agreement. Any unauthorized variance from the Then-Current Standard Plans, the Minimum Design Standards, the Detailed Plans or required shop drawing submittals which have been approved by FRANCHISOR'S Board of Review will be a material breach of this AGREEMENT.

(D) **Construction.** The FRANCHISEE will be solely responsible for ascertaining that the Construction Work for the FRANCHISEE'S AmericInn is in compliance with the Then-Current Standard Plans, the Minimum Design Standards, the Detailed Plans approved in writing by the FRANCHISOR and all applicable laws, codes and regulations, including, but not limited to the ADA. The FRANCHISEE will be solely responsible for, and will retain a licensed architect for the purpose of, inspecting the FRANCHISEE'S AmericInn during the performance of the Construction Work to insure that such work is being performed according to the Then-Current Standard Plans, the

Minimum Design Standards, the Detailed Plans which have been approved by FRANCHISOR in writing and all applicable laws, codes and regulations, including, but not limited to the ADA. The FRANCHISEE will be responsible for complying with all laws and for acquiring, at its expense, all licenses and building permits required in connection with the Construction Work. FRANCHISEE shall not during the term of this AGREEMENT or after the expiration or termination hereof directly or indirectly use all or any part of the Then Current Standard Plans, the Minimum Design Standards and/or the Detailed Plans in connection with the construction or remodeling of any hotel, motel or other lodging property other than an AmericInn.

**(E) Inspection During Construction Or Renovation.** The FRANCHISOR may, at its expense, view the FRANCHISED LOCATION during the performance of Construction Work at such times as it deems necessary for the purpose of determining the progress of the Construction Work and to ascertain whether the interior and exterior of the FRANCHISED LOCATION conform to the Then-Current Standard Plans and the Minimum Design Standards and have or will have the physical appearances of an AmericInn. Neither the FRANCHISOR'S review or approval of the FRANCHISEE'S Detailed Plans or shop drawing submittals, nor the FRANCHISOR'S viewing of the FRANCHISED LOCATION during the performance of Construction Work will be for the purposes of determining that the Construction Work is being performed according to the approved Detailed Plans, in a good workmanlike manner or in compliance with any applicable laws, codes or regulations, including, but not limited to the ADA. Accordingly, the FRANCHISOR will have no responsibility to the FRANCHISEE or any other person if the Construction Work is not performed by the contractor (1) in compliance with the Detailed Plans which have been approved by the FRANCHISOR, (2) in compliance with applicable laws, codes or regulations, including, but not limited to the ADA, or (3) in a good workmanlike manner, or if the contractor breaches its contract with the FRANCHISEE. The FRANCHISEE agrees to promptly replace or change at its expense any Construction Work which does not comply with the Then-Current Standard Plans, the Minimum Design Standards, the Detailed Plans approved by FRANCHISOR and/or applicable laws, codes or regulations, including, but not limited to the ADA. Notwithstanding any provision of this AGREEMENT to the contrary, FRANCHISOR hereby disclaims any right of control over the safety and security of the FRANCHISEE'S AmericInn. FRANCHISEE shall be solely responsible for (i) determining the level of exterior lighting, (ii) determining the type of locks to install in guest rooms, (iii) determining the type, location and monitoring of any surveillance equipment, and (iv) otherwise ensuring the safety and security of FRANCHISEE'S AmericInn.

**(F) Pre Opening Inspection.** The FRANCHISEE will not open its AmericInn and commence initial business operation until the FRANCHISOR has inspected the FRANCHISEE'S AmericInn and has given the FRANCHISEE written approval to open for business. It is expressly agreed that the FRANCHISEE will not be permitted to open its AmericInn for business unless and until: (1) the FRANCHISEE'S Sign has been installed in accordance with ARTICLE 14 hereof; (2) the pool/recreation area and other common areas for the FRANCHISEE'S AmericInn have been completed, are operational and are "guest ready"; (3) the lobby area, including the front desk, have been finished and fully equipped; (4) at least fifty percent (50%) of the guest rooms

have been completed, are fully equipped, "guest ready" and are accessible to the FRANCHISEE'S customers without having to cross through uncompleted portions of the FRANCHISEE'S AmericInn; (5) all Construction Work which could reasonably be expected to materially diminish the quality of a customer's stay at the FRANCHISEE'S AmericInn has been completed; (6) the FRANCHISEE'S architect or general contractor has certified to the FRANCHISOR, in accordance with the ADA certification in the form attached hereto as Attachment 2; that the FRANCHISEE'S AmericInn complies with the ADA and all other related or similar federal, state or local laws, codes and regulations; (7) the FRANCHISOR has received from FRANCHISEE all documentation and other items required under this AGREEMENT, including, but not limited to: (a) a signed receipt for the FRANCHISOR'S Uniform Franchise Offering Circular as provided for in ARTICLE 23(D); (b) an application for a franchise agreement completed and signed by the FRANCHISEE; (c) all financial information required under ARTICLE 4(E) or elsewhere in this AGREEMENT; (d) the full Initial Fee; (e) a copy of this AGREEMENT and the Personal Guaranty signed by FRANCHISEE and all of its partners, members, shareholders and other owners, as well as by the Personal Guarantor; (f) any and all site approvals, feasibility studies, architect and contractor resumes, approved plans, and accepted contractor's bids that are required under ARTICLE 19 of this AGREEMENT; (g) any organizational documents requested under ARTICLE 17 of this AGREEMENT; and (h) any certificates of insurance required under ARTICLE 15 of this AGREEMENT; and (8) the FRANCHISEE'S Manager and other personnel must have satisfactorily completed all training required by the FRANCHISOR as outlined in ARTICLE 12.

## ARTICLE 20: ENFORCEMENT

(A) **Injunctive Relief.** The FRANCHISOR has the right to petition a Court of competent jurisdiction for the entry of temporary and permanent injunctions and orders of specific performance restraining violations and threatened violations of the terms and conditions of this AGREEMENT and/or enforcing the terms and conditions of this AGREEMENT, including, but not limited to, the terms and conditions of this AGREEMENT relating to: (1) the FRANCHISEE'S improper use of the Marks and/or the Business System; (2) the obligations of the FRANCHISEE upon termination or expiration of this AGREEMENT; (3) the sale, assignment or other transfer of this AGREEMENT, the Business Assets or shares of capital stock, partnership interests, membership interests or other ownership interests of the FRANCHISEE; (4) requiring the FRANCHISEE to exhibit the approved AmericInn® Sign during the term of this AGREEMENT and requiring the FRANCHISEE to remove the Sign upon the termination or expiration of this AGREEMENT; and (5) any act or omission by the FRANCHISEE or the FRANCHISEE'S employees that, (a) constitutes a violation of any applicable law, ordinance or regulation, (b) is dishonest or misleading to customers of the FRANCHISEE'S AmericInn or other AmericInns, (c) constitutes a danger to the employees, public or customers of the FRANCHISEE'S AmericInn, or (d) may impair the goodwill associated with the Marks and/or the Business System. In addition, notwithstanding any provision of ARTICLE 10 of this AGREEMENT to the contrary, if the FRANCHISEE gives the FRANCHISOR any notice of any alleged breach or



violation of this AGREEMENT or of any laws that give rise to a claim for damages or the termination of this AGREEMENT in favor of the FRANCHISEE, then the FRANCHISOR will have the right to immediately commence legal action seeking to enjoin and prevent the FRANCHISEE from terminating this AGREEMENT without regard to any waiting period that may be contained in this AGREEMENT. Upon issuance of such injunctive relief against the FRANCHISEE, the FRANCHISEE will not have the right to terminate this AGREEMENT as provided herein unless and until a Court of competent jurisdiction has ruled on the merits that the FRANCHISOR has breached this AGREEMENT in the manner alleged by the FRANCHISEE, and then only if the FRANCHISOR fails to correct the breach determined by the Court within thirty (30) days after a final judgment has been entered against the FRANCHISOR and all time for appeals by the FRANCHISOR expired. The FRANCHISOR shall be entitled to obtain any such injunctive relief without the posting of any bond or other security in such action.

(B) **Waiver.** The FRANCHISOR and the FRANCHISEE may, by written instrument signed by the FRANCHISOR and the FRANCHISEE, waive any obligation of or restriction upon the other under this AGREEMENT. Acceptance by the FRANCHISOR of any payment by the FRANCHISEE and the failure, refusal or neglect of the FRANCHISOR to exercise any right under this AGREEMENT or to insist upon full compliance by the FRANCHISEE of any of its obligations hereunder will not constitute a waiver by the FRANCHISOR of any provision of this AGREEMENT. The FRANCHISEE must give the FRANCHISOR prompt written notice of an alleged breach or violation of this AGREEMENT after the FRANCHISEE has knowledge of, determines, or is of the opinion that there has been an alleged breach or violation of this AGREEMENT by the FRANCHISOR. If the FRANCHISEE fails to give written notice to the FRANCHISOR of an alleged breach or violation of this AGREEMENT within one (1) year from the date that the FRANCHISEE has knowledge of, determines or is of the opinion that there has been an alleged breach or violation by the FRANCHISOR, then the alleged breach or violation will be deemed to be condoned, approved and waived by the FRANCHISEE, and the alleged breach or violation will not be deemed to be a breach or violation of this AGREEMENT by the FRANCHISOR, and the FRANCHISEE will be barred from commencing any action or asserting any claim against the FRANCHISOR for that alleged breach or violation.

(C) **Payments To Franchisor.** The FRANCHISEE will not for any reason withhold payment of any Continuing Fees, Marketing Fees or any other payments due to the FRANCHISOR pursuant to this AGREEMENT or otherwise. The FRANCHISEE will not have the right to "offset" any liquidated or unliquidated amounts allegedly due to the FRANCHISEE from the FRANCHISOR against the Continuing Fees, Marketing Fees or any other payment due to the FRANCHISOR pursuant to this AGREEMENT or otherwise. Consequently, the FRANCHISEE will timely pay all such amounts due to the FRANCHISOR regardless of any claims that the FRANCHISEE may allege against the FRANCHISOR.

(D) **Effect Of Wrongful Termination.** If the FRANCHISOR or the FRANCHISEE takes any action to terminate this AGREEMENT or to convert the FRANCHISEE'S AmericInn to another business without first complying with the terms

and conditions (including written notice and opportunity to cure provisions) of ARTICLE 9 or 10 hereof, as applicable, then such action will not relieve either party of, or release either party from, any of its obligations under this AGREEMENT, and the terms and conditions of this AGREEMENT will remain in full force and effect until such time as this AGREEMENT expires or is terminated in accordance with the provisions of this AGREEMENT and applicable law. If this AGREEMENT is terminated by the FRANCHISOR pursuant to ARTICLE 9, or if the FRANCHISEE breaches this AGREEMENT by attempting to terminate this AGREEMENT other than in full compliance with the terms and conditions of ARTICLE 10 hereof, then unless the FRANCHISEE pays FRANCHISOR upon demand the Liquidated Damages provided for in ARTICLE 9(F) hereof, the FRANCHISOR will be entitled to seek recovery from the FRANCHISEE and the Personal Guarantors of all damages that the FRANCHISOR has sustained and will sustain in the future as a result of the FRANCHISEE'S breach of this AGREEMENT, taking into consideration the Continuing Fees and Marketing Fees that would have been payable by the FRANCHISEE to the FRANCHISOR for what would have been the remaining term of this AGREEMENT.

(E) **Cumulative Rights.** The rights and remedies of the FRANCHISOR hereunder are cumulative and no exercise or enforcement by the FRANCHISOR of any right or remedy hereunder will preclude the exercise or enforcement by the FRANCHISOR of any other right or remedy hereunder or which the FRANCHISOR is entitled by law to enforce.

(F) **Venue And Jurisdiction.** Unless provided by this AGREEMENT or applicable law to the contrary, all litigation and other proceedings initiated by either party against the other party for any matter or cause whatsoever will be venued exclusively in Hennepin County, Minnesota. The FRANCHISEE, each of its officers, managers, directors, governors, shareholders, partners and/or members and the Personal Guarantors do hereby agree and submit to personal jurisdiction in the State of Minnesota for the purposes of any suit, proceedings or hearing brought to enforce or construe the terms of this AGREEMENT or to resolve any dispute or controversy between the parties, including any disputes or controversies, arising under, as a result of, or in connection with this AGREEMENT, the FRANCHISED LOCATION or the FRANCHISEE'S AmericInn and do hereby agree and stipulate that any such suits, proceedings and hearings will be venued and held exclusively in Hennepin County, Minnesota.

(G) **Binding Agreement.** This AGREEMENT is binding upon the parties hereto and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest, but nothing in this AGREEMENT is to be construed as an authorization or right of FRANCHISEE to assign, license, franchise or otherwise transfer its rights or delegate its duties under this AGREEMENT except as expressly permitted in ARTICLE 18 hereof.

(H) **Entire Agreement.** This AGREEMENT supersedes and terminates all prior agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof. The recitals are a part of this AGREEMENT, which constitutes

the entire agreement of the parties, and there are no other oral or written representations, inducements, promises, understandings or agreements between the FRANCHISOR and the FRANCHISEE relating to the subject matter of this AGREEMENT.

(I) **Headings; Terms.** The headings of the ARTICLES are for convenience only and do not define, limit or construe the contents of such ARTICLES. The term "FRANCHISEE" as used herein is applicable to one or more persons, a corporation, partnership, limited liability company or other entity, as the case may be, and the singular usage includes the plural, the masculine usage includes the neuter and the feminine, and the neuter usage includes the masculine and the feminine. References to "FRANCHISEE," "assignee" and "transferee" which are applicable to an individual or individuals will mean the principal owner or owners of the equity or operating control of the FRANCHISEE or any such assignee or transferee if FRANCHISEE or such assignee or transferee is a corporation, partnership, limited liability company or other entity.

(J) **Collection Costs.** The FRANCHISEE shall reimburse the FRANCHISOR for any and all costs and expenses, including, but not limited to, reasonable attorneys' fees, expert witness fees, costs of investigation, court costs, disbursements of counsel, and travel and living expenses, reasonably incurred by the FRANCHISOR in collecting any amount due and payable by FRANCHISEE to FRANCHISOR under this AGREEMENT or otherwise, in enforcing the terms and conditions of this AGREEMENT and/or in pursuing any of its rights and remedies; including, but not limited to, any and all such costs and expenses incurred by the FRANCHISOR in (1) collecting any unpaid and past due Continuing Fees and/or Marketing Fees from FRANCHISEE and/or (2) seeking equitable relief against the FRANCHISEE, including orders of specific performance enforcing the terms and conditions of this AGREEMENT and/or temporary and/or permanent injunctions enjoining violations of the terms and conditions of this AGREEMENT.

(K) **Interest.** Any amounts payable by FRANCHISEE to FRANCHISOR, including, but not limited to, amounts payable by FRANCHISEE to FRANCHISOR under this AGREEMENT, shall bear interest from the date it is due and until paid in full at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law in the state in which the FRANCHISEE'S AmericInn is located.

(L) **Joint And Several Liability.** If the FRANCHISEE consists of more than one individual, then the liability of all such individuals under this AGREEMENT will be deemed to be joint and several.

(M) **No Oral Modifications.** No oral modification, change, addition, rescission, release, amendment or waiver of this AGREEMENT and no approval, consent or authorization required by any provision of this AGREEMENT may be made except by a written agreement subscribed to by a duly authorized manager, officer, governor, director or partner of the FRANCHISEE and the president or other duly authorized manager of the FRANCHISOR.

(N) **Counterparts.** This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

(O) **Parties In Interest.** Nothing expressed or implied in this AGREEMENT is intended or shall be construed to confer any rights or remedies under or by reason of this AGREEMENT upon any person or entity other than FRANCHISOR and FRANCHISEE and their respective heirs, personal representatives, successors and permitted assigns. Nothing in this AGREEMENT is intended to relieve or discharge debts, liabilities or obligations of any third person or entity to FRANCHISOR or FRANCHISEE.

(P) **Punitive Damages.** FRANCHISOR and FRANCHISEE hereby waive to the fullest extent permitted by law any right to or claim of punitive or exemplary damages against the other and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it. FRANCHISEE acknowledges and agrees that FRANCHISEE shall not seek to litigate as a member or representative of, or on behalf of, any class of persons or entities, or any other person or entity, any dispute, controversy, or claim arising out of or related to this AGREEMENT of any breach hereof.

#### ARTICLE 21: NOTICES

All notices to the FRANCHISOR will be in writing and will be made by personal service upon a manager or governor of the FRANCHISOR or sent by prepaid registered or certified United States mail addressed to the Chief Executive Officer of the FRANCHISOR at 250 Lake Drive East, Chanhassen, Minnesota 55317 or such other place as the FRANCHISOR may designate. All notices to the FRANCHISEE, unless otherwise provided in this AGREEMENT, will (i) be by personal service upon the FRANCHISEE (or, if applicable, upon an officer, manager, director, governor or partner of the FRANCHISEE) (ii) be sent by prepaid registered or certified United States mail addressed to the FRANCHISEE at the FRANCHISED LOCATION, or such other address as the FRANCHISEE may designate in writing, or (iii) be given in such manner as the FRANCHISOR may determine in its sole discretion to be reasonably likely to be received by the intended recipient. Notices delivered by a recognized delivery service that requires written receipt will be deemed to have been personally served under this AGREEMENT.

#### ARTICLE 22: GOVERNING LAW; STATE MODIFICATIONS

(A) **Governing Law; Severability.** Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. § 1051 et seq.), this AGREEMENT and the relationship between the parties will be governed by the laws of the state in which the FRANCHISED LOCATION is located. All provisions of this AGREEMENT are severable and this AGREEMENT will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein and

partially valid and unenforceable provisions will be enforced to the extent valid and enforceable. If any applicable law or rule of any relevant jurisdiction requires a greater prior notice of the termination of or refusal to renew this AGREEMENT than is required hereunder or the taking of some other action not required hereunder, or if under any applicable law or rule of any relevant jurisdiction, any provision of this AGREEMENT or any specification, standard or operating procedure prescribed by the FRANCHISOR is invalid or unenforceable, the prior notice or other action required by such law or rule will be substituted for the notice requirements hereof, or such invalid or unenforceable provision, specification, standard or operating procedure will be modified to the minimum extent required to be valid and enforceable. Such modifications to this AGREEMENT will be effective only in such jurisdiction and will be enforced as originally made and entered into in all other jurisdictions. All other provisions of this AGREEMENT shall be enforceable as originally made and entered into upon the execution of this AGREEMENT by the FRANCHISOR and the FRANCHISEE.

(B) **State Modifications.** If, pursuant to ARTICLE 22(A) or otherwise, this AGREEMENT is governed by the laws of any one of the states indicated below in this ARTICLE 22(B), then the designated provisions of this AGREEMENT shall be amended and revised as follows:

(1) **California.** If this AGREEMENT is governed by the laws of the State of California, then California Civil Code Section 1671 restricts or prohibits the imposition of liquidated damages.

(2) **Illinois.** If this AGREEMENT is governed by the laws of the State of Illinois, then: (a) the acknowledgments contained in the second and third sentences of ARTICLE 23(A), the first clause of ARTICLE 23(B) and ARTICLE 23(D) will be unenforceable against the FRANCHISEE, (b) the waiver provided for in the last sentence of ARTICLE 20(B) is void to the extent it purports to waive compliance with any provision of the Franchise Disclosure Act of 1987 or any other law of the State of Illinois, (c) the integration clause contained in ARTICLE 20(H) shall not apply to representations made or understandings communicated via the FRANCHISOR'S Uniform Franchise Offering Circular (UFOC), and (d) the designation of jurisdiction and venue in Hennepin County, Minnesota contained in ARTICLE 20(F) shall not be applicable if the FRANCHISED LOCATION is located in State of Illinois; provided, however, that the inapplicability of this provision in Illinois shall not be construed to mean that venue in Hennepin County, Minnesota is improper, or that the FRANCHISEE, its officers, directors and shareholders, and the Personal Guarantors are not subject to personal jurisdiction in the State of Minnesota.

(3) **Indiana.** If this AGREEMENT is governed by the laws of the State of Indiana, then: (a) the general release described in ARTICLE 18(D)(8) shall not be applicable if the FRANCHISEE or the FRANCHISED LOCATION is located in the State of Indiana; (b) the designation of jurisdiction and venue in Hennepin County, Minnesota contained in ARTICLE 20(F) shall not be applicable if the FRANCHISEE or the FRANCHISED LOCATION is located in the State of

Indiana; provided, however, that the inapplicability of this provision shall not be construed to mean that venue in Hennepin County, Minnesota is improper, or that the FRANCHISEE, its officers, directors and shareholders, and the Personal Guarantors are not subject to personal jurisdiction in the State of Minnesota; (c) notwithstanding any provisions of this AGREEMENT to the contrary, a court of competent jurisdiction will determine whether the FRANCHISOR will be required to post bond or other security, and the amount of such bond or other security, in any injunctive proceeding commenced by the FRANCHISOR against the FRANCHISEE, the FRANCHISEE'S shareholders, partners or members or the Personal Guarantors; (d) notwithstanding the provisions of ARTICLE 20(H) of this Agreement to the contrary, if the FRANCHISEE or the FRANCHISED LOCATION is located in the State of Indiana, then the FRANCHISOR'S Uniform Franchise Offering Circular for use in the State of Indiana delivered to FRANCHISEE together with this AGREEMENT shall constitute the entire agreement of the parties hereto regarding the subject matter hereof and the representations, inducements, promises or agreements set forth in such offering circular shall be enforceable against FRANCHISOR; (e) the provisions of Indiana Code Sections 23-2-2.5-30 and 23-2-2.7-7 shall supercede any conflicting provisions of ARTICLE 20(B) of this AGREEMENT regarding limitations on when the FRANCHISEE may maintain an action against the FRANCHISOR; (f) notwithstanding the provisions of ARTICLE 16(B) of this AGREEMENT to the contrary, the FRANCHISEE shall not be required to indemnify the FRANCHISOR against liability incurred by the FRANCHISOR in defending claims asserted against it by third parties which arise out of the operation of the FRANCHISEE'S American if such liability was caused by the FRANCHISOR'S negligence or the FRANCHISEE'S proper reliance on or use of procedures or materials provided by the FRANCHISOR; (g) the provisions of Indiana Code Section 23-2-2.7-1(10) shall supersede any conflicting provisions of ARTICLE 20(P) of this AGREEMENT regarding waivers of claims for punitive or exemplary damages and limitations on participating in class action suits; (h) the provisions of Indiana Code Section 23-20-2.7-1(10) shall supersede any conflicting provisions of ARTICLE 9(F) regarding liquidated damages; and (i) the provisions of Indiana Code Section 23-2-2.5 and 23-2-2.7 shall supersede any conflicting provisions of this AGREEMENT.

(4) **Iowa.** If this AGREEMENT is governed by the laws of the State of Iowa, then the provisions of Iowa's Relationship Laws, Iowa Stat. Chapter 4150, will supersede any conflicting terms of this AGREEMENT.

(5) **Minnesota.** If this AGREEMENT is governed by the laws of the State of Minnesota, then: (a) ARTICLE 2 of this AGREEMENT will be amended to provide that, except in certain circumstances specified by law, the FRANCHISOR must provide the FRANCHISEE with at least one hundred eighty (180) days prior written notice of nonrenewal of this AGREEMENT; (b) ARTICLE 9(B) will be amended to require that, except as set forth in ARTICLE 9 (D) and (E), in the event the FRANCHISOR provides the FRANCHISEE with written notice that the FRANCHISEE has breached this AGREEMENT, such written

notice will be provided to the FRANCHISEE at least ninety (90) days prior to the date this AGREEMENT is terminated by the FRANCHISOR, and the FRANCHISEE will have sixty (60) days after receipt of such written notice within which to correct the breach specified in the written notice; notwithstanding any provisions of this AGREEMENT to the contrary, a Court of competent jurisdiction will determine whether the FRANCHISOR will be required to post bond or other security, and the amount of such bond or other security, in any injunctive proceeding commenced by the FRANCHISOR against the FRANCHISEE, the FRANCHISEE'S shareholders, partners or members or the Personal Guarantors; and (d) ARTICLE 9(F) which requires the FRANCHISEE to pay liquidated damages in certain circumstances is subject to Minnesota Rules § 2860.4400(J) and may not be enforceable.

(6) **New York.** If this Agreement is governed by the laws of the State of New York, then clause (8) of ARTICLE 18(D) of this AGREEMENT shall be amended to read in its entirety as follows:

"(8) except to the extent prohibited by applicable law, the FRANCHISEE and the Personal Guarantors must execute a general release in such form as FRANCHISOR may require releasing and waiving any and all claims which FRANCHISEE and/or the Personal Guarantors may have against FRANCHISOR, its members, managers, governors, employees, agents and affiliates; provided, however, that all rights arising in FRANCHISEE'S favor from the provisions of Article 33 of the GBL of the State of New York and the regulations issued thereunder shall remain in force, it being the intent of this proviso that the non-waiver provisions of GBL, Sections 687.4 and 687.5 be satisfied."

(7) **North Dakota.** If this AGREEMENT is governed by the laws of the State of North Dakota, then: (a) ARTICLE 9(B) of this AGREEMENT will be amended to require that, if the FRANCHISOR gives the FRANCHISEE written notice that the FRANCHISEE is delinquent in the payment of any fees or other payments payable to the FRANCHISOR, the FRANCHISEE will have thirty (30) days after receipt of such written notice within which to correct the breach by making full payment (including interest as provided for herein) to the FRANCHISOR; (b) the consent by the FRANCHISEE to jurisdiction and venue in Hennepin County, Minnesota contained in ARTICLE 20(F) may be inapplicable; provided, however, that such inapplicability in the State of North Dakota will not be construed to mean that venue in Hennepin County, Minnesota is improper, or that the FRANCHISEE, its officers, directors, shareholders, partners and/or members and the Personal Guarantors are not subject to jurisdiction in Hennepin County, Minnesota, or in any other state; (c) ARTICLE 20(J) of this AGREEMENT may only require the FRANCHISEE to reimburse the FRANCHISOR for the costs and expenses, including, but not limited to, attorneys' fees, expert witness fees, costs of investigation, court costs, disbursements of counsel and travel and living expenses, reasonably incurred by

FRANCHISOR in enforcing the terms and conditions of this AGREEMENT and/or in pursuing any of its rights and remedies, if the FRANCHISOR is the prevailing party in the action or proceeding brought for such purpose; (d) the waiver of punitive and exemplary damages contained in ARTICLE 20(P) of this AGREEMENT may be unenforceable; and (e) ARTICLE 9(F) which requires the FRANCHISEE to pay liquidated damages in certain circumstances may not be enforceable.

(8) **South Dakota.** If the FRANCHISED LOCATION is located in the State of South Dakota, then the FRANCHISOR and FRANCHISEE mutually agree: (a) that out of the Initial Fee payable by the FRANCHISEE to the FRANCHISOR pursuant to ARTICLE 4(A) hereof, the sum of Two Thousand and No/100 Dollars (\$2,000.00) is being paid in exchange for services and/or tangible personal property which is/are subject to sales tax in the State of South Dakota (the "Taxable Fee Portion"); (b) the FRANCHISOR shall deduct the South Dakota State sales tax on the Taxable Fee Portion from the Taxable Fee Portion; (c) an amount equal to ten percent (10%) of the Continuing Fees to be paid by the FRANCHISEE to the FRANCHISOR pursuant to ARTICLE 5(A) hereof are being paid to the FRANCHISOR in exchange for services and/or tangible personal property which is/are subject to sales tax in the State of South Dakota (the "Taxable Royalty Portion"); (d) that the FRANCHISEE shall pay to the FRANCHISOR with the monthly Continuing Fees payable by the FRANCHISEE under this AGREEMENT an incremental amount equal to the South Dakota State sales tax on the Taxable Royalty Portion; (e) that the South Dakota State sales tax applicable to the Taxable Royalty Portion may not be deducted by the FRANCHISEE from or offset against the monthly Continuing Fees payable by the FRANCHISEE to the FRANCHISOR hereunder; and (f) the FRANCHISOR shall report the Taxable Fee Portion and Taxable Royalty Portion and remit the South Dakota State sales tax thereon to the South Dakota Department of Revenue.

(9) **Washington.** If this AGREEMENT is governed by the laws of the State of Washington, then: (a) the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall supersede any conflicting terms of this AGREEMENT, (b) a release or waiver of rights executed by FRANCHISEE shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after this AGREEMENT is in effect and where the parties are represented by independent counsel; (c) provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Washington Franchise Investment Protection Act, or rights or remedies under such Act such as a right to a jury trial may not be enforceable, (d) transfer fees are collectable only to the extent that they reflect the FRANCHISOR'S reasonable estimated or actual costs in effecting a transfer, (e) pursuant to Section 5826.06, the imposition of liquidated damages is restricted by fair practice laws, contract law and state and federal court decisions, (f) the provisions of the Washington Franchise Investment Protection Act may supersede this AGREEMENT in the areas of termination and renewal of this



AGREEMENT, and (g) in any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the State of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

(10) **Wisconsin.** If this AGREEMENT is governed by the laws of the State of Wisconsin, then the provisions of the Wisconsin Fair Dealership Law, Wis. Stat. Chapter 135, will supersede any conflicting terms of this AGREEMENT.

## ARTICLE 23: ACKNOWLEDGMENTS

(A) **Business Risks; No Financial Projections.** The FRANCHISEE acknowledges that it has conducted an independent investigation of the AmericInn business franchised hereunder, and recognizes that the business venture contemplated by this AGREEMENT involves business and economic risks and that the financial and business success of its AmericInn will be primarily dependent upon the personal efforts of the FRANCHISEE, its management and its employees. The FRANCHISOR expressly disclaims making, and the FRANCHISEE acknowledges that it has not received, any express or implied estimates, projections, representations, warranties or guaranties, express or implied, regarding the actual or potential sales, Gross Revenues, profits, income, earnings, business, financial success, or value of the FRANCHISEE'S AmericInn (hereinafter referred to as "representations or warranties"), except as may be set forth in the FRANCHISOR'S Uniform Franchise Offering Circular, a copy of which has delivered to and received by the FRANCHISEE together with this AGREEMENT. The FRANCHISEE further acknowledges that if it had received such representations or warranties (including any sales, earnings or profits representations not contained in such Uniform Franchise Offering Circular), it would not have executed this AGREEMENT and that it would have: (1) promptly notified the Chief Executive Officer of the FRANCHISOR in writing of the person or persons making such representations or warranties; and (2) provided to the FRANCHISOR a specific written statement detailing the representations or warranties that were made.

(B) **No Income Or Refund Warranties.** The FRANCHISEE acknowledges that: (1) the FRANCHISOR does not warrant or guarantee that the FRANCHISEE will derive income or profit from the FRANCHISEE'S AmericInn; and (2) the FRANCHISOR will not refund all or any part of the price paid for the FRANCHISEE'S AmericInn or repurchase any of the furniture, fixtures, products, equipment, supplies or chattels supplied by the FRANCHISOR or an approved supplier if the FRANCHISEE is unsatisfied with its AmericInn.

(C) **Other Franchises.** The FRANCHISEE acknowledges that other franchisees of the FRANCHISOR have or will be granted franchises at different times and in different situations, and further acknowledges that the terms and conditions of such franchises may vary materially in form and in substance from those contained in this AGREEMENT, and FRANCHISEE is not entitled to rely upon any provision of any

such other agreement, whether to establish a course of dealing, waiver, estoppel or for any other purpose.

(D) **Receipt Of Agreement And Uniform Franchise Offering Circular.** The FRANCHISEE acknowledges that it received, read and understood a copy of this AGREEMENT, the documents referred to herein, and all Attachments hereto, with all material blanks fully completed at least five (5) business days prior to the date that this AGREEMENT was executed. The FRANCHISEE further acknowledges that it has received an AmericInn® Uniform Franchise Offering Circular at the earlier of its first personal meeting with the FRANCHISOR, at least ten (10) business days prior to the date of any payment to the FRANCHISOR, or at least ten (10) business days prior to the date on which this AGREEMENT was executed by the FRANCHISEE.

(E) **Legal Representation.** The FRANCHISEE acknowledges that this AGREEMENT constitutes a legal document which grants certain rights to and imposes certain obligations upon the FRANCHISEE. The FRANCHISEE acknowledges that the FRANCHISOR recommended to the FRANCHISEE that the FRANCHISEE should consult an attorney or other advisor prior to the execution of this AGREEMENT to review the AmericInn® Uniform Franchise Offering Circular and this AGREEMENT in detail, to review the potential economic benefits, operations and other business aspects of the AmericInn business, to determine compliance with franchising and other applicable laws, and to advise the FRANCHISEE regarding its economic risks, liabilities, obligations and rights under this AGREEMENT.

IN WITNESS WHEREOF, the FRANCHISOR, the FRANCHISEE and the shareholders, partners, members or other owners of the FRANCHISEE have respectively signed this AGREEMENT as of the Effective Date.

**FRANCHISOR:**

AMERICINN INTERNATIONAL, LLC

By \_\_\_\_\_  
Its \_\_\_\_\_

**FRANCHISEE:**

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

The undersigned shareholders, partners, members or other owners of the FRANCHISEE hereby agree to be bound by the terms and conditions of this FRANCHISE AGREEMENT.

**Shareholders, Partners, Members or  
Other Owners of Franchisee**

**Percentage of  
Ownership**

_____	_____
_____	_____
_____	_____
_____	_____

**PERSONAL GUARANTY AND AGREEMENT TO BE BOUND PERSONALLY  
BY THE TERMS AND CONDITIONS OF THE FRANCHISE AGREEMENT**

In consideration of the execution of this FRANCHISE AGREEMENT by the FRANCHISOR, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, for themselves, their heirs, personal representatives, successors and assigns, do jointly and severally hereby guaranty the payment and performance of all of the FRANCHISEE'S debts, liabilities and obligations to FRANCHISOR, including, but not limited to, the payment and performance of all of the FRANCHISEE'S debts, liabilities and obligations under this FRANCHISE AGREEMENT.

Further, the undersigned, jointly and severally, hereby agree to be personally bound by each and every condition and term contained in this FRANCHISE AGREEMENT and agree that this PERSONAL GUARANTY should be construed as though the undersigned and each of them executed a FRANCHISE AGREEMENT containing the identical terms and conditions of this FRANCHISE AGREEMENT.

If any default should at any time be made by the FRANCHISEE under this FRANCHISE AGREEMENT, then the undersigned, their heirs, personal representatives, successors and assigns, do hereby, jointly and severally, promise and agree to pay to FRANCHISOR all monies due and payable to the FRANCHISOR under the terms and conditions of this FRANCHISE AGREEMENT as well as all damages sustained and to be sustained by FRANCHISOR as a result of such breach.

In addition, if the FRANCHISEE fails to comply with any other terms and conditions of this FRANCHISE AGREEMENT, then the undersigned, their heirs, personal representatives, successors and assigns, do hereby, jointly and severally, promise and agree to comply with the terms and conditions of this FRANCHISE AGREEMENT for and on behalf of the FRANCHISEE.

In addition, should the FRANCHISEE at any time be in default on any obligation to pay monies to the FRANCHISOR or any subsidiary or affiliate of the FRANCHISOR, whether for products, supplies, furniture, fixtures, equipment or other goods purchased by the FRANCHISEE from the FRANCHISOR, or any subsidiary or affiliate of the FRANCHISOR, or for any other indebtedness of the FRANCHISEE to the FRANCHISOR, or any subsidiary or affiliate of the FRANCHISOR, then the undersigned, their heirs, personal representatives, successors and assigns, do hereby jointly and severally promise and agree to pay all such monies due and payable from the FRANCHISEE to the FRANCHISOR, or any subsidiary or affiliate of the FRANCHISOR upon default by the FRANCHISEE.

The liability of the undersigned shall not be affected or impaired by any of the following acts or things (which the FRANCHISOR is expressly authorized to do, omit or suffer from time to time, without notice to or approval by the undersigned): (i) any

waiver or indulgence granted by FRANCHISOR to FRANCHISEE, (ii) any delay or lack of diligence on the part of the FRANCHISOR in the enforcement of the FRANCHISE AGREEMENT, (iii) any failure by the FRANCHISOR to institute proceedings, file a claim, give any required notice or otherwise to enforce its rights under the FRANCHISE AGREEMENT, (iv) any modification or amendment of the FRANCHISE AGREEMENT, and/or (v) any full or partial release of, settlement with, or agreement not to sue, the FRANCHISEE or any other guarantor or other person liable under the FRANCHISE AGREEMENT.

The foregoing provisions of this PERSONAL GUARANTY notwithstanding, it is understood and agreed that the joint and several liability of each of the undersigned (if more than one), and that the aggregate joint and several liability of all of the undersigned (if more than one), arising from obligations of the FRANCHISEE referable to this FRANCHISE AGREEMENT, shall be limited to a principal amount of \$250,000 plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto; provided, however, that any payment by any of the undersigned pursuant to this PERSONAL GUARANTY will be effective to reduce or discharge his or her liability pursuant to this PERSONAL GUARANTY only if accompanied by written notice to the FRANCHISOR advising that such payment is made pursuant to this PERSONAL GUARANTY for such purpose. The undersigned jointly and severally agree to reimburse the FRANCHISOR for all costs and expenses, including reasonable attorney's fees incurred by the FRANCHISOR in enforcing the terms and conditions of this FRANCHISE AGREEMENT, including this PERSONAL GUARANTY, and in pursuing its rights and remedies thereunder and hereunder.

This PERSONAL GUARANTY may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

It is further understood and agreed by the undersigned that the provisions, covenants and conditions of this PERSONAL GUARANTY will inure to the benefit of the successors and assigns of the FRANCHISOR.

## PERSONAL GUARANTORS

\_\_\_\_\_  
Signature

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Signature

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**ATTACHMENT 1**

AmericInn International, LLC  
250 Lake Drive East  
Chanhassen, MN 55317  
Attention: Vice President – Construction

Re: AmericInn® Lodging Property to be Constructed in \_\_\_\_\_,  
\_\_\_\_\_

Dear Sir or Madam:

The undersigned has been engaged by \_\_\_\_\_ (the "Franchisee") to prepare detailed building plans and specifications, including, but not limited to, site plans, civil engineering plans and structural, mechanical and electrical plans (collectively the "Detailed Plans") for the AmericInn® lodging property to be developed and constructed by the Franchisee in \_\_\_\_\_. The undersigned acknowledges that Article 19(C) of the Franchise Agreement between AmericInn International, LLC, a Minnesota limited liability company (the "Franchisor"), and the Franchisee provides that the Franchisor will not review or approve the Detailed Plans unless and until the undersigned provides the following certification regarding the compliance of the Detailed Plans with the Americans with Disabilities Act of 1990 (the "ADA") and other applicable laws.

Therefore, the undersigned hereby represents, warrants and certifies to the Franchisor that the undersigned has used professionally reasonable efforts to assure that the Detailed Plans conform to and comply with the ADA, including the ADA Standards for Accessible Design, as well as with all other related or similar federal, state or local laws, codes and regulations in effect as of the date hereof.

[ARCHITECT OR ENGINEER FIRM]

Signed: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Dated: \_\_\_\_\_



**ATTACHMENT 2**

AmericInn International, LLC  
250 Lake Drive East  
Chanhassen, MN 55317  
Attention: Vice President – Construction

Re: AmericInn® Lodging Property to be Constructed in \_\_\_\_\_,  
\_\_\_\_\_

Dear Sir or Madam:

The undersigned has been engaged by \_\_\_\_\_ (the "Franchisee") to construct the AmericInn® lodging property to be developed and constructed by the Franchisee in \_\_\_\_\_, \_\_\_\_\_ (the "AmericInn"). The undersigned acknowledges that Article 19(C) of the Franchise Agreement between AmericInn International, LLC, a Minnesota limited liability company (the "Franchisor"), and the Franchisee provides that the Franchisor will not permit the Franchisee to open its AmericInn for business unless and until the undersigned provides the following certification regarding the compliance of the AmericInn with the Americans with Disabilities Act of 1990 (the "ADA") and other applicable laws.

Therefore, the undersigned hereby represents, warrants and certifies to the Franchisor that the undersigned has used professionally reasonable efforts to assure that the AmericInn has been constructed in conformance to and in compliance with the ADA, including the ADA Standards for Accessible Design, as well as with all other related or similar federal, state or local laws, codes and regulations in effect as of the date hereof.

[CONTRACTOR FIRM]

Signed: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Dated: \_\_\_\_\_