

EXHIBIT A

FRANCHISE AGREEMENT

between

HUHOT MONGOLIAN GRILLS, LLC

AND

FRANCHISEE: \_\_\_\_\_

DATED: \_\_\_\_\_

LOCATION OF RESTAURANT: \_\_\_\_\_

## TABLE OF CONTENTS

	<u>Page</u>
1. Grant of Franchise .....	A-2
a. Grant .....	A-2
b. Restrictions Upon Franchisee’s Channels of Distribution.....	A-2
c. Rights Reserved by Franchise.....	A-2
d. Franchisee’s Protected Area .....	A-2
e. Corporation, Limited Liability Company or Partnership.....	A-2
2. Term and Grant of a Successor Franchise .....	A-3
a. Term .....	A-3
b. Grant of a Successor Franchise.....	A-3
3. Location and Development of Restaurant .....	A-4
a. Location and Lease .....	A-4
b. Restaurant Development.....	A-5
c. Equipment, Fixtures, Furnishings and Signs .....	A-5
d. Point of Purchase Software System (“POS System”).....	A-6
e. Restaurant Refurbishing .....	A-6
f. Restaurant Opening.....	A-6
g. Relocation of Restaurant.....	A-7
4. Training and Guidance.....	A-8
a. Training.....	A-8
b. Guidance and Assistance .....	A-8
c. Operations Manual.....	A-8

	d.	Delegation of Performance .....	A-9
5.		Marks .....	A-9
	a.	Ownership and Goodwill of Marks .....	A-9
	b.	Limitations on Use of Marks .....	A-9
	c.	Notification of Infringements and Claims .....	A-10
	d.	Discontinuance of Use of Marks .....	A-10
	e.	Indemnification of Franchisee .....	A-10
6.		Proprietary Information .....	A-10
	a.	The Proprietary Information .....	A-10
	b.	Limitations on Franchisee’s Use.....	A-11
	c.	Innovations.....	A-12
7.		Relationship of the Parties .....	A-12
	a.	Independent Contractors .....	A-12
	b.	Franchisee’s Obligations.....	A-12
	c.	Negation of Liability.....	A-12
	d.	Indemnification.....	A-13
	e.	Survival.....	A-13
8.		Franchise and Other Fees.....	A-13
	a.	Initial Franchise Fee.....	A-13
	b.	Royalty Fee .....	A-13
	c.	Definition of “Gross Revenues” .....	A-13
	d.	Interest on Late Payments.....	A-14
	e.	Application of Payments.....	A-14

9.	Operating Standards.....	A-14
	a. Image of the Restaurant .....	A-14
	b. Standards and Sources of Supplies .....	A-14
	c. Operating Procedures.....	A-15
	d. Compliance with Laws and Good Business Practices .....	A-16
	e. Management and Personnel of the Business.....	A-16
	f. Exclusive Relationship .....	A-17
	g. Insurance .....	A-17
	h. Participation in System-wide Internet Web Site.....	A-18
	i. Cooperation in Displaying Franchisor’s Franchise Literature.....	A-18
	j. Variation of System Standards .....	A-18
10.	Marketing and Promotion .....	A-18
	a. By Franchisor.....	A-18
	b. By Franchisee .....	A-20
11.	Records and Reports .....	A-20
	a. Accounting and Records.....	A-20
	b. Reports and Tax Returns.....	A-21
	i. Furnished to Franchisor .....	A-21
	ii. Availability for Inspection.....	A-21
	c. Use of Data, Name, Photograph and Biographic Information.....	A-21
12.	Inspections and Audits.....	A-21
	a. Examinations of Books and Records .....	A-21
	i. Franchisor’s Right to Examine and Audit .....	A-21

	ii. Audit Fees.....	A-22
b.	Inspection of the Restaurant .....	A-22
13.	Late Filing Fee .....	A-22
14.	Transfer .....	A-23
	a. By Franchisor.....	A-23
	b. By Franchisee .....	A-23
	i. Franchisee May Not Transfer Without Approval of Franchisor .....	A-23
	ii. Conditions for Approval of Transfer .....	A-23
	iii. Reimbursement of Franchisor’s Expenses .....	A-25
	iv. Transfer to a Wholly-Owned Entity .....	A-25
	c. Death or Disability of Franchisee .....	A-25
	i. Transfer of Interest .....	A-25
	ii. Operation After Death or Permanent Disability .....	A-25
	iii. Definition of Permanent Disability .....	A-26
	d. Effect of Consent to Transfer.....	A-26
	e. Franchisor’s Right of First Refusal.....	A-26
15.	Termination by Franchisee .....	A-27
16.	Termination by Franchisor.....	A-27
17.	Rights of Franchisor and Obligations of Franchisee Upon Termination or Expiration of the Franchise.....	A-29
	a. Payment of Amounts Owed to Franchisor.....	A-29
	b. Marks .....	A-29
	c. Confidential Information .....	A-29

d.	Covenant Not to Compete.....	A-29
e.	Continuing Obligations.....	A-30
f.	Franchisor’s Option to Purchase.....	A-30
18.	Enforcement .....	A-30
a.	Severability and Substitution of Valid Provisions.....	A-30
b.	Waiver of Obligations.....	A-31
c.	Rights of the Parties are Cumulative .....	A-32
d.	Costs and Attorneys’ Fees .....	A-32
e.	Governing Law/Consent to Jurisdiction .....	A-32
f.	Waiver of Jury Trial.....	A-32
g.	Limitation of Claims.....	A-32
h.	Binding Effect.....	A-32
i.	Modification.....	A-32
j.	Construction.....	A-33
k.	Time is of the Essence .....	A-33
l.	Mandatory and Binding Arbitration .....	A-33
m.	Franchisor’s Right to Change Personnel .....	A-34
n.	Franchisor’s Right to Implement, Change and Rescind Policies.....	A-34
o.	No Third Party Beneficiary Claims .....	A-34
19.	Notices and Payments.....	A-34
20.	Acknowledgements.....	A-35
	Rider A (Site Selection)	
	Rider B (Protected Area)	
	Rider C (Guaranty and Assumption of Obligations with Identification of Owners)	

**HUHOT MONGOLIAN GRILLS, L.L.C.  
FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT ("Agreement") with effective date of \_\_\_\_\_  
\_\_\_\_\_ (acceptance date by Franchisor), by and between HuHot Mongolian  
Grills, LLC, a Montana corporation ("Franchisor," "We," "Our," or "Us"), whose principal  
address is 223 East Main Street, Missoula, Montana 59802, and  
\_\_\_\_\_ ("Franchisee" or "You"), whose principal address is  
\_\_\_\_\_  
\_\_\_\_\_.

**RECITALS:**

A. We operate a franchise network to own and operate sit-down restaurants offering Asian-style cuisine cooked on a grill, using fresh meats, poultry, fish, seafood, vegetables, and home-made sauces, individually selected by the customer ("HuHot Restaurants"). These Restaurants will be operated under the service mark "HuHot Mongolian Grills," plus design, and such other trademarks, service marks and commercial symbols (collectively "Marks") as we will authorize from time to time. Such Restaurants will be operated in accordance with certain required formats, systems, methods of food preparation and service, standards and procedures, and trade dress, which we may modify from time to time ("System").

B. A "HuHot Restaurant" is a restaurant in a free-standing building, strip center or mall location, which we recommend to be approximately 4,000 to 6,500 square feet with seating capacity for 100 to 225 customers and a full bar service or with beer and wine service from a service bar.

C. We grant to certain persons who meet our qualifications a franchise ("Franchise") to own and operate a HuHot Restaurant utilizing the Marks and System.

D. You have applied for a license to own and operate a HuHot Restaurant at the location described in Rider A to this Agreement. We have approved your application in reliance upon all of the representations made therein and in this Agreement. You represent to us, as an inducement to our entry into this Agreement, that you have made no misrepresentations in obtaining the Franchise herein granted.

1. **GRANT OF FRANCHISE.**

a. **Grant.** Subject to the provisions of this Agreement, we hereby grant to Franchisee a franchise ("Franchise") to operate a HuHot Restaurant in or at the following general location (when the exact location is determined, the parties will complete Riders A and B):

---

and to use the Marks and the System in the operation thereof. Termination or expiration of this Agreement shall constitute a termination or expiration of the Franchise. You agree that for the entire term of this Agreement you will at all times fairly, honestly and diligently perform your obligations hereunder, and that you will continuously exert your best efforts to promote and enhance the business of the Restaurant and the goodwill of the Marks.

b. **Restrictions Upon Your Channels of Distribution.** You are restricted solely to the retail sale of products and services authorized to be sold under this Agreement. You are expressly prohibited from engaging in the wholesale distribution of products under this Agreement. The rights herein granted to you are specifically limited to the operation of business from the Restaurant location. You shall not solicit for business, promote the business, and/or offer and sell products sold under this Agreement through the use of a toll-free number, catalog, or the Internet or any other computer on-line service (except for online take-out service).

c. **Rights Reserved By Franchisor.** Except as otherwise provided herein, we (on behalf of ourselves and our affiliates) retain the right, in our sole discretion and without granting any rights to you:

i. to operate, or to grant other persons the right to operate, Restaurants at such locations and on such terms and conditions as we deem appropriate; and

ii. to sell the products and services authorized for Restaurants under the Marks or other trademarks, service marks and commercial symbols through similar or dissimilar channels of distribution and pursuant to such terms and conditions as we deem appropriate.

d. **Your Protected Area.** We agree that we will not establish and operate or grant a franchise for the establishment and operation of a HuHot Restaurant within the area designated in Rider B hereto ("Your Protected Area")

e. **Corporation, Limited Liability Company, or Partnership.** If Franchisee at any time is a corporation, limited liability company, or general or limited partnership (collectively, an "Entity"), you agree and represent that:

i. You will have the authority to execute, deliver, and perform your obligations under this Agreement and all related agreements, and are duly organized or formed and validly existing in good standing under the laws of the state of your incorporation or formation;



ii. Your organizational documents, operating agreement, or partnership agreement, as applicable, will recite that this Agreement restricts the issuance and transfer of any ownership interests in Franchisee, and all certificates and other documents representing ownership interests in Franchisee will bear a legend referring to this Agreement's restrictions;

iii. Rider C to this Agreement completely and accurately describes all of Franchisee's owners and their interests in Franchisee as of the Effective Date;

iv. Each of Franchisee's owners during this Agreement's term will execute a guaranty in the form we prescribe (Rider C), undertaking personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements between Franchisee and Franchisor. You and Franchisee's owners agree to sign and deliver to us revised Rider C to reflect any permitted changes in the information that Rider C now contains; and

v. The Restaurant and other Franchised Businesses, if applicable, will be the only businesses you operate (although Franchisee's owners may have other, non-competitive business interests).

## 2. TERM AND GRANT OF A SUCCESSOR FRANCHISE.

a. **Term.** The term of this Agreement (the "Term") shall commence on the date of this Agreement and expire fifteen (15) years from such date, unless sooner terminated as provided in Sections 15 and 16 hereof.

### b. Grant of a Successor Franchise.

iii. You may, at your option, acquire a grant of a successor franchise for additional successive five (5) year terms, unless sooner terminated as provided in Sections 15 and 16 hereof, provided that:

(1) You have given us written notice of your election to acquire a successor franchise not less than six (6) months nor more than twelve (12) months prior to the end of the then-current term. An election by you to renew the lease or sublease for the premises of the Restaurant or to execute a new lease or sublease for such premises shall be deemed an election by you to acquire a successor franchise for the then-current term of such lease or sublease;

(2) You are not at such time in material breach of any of your obligations under this Agreement or any other agreement between Franchisee and Franchisor or any of its affiliates;

(3) You have substantially complied with all the terms and conditions of this Agreement and have met the operating and quality standards and

procedures we prescribe for HuHot Restaurants during the Term;

(4) You have satisfied all monetary obligations owed to us, our affiliates and designated suppliers, and have timely met these obligations throughout the Term;

(5) You have agreed to upgrade the Restaurant to our then-current standards of decor, equipment, and menu offerings;

(6) You comply with our then-current qualification and training requirements; and

(7) You execute a general release, in a form prescribed by us, of any claim against Franchisor, its affiliates, and their officers, directors, agents and employees.

iv. The grant of a successor franchise shall be effectuated by the execution by Franchisor and Franchisee of the then-current form of standard franchise agreement and all other agreements and legal instruments and documents then customarily used by us in the granting of Franchises for HuHot Restaurants, which may contain substantially different provisions from this Agreement, except that no initial franchise fee shall be payable upon any such grant of a successor franchise.

iii. We may extend this Agreement's term for the time period necessary to either give you reasonable time to correct deficiencies or to give us adequate time to give notice to you of our refusal to grant a successor franchise as required under this Agreement or under applicable law. If you fail to notify us of your election to acquire a successor franchise within the prescribed time period, we need not grant you a successor franchise.

### **3. LOCATION AND DEVELOPMENT OF RESTAURANT**

#### **a. Location and Lease.**

i. You may operate the Restaurant only at the location specified in Paragraph 1.a and Rider A to this Agreement and may not relocate the Restaurant except with our prior written consent. If the site for the Restaurant has not been located by you at the time of execution of this Agreement, you agree to locate and submit to us for approval, a site suitable for the operation of a HuHot Restaurant and acceptable to us. You must locate the site for your Restaurant and submit a site report to us. We shall assist you in the selection and shall not unreasonably withhold our approval of a site that in our judgment is suitable in terms of demographic characteristics, traffic patterns, parking, character of neighborhood, competition from other businesses within the area, the proximity to the site and other commercial characteristics, and the size, appearance and other physical characteristics of the site.

ii. You acknowledge and agree that, if we recommend or give you information regarding a site for the Premises, that is not a representation or warranty of any kind, express or implied, of the site's suitability for a Restaurant or any other purpose. Our recommendation indicates only that we believe that the site meets our then acceptable criteria. Applying criteria that have appeared effective with other sites and premises might not accurately reflect the potential for all sites and premises, and demographic and/or other factors included in or excluded from our criteria could change, altering the potential of a site and premises. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a site and premises we recommend fail to meet your expectations. You acknowledge and agree that your acceptance of the Franchise is based on your own independent investigation of the site's suitability for the Premises.

**b. Restaurant Development.** You agree that prior to obtaining possession of the site for the Restaurant, you shall secure all financing required to fully develop the Restaurant. You further agree that, promptly after obtaining possession of the site for the Restaurant, you will: (a) cause to be prepared and submit for approval by us a site plan together with a design fee of not more than \$6,000 total to Collaborative Design Architects and High Country Design Architects or such other architect or designer designated by us (collectively "Site Planner"). Site Planner shall then provide basic drawings and specifications [including requirements for dimensions, exterior design, materials, interior layout, equipment, fixtures, furniture, signs, and decorating) required for the development of a HuHot Restaurant. You are required to take these drawings and specifications to an approved architect who will modify them, as required, to meet applicable ordinances, building codes or permit requirements (we must approve any such modifications to the drawings and specifications)]; (b) obtain all required zoning changes, all required building, utility, health, sanitation and sign permits, liquor licenses, and any other required permits and licenses; (c) purchase or lease equipment, fixtures, furniture and signs as hereinafter provided; (d) complete the construction and/or remodeling, equip, furnish and decorate the Restaurant in full and strict compliance with plans and specifications approved by us and all applicable ordinances, building codes and permit requirements; (e) obtain all customary contractors' sworn statements and partial and full waivers of lien for construction, remodeling, decorating and installation services; and (f) upon completion of construction, furnish us with costs for the construction, equipment, build-out, deposits, and total development of the Restaurant. Once the Restaurant is established and approved by us, no changes in the interior or exterior design of the Restaurant or the equipment or fixtures used within may be made without our prior written consent.

**c. Equipment, Fixtures, Furnishings and Signs.** You agree to use in the operation of the Restaurant only those brands and models of equipment, fixtures, furniture, point-of-sale computer system ("POS System"), exterior and interior signs, décor items and tableware that we have approved for use in HuHot Restaurants as meeting our requirements for performance, warranties, design and appearance. If you propose to purchase or lease any item of equipment, fixtures, furniture, POS System, signs, décor items or tableware not theretofore approved by us as meeting our specifications, you shall first notify us, and we may require submission of sufficient specifications, photographs, drawings and/or other information and samples to determine whether such items meet our specifications. We shall have the right to charge you a

reasonable testing fee of not more than \$250 to cover our costs incurred in making such determination. We shall advise you within a reasonable time whether such item meets our specifications. In the event that we do not maintain a list of approved suppliers with respect to one or more items required by us for use in HuHot Restaurants, you may purchase or lease any such item from any source.

No vending machines, unapproved newspapers or periodicals, juke boxes or other music producing machines, gum or candy machines, games, pinball machines or other mechanical devices shall be installed or operated at the Restaurant without our prior written consent.

**d. Point of Purchase Software System ("POS System").** You shall purchase and use in your operation of the Restaurant the POS hardware and software specified by us. We shall have the right to contract with third parties to update the POS System from time to time. In such event, you shall be responsible for properly loading the updated programs onto your computer in a timely manner. Thereafter, you shall use the updated point of purchase software program in the operation of your Restaurant. Any such requirement to update the Restaurant's POS System shall be considered "Restaurant Refurbishing" and shall be subject to dollar and frequency limitations detailed in Paragraph 3.e. below.

**e. Restaurant Refurbishing.**

i. Subject to the terms and conditions hereafter set forth, you agree to effect such refurbishing of the Restaurant (in addition to regular maintenance and repair) as we from time to time reasonably require to maintain or improve the appearance and efficient operation of the Restaurant, and/or to comply with our then-current standards for a HuHot Restaurant. Refurbishing may include: (a) the substitution or addition of new or improved equipment; (b) the substitution or addition of new or improved fixtures, furniture and signs; (c) replacement of worn out or obsolete equipment, fixtures, furniture and signs; (d) redecorating; (e) repair of the interior and exterior of the premises; and (f) structural modifications and remodeling of the premises.

ii. Your obligation to refurbish the Restaurant as hereinabove provided shall be subject to the following terms and conditions: (a) you shall not be required to make aggregate expenditures for refurbishing in excess of 1% of the accumulative gross revenues of the Restaurant during the six preceding years to the date of any such required refurbishing; and we shall not require such refurbishing more often than every six years; (b) you shall not be required to effect any refurbishing of the Restaurant during the last three (3) years of the initial or any term of a successor franchise except in connection with acquisition of a successor franchise; and all refurbishing shall be completed within six (6) months of your receipt of notice thereof from us.

**f. Restaurant Opening.** You shall complete development of the Restaurant, obtain all licenses required by us for the operation of the Restaurant and have the Restaurant ready to open and commence the conduct of your business not later than sixteen (16) months from the date of this Agreement. If you fail to commence the conduct of business by the deadline set forth above in this Subparagraph 3.f., then this Agreement and the Franchise granted hereby may, at

our sole option, be terminated upon our giving you written notice.

**g. Relocation of Restaurant.**

i. If your lease for the premises of the Restaurant terminates without fault on your part, or expires and is unable to be renewed by you at market rent and on substantially the same other material terms and conditions, or if in our mutual judgment there is a change in the character of the location of the Restaurant sufficiently detrimental to its business potential to warrant its relocation, or if you desire to relocate to another site within your Protected Area under this Agreement, we shall grant permission for relocation of the Restaurant to a location approved by us in accordance with the criteria then generally used by us in approving sites for HuHot Restaurants. You acknowledge that we shall not be obligated to approve a relocation which would violate the exclusive territory or any other contractual right of any other HuHot franchisee. Any relocation shall be at your sole expense, and shall not be undertaken without our prior written consent. We shall have the right to charge you for services we render to you in connection with such relocation. We shall also have the right to require you to construct, furnish and equip the relocated Restaurant to conform to our then current image, standards, and specifications for construction and equipment for all new HuHot Restaurants.

ii. In the event of a relocation of the Restaurant, you shall promptly remove from the former Restaurant premises any and all signs, fixtures, furniture, posters, equipment, menus, advertising materials, stationery, supplies, forms and other articles which display any of the Marks and distinctive features or designs associated with the System. Any articles which display any of the Marks or any distinctive features or designs associated with the System which are not used by you at the new Restaurant location shall be disposed of by you as directed by us following notice to us to the effect such articles will not be used at the new Restaurant. Furthermore, you shall, at your expense, immediately make such modifications or alterations as may be necessary to distinguish the former Restaurant premises so clearly from its former appearance and from other HuHot Restaurants so as to prevent any possibility of confusion by the public (including, without limitation, removal of all distinctive physical and structural features identifying HuHot Restaurants and removal of all distinctive signs and emblems). you shall, at your expense, make such specific additional changes as we may reasonably request for this purpose. If you fail to initiate immediately or complete such alterations within such period of time as we deem appropriate, You agree that we or our designated agents may enter the premises of the former Restaurant and adjacent areas at any time to make such alterations as we deem appropriate to distinguish your former Restaurant premises, without liability for trespass. You expressly acknowledge that failure to make such alterations will cause irreparable injury to us and hereby consent to entry, at your expense, of an ex parte order by any court of competent jurisdiction authorizing us or our agents to take such action, if we seek such an order. Compliance with the foregoing shall be a condition subsequent to our approval of any relocation request by you, and in the event complete de-identification of the former Restaurant premises is not properly and completely undertaken, we may then revoke our permission for relocation and declare a

default under this Agreement.

#### 4. TRAINING AND GUIDANCE.

a. **Training.** We shall furnish, and you shall complete to our satisfaction, our initial training program in all phases of the operations of a HuHot Restaurant, including unit operations, food and beverage preparation and service, bookkeeping, inventory management, and local restaurant marketing. Such training program shall be for a minimum of ten (10) days at our training facility and a Restaurant location. We shall also furnish on-site training at your Restaurant around the time of the Restaurant opening for such time as we deem appropriate. Training shall be furnished to you or a Franchisor-approved manager designated by you (or, if Franchisee is a corporation, partnership or limited liability company, to its controlling shareholder, managing partner, member or a Franchisor-approved manager) and one additional person designated by you. The cost of such training is included in the initial franchise fee. We also shall furnish our initial training program to new managers of your Restaurant on reasonable request and subject to space availability and class scheduling. you shall pay to us \$1,500 for each manager to whom such training is given. If you delegate the direct supervision of the HuHot Restaurant to a HuHot-approved and trained manager, you (or, if you are a corporation, partnership or limited liability company, a controlling shareholder, managing partner or member) shall complete an owner's training program incorporating portions of our initial training program. If we provide refresher and supplemental training programs, you are required to attend such training. You shall be responsible for the travel and living expenses (including local transportation expenses) incurred while attending the initial training program, owner's training, and any refresher training programs.

b. **Guidance and Assistance.** We shall furnish guidance to you with respect to: (1) specifications, standards and operating procedures utilized by HuHot Restaurants, and any modifications thereof; (2) specification of approved fixtures, equipment, furniture, POS System, signs, operating materials and supplies; (3) methods of food preparation and service and improvements thereon; (4) the establishment and maintenance of administrative, bookkeeping, accounting and general operating and management procedures; and (5) local marketing of your Restaurant. Such guidance shall, in our discretion, be furnished in or supplemented by our Operations Manual, bulletins, written reports and recommendations, other written materials, and/or telephonic consultations or consultations at our offices, at your Restaurant, or at other locations. We shall advise you from time to time of operational concerns at or in your Restaurant as disclosed by reports submitted to or inspections made by us. We shall make no separate charge to you for such operating assistance, provided that we may make reasonable charges for forms and other materials supplied to you and for operating assistance or training made necessary in our judgment as a result of your failure to comply with any provision of this Agreement or any specification, standard or operating procedure prescribed by us or operating assistance requested by you in excess of that normally provided by us.

c. **Operations Manual and Restaurant Development Manual.** We will lend to you during the term of the Franchise one copy of the Operations Manual. The Operations Manual shall contain mandatory and suggested specifications, standards, and operating procedures we prescribe from time to time for a HuHot Restaurant and information relative to

your other obligations hereunder. We in our sole discretion may create and lend to you a separate Restaurant Development Manual containing specifications for site selection and procedures for opening the Restaurant. All Manuals may be modified from time to time to reflect changes in the specifications, standards and operating procedures of HuHot Restaurants. You shall keep your copy of the Operations Manual and Restaurant Development Manual, if any, current by immediately inserting all modified pages furnished by us for the Manuals and received by you. In the event of a dispute relative to the contents of the Manuals, the master copies maintained by us at our principal office shall be controlling. You may not at any time copy any part of the Manuals, or remove any Manuals from your place of business.

d. **Delegation of Performance.** You agree that we have the right to delegate the performance of any portion or all of our obligations under this Agreement to third-party designees, whether these designees are our agents or independent contractors with whom we have contracted to perform such obligations.

## 5. **MARKS.**

a. **Ownership and Goodwill of Marks.** You acknowledge that we own the Marks and are authorized to use the Marks in connection with our franchise program. Your right to use the Marks is derived solely from this Agreement and is limited to the conduct of business pursuant to and in compliance with this Agreement and all applicable specifications, standards and operating procedures prescribed by us from time to time during the term of this Agreement. Any unauthorized use of the Marks by you shall constitute an infringement of our rights in and to the Marks. You agree that all usage of the Marks by you and any goodwill established thereby shall inure to our exclusive benefit, and you acknowledge that this Agreement does not confer any goodwill or other interests in the Marks upon you. You shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Marks or assist any others in contesting the validity or ownership of any of the Marks. All provisions of this Agreement applicable to the Marks shall apply to any additional trademarks, service marks, logo forms and commercial symbols hereafter authorized for use by and licensed to you pursuant to this Agreement.

b. **Limitations on Use of Marks.** You agree to use the Marks as the sole identification of the Restaurant, provided that you shall identify yourself as the independent owner thereof in the manner we prescribe. You shall not use any Mark as part of any corporate or trade name or with any prefix, suffix or other modifying words, nicknames, terms, designs or symbols, or in any modified form (including, without limitation, any local or special adaptations or artistic variations of any of the Marks), nor may you use any Mark in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized in writing by us. You shall not for your own account register the Marks on the Internet or any other computer on-line service, create and maintain your own web site on the Internet using the Marks, or use the Marks on the Internet in any other manner. You agree to display the Marks prominently and in the manner we prescribe on signs, forms, and other materials and articles, and in no other manner. Further, you agree to give such notices of trademark or service mark ownership or registration and copyrights as we specify and to obtain such fictitious or assumed name registrations as may be required under applicable law. Any and all uses of any of the

Marks shall include such information and samples as we may require. You may not use “HuHot Mongolian Grills” or “HuHot” or a derivative thereof in its corporate, assumed, or other formal name.

c. **Notification of Infringements and Claims.** You shall notify us immediately in writing of any apparent infringement of or challenge to your use of any Mark, or claim by any person other than Franchisor or its franchises or affiliates of any rights in any Mark or any similar trade name, trademark, or service mark of which you become aware. You shall not communicate with any person other than us and our counsel in connection with any such infringement, challenge or claim. We have sole discretion to take such action as we deem appropriate and to control exclusively any litigation, U.S. Patent and Trademark Office proceeding or any other administrative proceeding arising out of any infringement, challenge or claim or otherwise relating to any Mark. You agree to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in any such litigation, U.S. Patent and Trademark Office proceeding or other administrative proceedings or otherwise to protect and maintain our interests in the Marks.

d. **Discontinuance of Use of Marks.** It if becomes advisable at any time and for any reason, in our sole discretion, for us and/or you to modify or discontinue use of any Mark, and/or use one or more substitute trademarks or service marks, you agree to comply therewith within a reasonable time after notice thereof by us and our sole obligation shall be to reimburse you for your out-of-pocket expenses of complying with these obligations.

e. **Indemnification of Franchisee.** We agree to indemnify you against and to reimburse you for all direct, but not consequential (including, but not limited to, loss of revenue and/or profits), damages for which you are held liable in any proceeding arising out of the use of any Mark pursuant to and in compliance with this Agreement, and for all costs reasonably incurred by you in the defense of any such claim brought against you or in any such proceeding in which you are named as a party, provided that you have timely notified us of such claim or proceeding and have otherwise complied with this Agreement, cooperated fully with us and our attorneys. You agree that we shall have the right to defend any such claim. If we defend such claim, we shall have no obligation to indemnify or reimburse you with respect to any fees or disbursements of any attorney separately retained by you.

## 6. **PROPRIETARY INFORMATION**

a. **The Proprietary Information.** We possess (and will continue to develop and acquire) certain proprietary information, some of which constitutes trade secrets under applicable law (the “Proprietary Information”), relating to developing and operating Restaurants, including (without limitation):

site selection criteria;

training and operations materials and manuals;



the recipes of items prepared and sold in HuHot Restaurants

methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in developing and operating Restaurants;

marketing and advertising programs for Restaurants;

knowledge of, specifications for, and suppliers of products and supplies used in the Restaurant;

Customer list and data, including names, addresses and other information;

knowledge of the operating results and financial performance of Restaurants other than your Restaurant; and

graphic designs and related intellectual property.

Any and all other information, processes or techniques which we designate as confidential or proprietary also shall be deemed Proprietary Information. We will disclose the Proprietary Information to you through furnishing you sample drawings and specifications for development and operation of the Restaurant, training programs, the Operations Manual, Restaurant Development Manual, if any, and through guidance furnished to you during the term of this Agreement.

Proprietary Information does not include information, knowledge, or know-how which you can demonstrate lawfully came to your attention before we provided it to you directly or indirectly; which, at the time we disclosed it to you, already had lawfully become generally known in the relevant industry through publication or communication by others (without violating an obligation to us); or which, after we disclose it to you, lawfully becomes generally known in the relevant industry through publication or communication by others (without violating an obligation to us). However, if we include any matter in Proprietary Information, anyone who claims that it is not Proprietary Information must prove that one of the exclusions provided in this paragraph is fulfilled.

**b. Limitations on Franchisee's Use.** You acknowledge and agree that you will not acquire any interest in the Proprietary Information, other than the right to utilize the same in the development and operation of the Restaurant pursuant to this Agreement and in accordance with the terms of this Agreement or other agreements between Franchisee and Franchisor or its affiliates, and that the use or duplication of the Proprietary Information in any other business would constitute an unfair method of competition. You hereby agree that you and your affiliates, officers, directors, partners and all owners of any interest in Franchisee and/or the Restaurant: (a) will not use the Proprietary Information in any other business or capacity; (b) will maintain the absolute confidentiality of the Proprietary Information during and after the Term; (c) will not make unauthorized copies of any portion of the Proprietary Information disclosed in written, visual, auditory or other tangible form; and (d) will adopt and implement all reasonable procedures we prescribe from time to time to prevent unauthorized use or disclosure of the

Proprietary Information including, without limitation, restrictions on disclosure thereof to employees and the use of nondisclosure and non-competition clauses in employment agreements with employees and agents in the form we prescribe. We have the right to regulate the form of agreements that you use and to be a third party beneficiary of those agreements with independent enforcement rights. In connection with this obligation, you shall notify us of the name and address of each affiliate, officer, director, partner, supervisory employee and owner of Franchisee and shall update such information whenever necessary. Such notification shall contain and have annexed thereto a copy of the Confidentiality and Non-Competition Agreement executed by the individual at the time he or she acquires an interest in or becomes associated with or employed by. In said agreement such individual shall consent to be bound by the restrictive covenants contained in said Agreement and to our and your enforcement of such covenants. Your obligations pursuant to this Paragraph 6.b shall survive the termination or expiration of this Agreement.

c. **Innovations.** All ideas, concepts, techniques, and marketing, advertising or other materials relating to a Restaurant, whether or not protectable intellectual property and whether created by or for you or Franchisee's owners or employees, must be promptly disclosed to us and will be deemed to be our sole and exclusive property, part of the Franchise System, and works made-for-hire for us. To the extent that any item does not qualify as a "work made-for-hire" for us, by this paragraph you assign ownership of that item, and all related rights to that item, to us and agree to take whatever action (including signing assignment or other documents) we request to evidence our ownership or to help us obtain intellectual property rights in the item.

## 7. **RELATIONSHIP OF THE PARTIES**

a. **Independent Contractors.** It is understood and agreed by the parties that this Agreement does not create a fiduciary relationship between them, that Franchisor and Franchisee shall be independent contractors and that nothing in this Agreement is intended to make either party a general or special agent, legal representative, subsidiary, joint venturer, partner, employee or servant of the other for any purpose.

b. **Franchisee's Obligations.** You shall conspicuously identify yourself in all dealings with customers, suppliers, public officials, Restaurant personnel, and others as the owner of the Restaurant under a Franchise granted from Franchisor, and shall place such notices of independent ownership on such forms, stationery, business cards, advertising and other materials as we may require from time to time. We have not authorized or empowered you to use the Marks except as provided by this Agreement, and you shall not employ any Mark in signing any contract, check, purchase agreement, negotiable instrument or other legal obligation without our prior written consent or employ any Mark in a manner that may result in liability to us for your indebtedness or obligation.

c. **Negation of Liability.** Neither Franchisor nor Franchisee shall make any express or implied agreements, guaranties or representations or incur any debt in the name of or on behalf of the other or represent that their relationship is other than that of franchisor and franchisee. Neither Franchisor nor Franchisee shall be obligated by or have any liability under any agreements or representations made by the other. We shall have no liability or obligation for

any damages to any person or property directly or indirectly arising out of the development or operation of the Restaurant, whether or not caused by your negligent or willful action or failure to act. We shall have no liability for any sales, use, excise, gross receipts, property or other taxes of Franchisee or the Restaurant.

d. **Indemnification.** You agree to indemnify Franchisor and its subsidiaries, affiliates, stockholders, directors, officers, employees, agents and assignees against and to reimburse them for all obligations, damages, and taxes for which they are held liable and for all costs reasonably incurred by them in the defense of any claims brought against them or in any action in which they are named as a party (including without limitation, reasonable attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses) as a result of or related in any way to the operation of the Restaurant, except to the extent caused solely by our negligent or willful action or failure to act. We have the right to defend any such claim against us. You shall also indemnify and hold us and our officers, directors, employees and agents harmless from any and all claims, demands or liabilities arising from the offer or sale of securities, whether asserted by a purchaser of any security or by a governmental agency. We have the right to defend any such claims.

e. **Survival.** The indemnities and assumptions of liabilities and obligations herein shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

## 8. **FRANCHISE AND OTHER FEES**

a. **Initial Franchise Fee.** You agree to pay to us, upon execution of this Agreement, an initial franchise fee of \$35,000. The initial franchise fee shall be fully earned by us upon its payment, and shall be non-refundable, except that in the event that we determine following training that you have not completed training to our satisfaction, we may terminate this Agreement, and shall promptly return to you \$25,000 of the initial franchise fee.

b. **Royalty Fee.** You agree to pay to us a weekly royalty fee in the amount of five percent (5%) [six percent (6%) if local law does not permit a royalty to be paid or received on sales of alcoholic beverages] of the Gross Revenues of the Restaurant (as defined in Paragraph 8.c. hereof). The royalty fee shall be payable on or before each Friday for the preceding Reporting Week (Monday through Sunday).

c. **Definition of "Gross Revenues."** As used in this Agreement, the term "Gross Revenues" shall mean the entire amount of all gross sales and business receipts, including direct or indirect barter transactions (for products and services consumed or furnished on or off premises) arising out of the operation of the Restaurant, or through or by means of the business conducted in connection therewith, whether for cash or credit, and including proceeds of business interruption insurance policies, but excluding: (1) sales, use, or service taxes collected from customers and paid to the appropriate taxing authority; (2) all bona fide customer refunds and approved rebates, discounts and allowances; and (3) where local law prohibits the collection or payment of a fee from you based on sales of alcoholic beverages, all receipts from such sales.

d. **Interest on Late Payments.** All Royalty Fees, Marketing Fund Contributions and other amounts which you owe to us or our affiliate shall bear interest after their due date at the lower of 1.5% per month, or the highest contract rate allowed by local law. You acknowledge that this Paragraph shall not constitute our agreement to accept such payments after same are due or a commitment by us to extend credit to, or otherwise finance, your operation of the Restaurant. Further, you acknowledge that your failure to pay all such amounts when due shall constitute grounds for termination of this Agreement, as provided in Section 16 hereof, notwithstanding the provisions of this Paragraph.

e. **Application of Payments.** Notwithstanding any designation by you, we shall have sole discretion to apply any payments by you to any past due indebtedness of Franchisee for Royalty Fees, Marketing Fund Contributions, purchases from us or our affiliates, interest or other indebtedness owed to us or our affiliates

## 9. **OPERATING STANDARDS**

a. **Image of the Restaurant.** The presentation of an image in compliance with our minimum standards and specifications to the public is an essential element of a successful franchise system. You shall offer for sale all products and services that we, in our sole discretion, may from time to time require, and shall make such reasonable expenditures as may be necessary to enable it to fulfill such obligation, including, without limitation, the purchase or lease of new equipment or services, and the hiring and training of suitable personnel. You further agree that the Restaurant will not, without our prior written approval, provide and/or offer for sale any products or services not then authorized by us for HuHot Restaurants. We reserve the right to revoke our approval of any products or suppliers previously authorized at any time upon written notice to you, provided that you may continue to offer and sell all remaining on-hand or ordered non-cancelable inventory of such products ordered from such suppliers as of the date of receipt of written notice from us. We may, but are not required to, from time to time, conduct market research and testing to determine consumer trends and the salability of new food and beverage products and services. If reasonably possible, you agree to cooperate by participating in our market research programs, test marketing of new services and products in the Restaurant and providing us with timely reports and other relevant information regarding such market research.

### b. **Standards and Sources of Supplies.**

i. You agree that the Restaurant will

- (1) use ingredients and prepare and offer for sale other beverages and food products
- (2) use menus and logoed materials, and
- (3) offer for sale other products and services

which conform to our specifications and quality standards and/or are purchased from suppliers approved from time to time by us (which may include Franchisor and/or its affiliates).

ii. You agree to use in the operation of the Restaurant only signs, equipment, merchandise, materials and supplies that conform to our minimum specifications and quality standards and/or are purchased from suppliers we approve from time to time.

iii. We may, from time to time, modify the minimum standards and specifications and/or the list of approved brands and/or suppliers. If you propose to use or offer any food products or beverages, or ingredients or supplies or other products or services (other than those which must be purchased pursuant to Paragraph 9.b.i) which do not comply with our then-current minimum standards or specifications or which are purchased from a supplier that has not been approved, you shall first notify us in writing and submit sufficient information, specifications and samples concerning such item or supplier for our determination as to whether such item complies with our specifications and standards, and/or whether the supplier meets our approved supplier criteria. We shall have the right to charge you a reasonable fee to cover our costs incurred in making such determination, which, in the case of new items, shall be not more than \$250. We shall, within a reasonable time, notify you whether or not such proposed item or supplier is approved. We may from time to time prescribe procedures for submission of requests for approval of items or suppliers, and obligations which approved suppliers must assume (which may be incorporated into a written agreement to be executed by approved suppliers). We may impose limits on the number of suppliers and/or brands for any ingredient, food or beverage product or logoed materials, used or served by the Restaurant. We may collect a service fee on items purchased by you through national marketing contracts negotiated and maintained by us. Such service fee shall be established and paid to the Marketing Fund in the manner we prescribe from time to time.

iv. You shall not offer and sell any branded products in the Restaurant without our prior written consent. You shall offer and sell branded products which have been approved by us only in the manner we prescribe from time to time. We reserve the right to revoke the approval of a previously authorized branded product.

v. You shall at all times maintain an inventory of approved food products, beverages and ingredients and other products sufficient in quantity to meet customer demand.

vi. We reserve the right to require you to use proprietary sauces in the Restaurant and to offer such sauces for retail sale if we so require.

vii. We may receive payments from suppliers on account of purchases by you and other franchise owners from those suppliers. We may, but are not required to, contribute said payments toward the Advertising Fund.

c. **Operating Procedures.** You acknowledge that each and every detail of the appearance and operation of the Restaurant in compliance with our high standards is important to Franchisor and other HuHot Restaurants. You agree to cooperate with us by maintaining such high standards in the operation of the Restaurant. You agree to comply with all mandatory specifications, standards and operating procedures relating to the function and operation of a

HuHot Restaurant including, without limitation, specifications, standards and operating procedures and rules relating to: (1) hours during which you shall operate the Restaurant; (2) methods and procedures relating to the acquisition, storage and preparation of products you offer or use in the operation of the Restaurant; (3) advertising and promotion; (4) use of standard menus; (5) the handling of customer inquiries and complaints; and (6) use of approved POS System. We reserve the right to approve all menu items and final copy of your menu prior to printing. Mandatory specifications, standards and operating procedures we prescribe from time to time in the Operations Manual, Restaurant Development Manual, if any, or otherwise communicated to you in writing, shall constitute provisions of this Agreement as if fully set forth herein. All references herein to this Agreement shall include all such mandatory specifications, standards and operating procedures.

d. **Compliance with Laws and Good Business Practices.** You shall secure and maintain in force in your name all required licenses, permits and certificates relating to the operation of the Restaurant. You shall operate the Restaurant in full compliance with all applicable laws, ordinances and regulations including, without limitation, all government regulations relating to the retail sale of alcoholic beverages, workers' compensation insurance, unemployment insurance and withholding and payment of federal and state income taxes, social security taxes and sales taxes. All advertising by you shall be completely factual, in good taste in our judgment, and shall conform to the highest standards of ethical advertising. Both parties, in all dealings with customers, suppliers, employees, public officials and each other, shall adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. Both parties agree to refrain from any business or advertising practice that may be injurious to the other and the goodwill associated with the Marks and other HuHot Restaurants. In the event you fail to secure any license or permit required for the operation of the Restaurant, we, at our option and in addition to our other rights and remedies hereunder, may obtain such license or permit on behalf of Franchisee and you shall fully cooperate with us in our efforts to obtain such license or permit on behalf of Franchisee and shall pay to us, on demand, all costs and charges incurred by us.

e. **Management and Personnel of the Business.** The Restaurant shall at all times be under your supervision, and shall at all times be under the full-time management by you or a qualified manager who has successfully completed our training program (or, if you are a corporation, partnership or limited liability company, your majority shareholder or partner or managing member, or qualified manager who has successfully completed our training program). You shall hire all employees of the Restaurant and shall be exclusively responsible for the terms of their employment and compensation and for the proper training of such employees. If (other than as part of initial training as provided in Paragraph 4.a hereof) you request us to train your manager, you shall pay us a Training Fee in the amount of \$1,500. You shall establish at the Restaurant for all employees a training program meeting the standards we prescribe. You shall require all managers of the Restaurant to execute our then-current form of Confidentiality and Non-Competition Agreement and shall require all employees to execute our then current form of Confidentiality Agreement. Upon reasonable request, you agree to provide us a copy of an executed Confidentiality and Non-Competition Agreement for each manager of the Restaurant. You shall require all employees to maintain a neat and clean appearance and to conform to the standards of dress specified by us from time to time. You shall not, during the term of this Agreement and for a period of two (2) years following termination or expiration of this

Agreement for any reason, recruit or hire any employee of Franchisor or a HuHot Restaurant operated by Franchisor, an affiliate of Franchisor or another franchisee of Franchisor, without obtaining our prior written permission, such affiliate, or franchisee. If the Restaurant at any time is not being managed by you or a qualified, trained, full-time manager, we may appoint a manager for the Restaurant and charge a reasonable management fee (currently \$250 per day) during the period in which we manage the Restaurant.

f. **Exclusive Relationship.** We have entered into this Agreement with you on the express condition that you and Franchisee's owners will deal exclusively with us. You therefore agree that during the term of this Agreement, except for the Restaurant and other HuHot Restaurants operated under franchise agreements with us, neither you nor any of Franchisee's owners or approved managers shall (1) have any direct or indirect ownership interest in any Competitive Business located or operating anywhere in the world; (2) have any direct or indirect ownership interest in any entity which grants franchises or licenses or establishes joint ventures for operation of Competitive Businesses anywhere in the world; or (3) perform services as a director, officer, manager, employee, consultant, representative, agent, lessor, lender, or otherwise for any Competitive Business or any business which grants franchises or licenses or establishes joint ventures for the operation of Competitive Businesses anywhere in the world. The restrictions of this Paragraph shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on an over-the-counter market that represent three percent (3%) or less of the number of shares of that class of securities issued and outstanding. The term "Competitive Business" shall mean a restaurant offering food prepared within view of customers on a "Mongolian Grill," "Mongolian Barbeque," or similar cooking surface.

g. **Insurance.**

i. During the Term, you shall maintain in force, under policies of insurance issued by carriers approved by us, comprehensive general liability and property damage insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Restaurant, or otherwise in conjunction with the conduct of business by you pursuant to the Franchise Agreement, under one or more policies of insurance containing: Workers Compensation including Employers Liability insurance in the limit of no less than \$500,000; Comprehensive General Liability with a General Aggregate of no less than \$1,000,000 which must include "Hired and Non-Owned" automobile liability coverage; Products Liability of \$1,000,000; host liquor liability coverage if and to the extent such liability is imposed by applicable law; and Business Interruption insurance in an amount equal to at least six months of gross revenue. In addition, if you use a vehicle to transport products or supplies, you must maintain Comprehensive Auto Liability of no less than \$1,000,000. We may periodically increase the amounts of coverage required under such insurance policies and require different or additional kinds of insurance at any time, including excess liability insurance, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances. Each insurance policy shall name HuHot Mongolian Grills, L.L.C., 223 East Main Street, Missoula, Montana 59802 as an additional insured on a primary basis with respect to policies secured, and shall provide for thirty (30) days' prior written

notice to us of any material modification, cancellation or expiration of such policy.

ii. Upon request, you shall furnish us with a copy of each insurance policy to be maintained by you for the immediately following term and of the payment of the premiums therefor. If you fail or refuse to maintain required insurance coverage, or to furnish satisfactory evidence thereof and the payment of the premiums therefor, we, at our option and in addition to our other rights and remedies hereunder, may obtain such insurance coverage on behalf of Franchisee and you shall fully cooperate with us in our effort to obtain such insurance policies, promptly execute all forms or instruments required to obtain or maintain such insurance and pay to us, on demand, any costs (including administrative) and premiums incurred by us.

iii. Your obligations to maintain insurance coverage as herein described shall not be affected in any manner by reason of any separate insurance maintained by us, nor shall the maintenance of such insurance relieve you of any obligations under Section 7 of this Agreement.

**h. Participation in System-wide Internet Web Site.** You acknowledge that the Internet is a powerful, expanding medium through which business is conducted. We shall, at our discretion, determine the content and use of the web site or other listing. We shall retain all rights relating to the web site or other listing and may alter or terminate the web site at our discretion. You acknowledge that certain information obtained through your participation in the HuHot Web Site may be considered Proprietary Information, including access codes and identification codes. You shall be prohibited from establishing your own web site or other listing on the Internet using the Marks and/or System without our prior approval.

**i. Cooperation in Displaying Franchisor's Franchise Literature.** You agree to cooperate with us in displaying our franchise literature, and will notify us when the supply of franchise literature on the Restaurants' premises is low. You will not be responsible for paying for any of the franchise literature.

**j. Variation of System Standards.** Because complete and detailed uniformity under many varying conditions might not be possible or practical, you acknowledge that we specifically reserve the right and privilege, as we consider to be best, to vary System standards for any franchise owner based upon the peculiarities of any condition that we consider important to that franchise owner's successful operation. You have no right to require us to grant you a similar variation or accommodation

## **10. MARKETING AND PROMOTION**

### **a. By Franchisor.**

i. You agree to pay a Marketing Fund Contribution equal to one half of one percent (0.5%) of the Gross Revenues as defined in Paragraph 8.c of this Agreement at the same time and in the same manner as the Royalty. When there are 500 HuHot Restaurants, we have the right to increase the Marketing Fund Contribution paid by you,



not to exceed three percent (3%) of Gross Revenues. We agree that HuHot Restaurants owned by us will contribute to the Marketing Fund on the same basis as franchised HuHot Restaurants.

ii. We will have sole discretion over all marketing programs funded by the Marketing Fund, including creative concepts, materials and endorsements, and the geographic markets, media placement and allocation of expenditures. The Marketing Fund may be used to pay the costs of preparing and producing video, audio and written advertising and promotional materials and electronic media; developing, implementing, and maintaining an electronic commerce Website and/or related strategies; administering multi-regional advertising programs, including purchasing direct mail and other media advertising and employing advertising agencies; and supporting public relations, market research and other advertising and marketing activities, as determined by us. We reserve the right to expend a portion of the Marketing Fund on advertising that is principally a solicitation for the sale of franchises. However, we will not expend an amount for this use that is greater than amounts contributed to the Marketing Fund by company-owned or affiliate-owned HuHot Restaurants. We will account for the Marketing Fund separately from our other funds. We will not use the Marketing Fund to defray any of our general operating expenses, except for reasonable salaries, administrative costs and overhead as we may incur in activities reasonably related to the administration of the Marketing Fund and our marketing programs, including conducting market research, preparing advertising, promotional and marketing materials and collecting and accounting for contributions to the Marketing Fund. In the event all the Marketing Fund Contributions collected in any year are not expended in that same year, we have the right to roll said unused monies for use in the succeeding year. We are not required to have the Marketing Fund audited; however, we will furnish you an unaudited annual report of the Marketing Fund upon written request.

iii. You understand and acknowledge that the Marketing Fund is intended to enhance recognition of the Marks and patronage of HuHot Restaurants. We are under no obligation to: (i) spend any amount in your market; (ii) ensure that expenditures of the Marketing Fund in or affecting any geographic area are proportionate or equivalent to the Marketing Fund Contributions paid by HuHot Restaurants operating in that geographic area; or (iii) insure that any HuHot Restaurants will benefit directly or in proportion to their Marketing Fund Contributions from the development of advertising, promotional and marketing materials or programs.

iv. We assume no direct or indirect liability or obligation to you or to the Marketing Fund with respect to any failure by any franchisees of Franchisor to make any contributions to the Fund. The Marketing Fund will not be our asset. Although the Fund is not a trust. We will hold all Fund contributions for the benefit of the contributors and use contributions only for the purposes described in this Section. We do not owe any fiduciary obligation to you for administering the Fund or any other reason.

v. We have the right to waive, reduce, forgive, or otherwise modify the obligation of other franchisees to contribute to the Marketing Fund, and to make

available to other franchisees the benefits of the Marketing Fund even though they may not be required to pay Marketing Fund Contributions in the same amounts that you must pay under this Agreement.

vi. We have the right to terminate the Marketing Fund by giving you thirty (30) days written notice. We have the right to reinstate the Marketing Fund under the same terms and conditions as set forth herein, by giving you thirty (30) days prior written notice of reinstatement.

**b. By Franchisee.**

i. You agree to list your Restaurant at your expense in each of the telephone directories distributed within your general market, in such business classifications as We prescribes from time to time.

ii. At anytime Restaurant's average quarterly sales volume is less than the average quarterly sales volume of all HuHot Restaurants nationwide, you will spend not less than three percent (3%) of your Gross Revenues on local advertising and promotion, inclusive of telephone directory listings. Such expenditures shall be made directly by you, subject to our approval and direction. Within fifteen (15) days of our request, you shall furnish to us, in a manner we approve, an accurate accounting of the expenditures on local advertising and promotion for the period requested. This requirement for local advertising and promotion expenditures shall commence immediately upon the Restaurant opening.

iii. You shall join any local advertising co-operative which has been or may be formed by a majority vote of franchisees and Franchisor-owned or affiliate-owned Restaurants in your "Area of Dominant Influence" as determined by Arbitron Co. We assume no direct or indirect liability or obligation to you or to any local co-operative, including without limitation, any failure by any franchisees to make any contributions to the co-operative. You shall contribute advertising and promotion funds due under the foregoing paragraph to the local advertising cooperative, and the failure by you to make said contributions to the cooperative is a breach of this Agreement. All expenditures of funds by the cooperative shall be made pursuant to its bylaws in effect from time to time.

iv. Prior to their use by you, samples of all local advertising and promotional materials not prepared or previously approved by us shall be submitted to us for approval. If written disapproval is not received by you within fifteen (15) days from the date of receipt by us of such materials, we shall be deemed to have given the required approval. You shall not use any advertising or promotional material that we have disapproved.

**11. RECORDS AND REPORTS**

a. **Accounting and Records.** During the Term, you agree, at your expense: (1) to establish and maintain record keeping and accounting systems conforming to the requirements

we prescribe from time to time; and (2) to prepare and preserve for three (3) years from the date of their preparation full, complete and accurate books, records and accounts prepared pursuant to such accounting procedures as we may prescribe from time to time, copies of sales tax returns and copies of such portions of your state and federal income tax returns as reflect the operation, income or losses of the Restaurant.

**b. Reports and Tax Returns.**

**i. Furnished to Franchisor.** You shall furnish to us the following: (1) concurrently with the payment of the royalty fees, a report of the Gross Revenues of the Restaurant for the preceding week; and (2) within ninety (90) days after the end of each fiscal year of the Restaurant, an annual profit and loss statement and source and use of funds statement for the Restaurant and a balance sheet for the Restaurant as of the end of each fiscal year, reviewed by an independent certified public accountant, or, if requested by us, accompanied by an opinion of a certified public accountant or firm of certified public accountants selected by you and approved by us, which opinion may be qualified only to the extent reasonably acceptable to us. Further, you shall furnish to us copies of other reports designated by us and such other information and supporting records as we prescribe from time to time. All such financial statements, reports and information shall be on forms we approve and shall be signed and verified by you.

**ii. Availability for Inspection.** You shall maintain readily available for inspection by us, and shall furnish to us upon our request, exact copies of all state sales tax returns and such portions of your federal and state income tax returns as reflect the operation, income or losses of the Restaurant. In addition, you at your expense shall furnish to us (and our accountant and/or other designee) for inspection or audit such forms, reports, records, financial statements and other information as we may require. You shall make such financial and other information available at such locations as we may reasonably request (including our office) and shall afford us (and our accountant and/or other designee) full and free access thereto during regular business hours. We (and our accountant and/or other designee) shall have the right to make extracts from the copies of all such documents and information.

**c. Use of Data, Name, Photograph and Biographic Information.** You consent to the use of your name, photograph, and biographical and financial data concerning the operation of your business, as well as photographs of the interior and exterior of your Restaurant, in our advertising and other literature promoting HuHot Restaurants.

**12. INSPECTIONS AND AUDITS**

**a. Examinations of Books and Records**

**i. Franchisor's Right to Examine and Audit.** We shall have the right at any time during business hours, and without prior notice to you, to examine or audit or cause to be examined or audited the business records, bookkeeping and accounting records, bank statements, sales and income tax records and returns and other books and

records of the Restaurant and the books and records of any corporation, partnership or limited liability company which is the Franchisee under this Agreement or which conducts any business relating to the franchise. You shall maintain all such books, records and supporting documents at all times at your business office. You shall fully cooperate with our representatives and accountants hired by us to conduct any such examination or audit.

ii. **Audit Fees.** In the event any such examination or audit shall disclose an understatement of Gross Revenues of the Restaurant, you shall pay to us, within ten (10) days after receipt of the examination or audit report, the royalty fees and any Marketing Fund Contributions due on the amount of such understatement, plus interest (at the rate and on the terms provided in Paragraph 8.d. hereof) from the date originally due until the date of payment. Further, in the event such examination or audit is made necessary by your failure to furnish reports, supporting records, financial statements or other documents or information, as herein required, or your failure to furnish such reports, records, financial statements, documents or information on a timely basis, or if an understatement of the Gross Revenues of the Restaurant for any period is determined by any such examination or audit to be one-and-one-half percent (1.5%) or greater, you shall reimburse us for the reasonable costs of such audit or examination, including, without limiting, the charges and disbursements of any independent accountants and the travel expenses, room and board (if any) and compensation of our employees in connection with such audit or examination. The foregoing remedies shall be in addition to all our other remedies and rights hereunder or under applicable law. Should audit reveal no material financial understatement, we shall reimburse you for reasonable expenses expended by you in connection with such audit and examination.

b. **Inspection of the Restaurant.** To determine whether you are complying with this Agreement and all System standards, and to insure the proper use of the Marks, we shall have the right at any time during business hours, and without prior notice to you, to inspect the Restaurant. You shall fully cooperate with our representatives making any such inspection and shall permit our representatives to take photographs, movies, or videotapes or digital recordings of the Restaurant; to interview employees and customers of the Restaurant; and to remove samples of any products and supplies.

### 13. **LATE FILING FEE**

You acknowledge that timely furnishing of the reports required under Paragraph 11.b.i is necessary to enable us to assess the performance of the Restaurant and to assist you in enhancing such performance, and to enable us to determine the amount of Royalty Fees and Marketing Fund Contributions due from you. Accordingly, you agree that in the event that you willfully fail to submit any reports or tax returns required to be furnished to us under this Agreement, within 15 days of their due date, you shall pay to us a late filing fee in the amount of \$100 per day thereafter until such reports or tax returns are furnished. The imposition of a penalty in no manner limits our rights to exercise any other remedy available under this Agreement or in law.

## 14. TRANSFER

a. **By Franchisor.** We may change our ownership or form and/or assign this Agreement and any other agreement to a third party without restriction. Following assignment by us, this Agreement shall inure to the benefit of any transferee or other legal successor to our interests. After our assignment of this Agreement to a third party who expressly assumes the obligations under this Agreement, we no longer will have any performance or other obligations under this Agreement.

b. **By Franchisee.**

i. **Franchisee May Not Transfer Without Approval of Franchisor.** You understand and acknowledge that the rights and duties created by this Agreement are personal to you and your owners and that we have granted the Franchise to you and Franchisee's owners in reliance upon the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of Franchisee and its owners. Accordingly, neither this Agreement nor the Franchise (or any interest therein), nor any part or all of the ownership of Franchisee (if you are a corporation, partnership or limited liability company) or of the assets (other than assets disposed of in the ordinary course of business) of Franchisee or the Restaurant, or any interest in any of the foregoing, may be transferred, sold, assigned, pledged, mortgaged or liened without our prior written approval, and any such transfer without such approval shall constitute a breach hereof and convey no rights to or interests in this Agreement, the Franchise, Franchisee, the Restaurant or your assets.

ii. **Conditions for Approval of Transfer.** If you and Franchisee's owners are in full compliance with this Agreement, we shall not unreasonably withhold our approval of a transfer that meets all the applicable requirements of this Paragraph. The proposed transferee and its owners must be individuals of good moral character and otherwise meet our then applicable standards for HuHot Restaurant franchisees, and the financial terms of the proposed transfer shall not, in our judgment, unduly burden the proposed transferee so as to impair its ability to successfully operate the Restaurant. We shall interview and evaluate the proposed transferee at our principal place of business or at such other location that we designate. A transfer of ownership in the Restaurant (including a transfer of substantially all the assets used in the operation of the business) may only be made in conjunction with a transfer of the Franchise, or if you are a corporation, partnership or limited liability company, the interest in Franchisee, or is one of a series of transfers which in the aggregate constitute the transfer of the Franchise or a controlling interest in Franchisee. All of the following conditions must be met prior to or concurrently with the effective date of the transfer (unless otherwise specified):

- (1) the assignee or transferee shall have been approved by us for financial responsibility, good moral character and suitability as an operator of a HuHot Restaurant;

- (2) You or the assignee or transferee shall pay to us a transfer fee of Three Thousand Five Hundred Dollars (\$3,500), and, if transferee has not previously successfully completed our training program, a training fee of Two Thousand Five Hundred Dollars (\$2,500) for each person for whom training is required by us or requested by Assignee;
- (3) the assignee or transferee shall not be engaged as a licensor, franchisor, independent operator or franchisee of any competitive business, except that the assignee, transferee or purchaser may be an existing franchisee of Franchisor or our affiliate;
- (4) You shall have paid all outstanding debts and obligations to us and our affiliates, including the royalty fees and all amounts due the Marketing Fund, and to our designated suppliers;
- (5) You and Franchisee's owners shall execute a release of any and all claims against us and our affiliates, and our and our affiliates' officers, directors, agents, and employees, arising out of or related to this Agreement, or any other agreement with us or our affiliates, which release shall contain language and be in the form we prescribe;
- (6) the assignee or transferee (and its owners) shall, at our sole discretion, have executed and agreed to be bound by: (i) an assignment and assumption agreement satisfactory to us, whereby the assignee assumes your obligations under this Agreement; or (ii) our then-current form of franchise agreement, for a term equal to the remaining term of the franchise, but which may provide for a different rate for Royalty Fees and Marketing Fund Contributions required hereunder;
- (7) if required, the lessor(s) of the premises of the Restaurant or any leased furniture, fixtures and equipment has consented to your assignment or sublease of said premises or furniture, fixtures and equipment to the proposed assignee;
- (8) We shall have approved the material terms and conditions of such assignment and shall have determined that the price and terms of payment are not so burdensome as to adversely affect the future operations of the Restaurant by the assignee;
- (9) You shall have entered into an agreement with us agreeing to subordinate any obligations of such transferee or assignee to make installment payments of the purchase price or any other payments to you to such transferee's or assignee's obligations to us, including, without limitation, any Royalty Fees or Marketing Fund Contributions; and
- (10) the assignee or transferee shall complete to our satisfaction, at assignee or transferee's expense and upon such terms and conditions as we may reasonably

require, any training programs then in effect for franchisees at such time and place designated by us.

iii. **Reimbursement of Franchisor's Expenses.** In the event you shall request consent to a transfer of this Agreement or a controlling interest in Franchisee and for any reason such transfer is not completed or consummated, we shall be entitled to reimbursement of our reasonable expenses incurred in connection with such proposed transfer in accordance with the procedures set forth herein, including, without limitation, expenses related to investigating, processing and training any proposed transferee.

iv. **Transfer to a Wholly-Owned Entity.** If you are a natural person and are in full compliance with this Agreement, we shall not unreasonably withhold our approval of a transfer in the case of a proposed assignment or transfer of this Agreement and the Franchise to a corporation, partnership or L.L.C. which conducts no business other than the Restaurant, which is actually managed by you and in which Franchisee maintains management control and owns and controls at least fifty-one percent (51%) of the general partnership interest or the equity and voting power of all issued and outstanding capital stock or membership interests, provided that all owners of such corporation, partnership or L.L.C. agree jointly and severally to guarantee the obligations of Franchisee under this Agreement and to be bound by the provisions of this Agreement in the form we prescribe. Transfer of shares or interests representing 50% or more of the ownership in such corporation, partnership or L.L.C. will be subject to the provisions of Paragraph 14.b.ii. You shall notify us in writing of the name and address of each and every shareholder, partner, officer, member, director and supervisory employees of any such corporation, partnership or L.L.C. and any changes thereto.

c. **Death or Disability of Franchisee.**

i. **Transfer of Interest.** Upon the death or permanent disability of you or any other owner of a controlling interest in Franchisee, the executor, administrator, conservator, guardian or other personal representative of such person shall transfer your interest in this Agreement and the Franchise, or such interest in Franchisee, to a third party approved by us. Such disposition of this Agreement and the Franchise, or such interest in Franchisee (including without limitation, transfer by bequest or inheritance), shall be completed within a reasonable time, not to exceed six (6) months from the date of death or permanent disability and shall be subject to all the terms and conditions applicable to transfers contained in this Section 14. Failure to so transfer the interest in this Agreement and the Franchise or such interest in Franchisee within said period of time shall constitute a breach of this Agreement.

ii. **Operation After Death or Permanent Disability.** Upon the death or permanent disability of you or the owner of a controlling interest in Franchisee, the executor, administrator, conservator, guardian or other personal representative of such person shall appoint a manager to operate the Restaurant within a reasonable time, not to exceed thirty (30) days from the date of death or permanent disability of such person. The appointment of such manager shall be subject to our prior written approval and, if

requested by us, such manager shall attend and complete our training program for franchisees. Such manager shall execute our then-current form of Confidentiality and Non-Competition Agreement. If in our judgment, the Restaurant is not being managed properly after the death or permanent disability of you or the owner of a controlling interest in Franchisee, we shall have the right to appoint a manager for the Restaurant. All funds from the operation of the Restaurant during the management by our appointed manager will be kept in a separate bank account, and all expenses of the Restaurant including compensation, other costs, and travel and living expenses of your manager will be charged to this account. We shall have the right to charge a reasonable management fee, currently \$250 per day (in addition to the royalty fee and Marketing Fund Contributions payable under this Agreement), during the period in which we manage the Restaurant as herein provided.

iii. **Definition of Permanent Disability.** You or the owner of a controlling interest in Franchisee will be deemed to have a "permanent disability" if your usual, active participation in the Restaurant as contemplated by this Agreement is for any reason curtailed for a continuous period of three (3) months.

d. **Effect of Consent to Transfer.** Our consent to a transfer of this Agreement and the Franchise, or any interest in Franchisee or the Restaurant or its assets, shall not constitute a waiver of any claims we may have against you (or Franchisee's owners), nor shall it be deemed a waiver of our right to demand exact compliance with any of the terms or conditions of this Agreement by the transferee.

e. **Franchisor's Right of First Refusal.** If you or Franchisee's owners shall at any time determine to sell an interest in this Agreement, the Franchise, the Store or an ownership interest in Franchisee, you or Franchisee's owners shall obtain a bona fide, executed written offer from a responsible and fully disclosed purchaser and shall immediately submit an exact copy of the offer to us. To be a valid, bona fide offer, the proposed purchase price must be in a dollar amount, and the proposed buyer must submit with its offer an earnest money deposit equal to at least five percent (5%) or more of the offering price. We shall have the right, exercisable by written notice delivered to you or Franchisee's owners within fifteen (15) days from the date of delivery of an exact copy of such offer to us, to purchase such interest for the price and on the terms and conditions contained in such offer, provided that we may substitute cash for any form of payment proposed in such offer. Our credit shall be deemed equal to the credit of any proposed purchaser. We shall have not less than sixty (60) days from the date of exercise of our right of first refusal to prepare for closing. We shall be entitled to purchase such interest subject to all customary representations and warranties given by the seller of the assets of a business or voting stock of an incorporated business, as applicable, including without limitation, representations and warranties as to ownership, condition and title to stock and/or assets. If we do not exercise our right of first refusal, you or Franchisee's owners may complete the sale to such purchaser pursuant to and on the exact terms of such offer, subject to our approval of the transfer, as provided in Section 14. If the sale to such purchaser is not completed within one hundred (120) days after delivery of such offer to us, or if there is a material change in the terms of the sale, we shall have an additional right of first refusal for thirty (30) days on the same terms and conditions as are applicable to the initial right of first refusal. For purposes of this



paragraph, a material change in an offer shall include, but not be limited to, a deviation of greater than 10% in the price you originally offered to us.

**15. TERMINATION BY FRANCHISEE.**

If you are in substantial compliance with this Agreement and we materially breach this Agreement and fail to cure such breach within thirty (30) days after written notice thereof is delivered to us, or if such breach cannot reasonably be cured within such thirty (30) day period, and we fail to commence a bona fide program to cure such breach within such thirty (30) day period and continue to complete such cure, then you may terminate the Franchise effective ten (10) days after delivery to us of written notice of termination. A termination of this Agreement for any other reason than material breach of this Agreement by us, and failure to cure such breach within the time period specified herein, shall be deemed a termination by you without cause.

**16. TERMINATION BY FRANCHISOR.**

a. We shall have the right to terminate this Agreement effective upon delivery of notice to you, and without an opportunity to cure, if:

i. You fail to have the Restaurant open for business within sixteen (16) months from the date of this Agreement.

ii. You abandon, surrender, transfer control of, lose the right to occupy the premises of the Restaurant, or fail to actively operate the Restaurant;

iii. You assign or transfer this Agreement or any interest therein or in the Franchise, the Restaurant, or the assets of the Restaurant without compliance with the provisions of this Agreement;

iv. You are adjudged bankrupt, become insolvent or make a general assignment for the benefit of creditors;

v. You, or any of Franchisee's owners, are convicted of or plead no contest to a felony or are convicted or plead no contest to any crime or offense that is likely to adversely affect the reputation of the Restaurant or the goodwill associated with the Marks;

vi. Your operation of the Restaurant would result in a threat or danger to the public health and safety;

vii. You fail on three (3) or more separate occasions within any twelve (12) consecutive month period to submit when due financial statements, reports or other data, information or supporting records; to pay when due the royalty fees, Marketing Fund Contributions, amounts due for purchases from us or our affiliates or other payments due to us or our affiliates; or otherwise fail to comply with this Agreement, whether or not

such failures to comply are corrected after notice thereof is given to you;

viii. You or any of Franchisee's owners fail to comply with the covenants contained in Paragraph 9.f. of this Agreement;

ix. You or any of Franchisee's owners disclose or divulge the contents of the Operations Manual, or other Manual or other trade secret or other confidential information provided to you by us contrary to provisions of this Agreement;

x. You fail to satisfactorily complete the Restaurant training program;

xi. Upon the death or permanent incapacity of you or an owner of a controlling interest in Franchisee, an approved transfer is not effected as provided in Section 14 of this Agreement;

xii. You fail to timely pay any lender to whom we have guaranteed your obligations, or to us if you have entered into a financing arrangement with us:

(1) more than three (3) times if the defaults are cured, or

(2) one (1) time if the default is not timely cured during the financing term;

xiii. Any other agreement between Franchisor and Franchisee (or related entities, of which any one or more parties, whether individual, corporate or otherwise, is a party to or guarantor of said other agreement) is terminated, which termination is a result of your default and failure to cure as provided under said agreement; or

xiv. Your or any of Franchisee's owners' assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities, or you or any of Franchisee's owners otherwise violate any such law, ordinance, or regulation.

b. We shall have the further right to terminate this Agreement, effective upon the delivery of notice of termination to you, if you fail to pay when due any monies owed to us or our affiliates and do not correct such failure within ten (10) days after written notice thereof is given to you, or fail to comply with any other provision of this Agreement or any mandatory specification, standard or operating procedure prescribed by us and do not correct such failure within thirty (30) days after written notice of such failure to comply is given to you.

c. A default under this Agreement shall also constitute a default under any and all other agreements entered into between Franchisor and Franchisee (or related entities, of which any one or more parties, whether individual, corporate or otherwise, is a party to or guarantor of said other agreement), with the right to terminate the other agreement(s) in accordance with the provisions of those agreement(s).

**17. RIGHTS OF FRANCHISOR AND OBLIGATIONS OF FRANCHISEE UPON TERMINATION OR EXPIRATION OF THE FRANCHISE.**

a. **Payment of Amounts Owed to Franchisor.** You agree to pay to us within fifteen (15) days after the effective date of termination or expiration of the Franchise, or such later date that the amounts due to us are determined, such Royalty Fees, Marketing Fund Contributions, amounts owed for purchases by you from us or our affiliates, interest due on any of the foregoing and all other amounts owed to us or our affiliates which are then unpaid.

b. **Marks.** You agree that after the termination or expiration of the Franchise you will: (1) not directly or indirectly at any time or in any manner identify yourself or any business as a current or former HuHot Restaurant, or as a franchisee or licensee of or as otherwise associated with us, use any Mark or any colorable imitation thereof in any manner or for any purpose or utilize for any purpose any trade name, trade or service mark or other commercial symbol that suggests or indicates a connection or association with us; (2) return to us at your cost or destroy all forms and materials containing any Mark or otherwise identifying or relating to a HuHot Restaurant; (3) alter the interior and exterior of the Restaurant so as to distinguish its appearance from HuHot Restaurants, including the removal of all HuHot-required décor build-out, murals and artwork; (4) return to us all inventory bearing the Marks at your cost; (5) take such action as may be required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any Mark; (6) change the telephone number of the Restaurant and instruct all telephone directory publishers to modify all telephone directory listings of the Restaurant associated with any Marks when the directories are next published; (7) if requested by us, transfer to us or our designee the telephone number of the Restaurant and all telephone directory listings associated with the Marks; and (8) furnish to us, within thirty (30) days after the effective date of termination or expiration, evidence satisfactory to us of your compliance with the foregoing obligations. Upon our request, you will furnish us photographs of the Restaurant as evidence of the removal of our Marks and trade dress.

c. **Confidential Information.** You agree that, upon termination or expiration of the Franchise, you will immediately cease to use our Proprietary Information or other business information disclosed to or otherwise learned or acquired by you from us, in any business or otherwise, and return to us all copies of the Operations Manual, Restaurant Development Manual, if any, and any other confidential materials which have been lent or made available to you by us.

d. **Covenant Not to Compete.** Upon termination of this Agreement by us in accordance with its terms and conditions or by you without good cause, or upon expiration of this Agreement, you and Franchisee's owners agree that for a period of two (2) years, commencing on the effective date of termination or expiration or the date on which all persons restricted by this Paragraph 17.d. begin to comply with this Paragraph 17.d., whichever is later, neither you nor Franchisee's owners shall (1) have any direct or indirect ownership interest in any Competitive Business located or operating within fifty (50) miles of the Restaurant or within ten (10) miles of any other franchisee of Franchisor, or of any company-owned or affiliate-owned HuHot Restaurant; or (2) have any direct or indirect ownership interest in any entity which has granted or during such two (2) year period grants franchises or licenses for the

operation of Competitive Businesses within fifty (50) miles of the Restaurant or within ten (10) miles of any other franchisee of Franchisor, or of any company-owned or affiliate-owned HuHot Restaurant; or (3) perform services as a director, officer, manager, employee, consultant, representative, agent, lender, lessor, or otherwise for any Competitive Business located within fifty (50) miles of the Restaurant or within ten (10) miles of any other franchisee of Franchisor, or of any company-owned or affiliate-owned HuHot Restaurant. The restrictions of this Section shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent three percent (3%) or less of the number of shares of that class of securities issued and outstanding. To the extent that any provision of this Paragraph 17.d. or Paragraph 9.f. hereof is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but could be enforceable by reducing any or all thereof, you and we agree that same shall be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought.

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

f. **Franchisor's Option to Purchase.** Upon the termination or expiration of the Franchise, we shall have the option, but not the obligation, exercisable for thirty (30) days upon written notice to you, to purchase at fair market value, all of the assets of the Restaurant. If the parties cannot agree on the fair market value of the assets of the Restaurant within a reasonable time, such value shall be determined by an independent appraiser who shall have been selected jointly by the parties. We shall not assume any liabilities, debts or obligations of the Restaurant in connection with any such transfer and you shall indemnify us for any and all claims made against us arising out of any such transfer of the assets of the Restaurant. The parties shall comply with all applicable laws in connection with any such transfer and you shall cooperate with the us in complying with all such requirements. At the closing of the purchase of the Restaurant, as above provided, both parties will execute and deliver all documents necessary to vest title in us or our nominee, free and clear of all liens and encumbrances. We shall have the right to set off against the purchase price of the assets of the Restaurant all amounts due to us from you under this Agreement or any other agreements between the parties.

## 18. **ENFORCEMENT**

a. **Severability and Substitution of Valid Provisions.** Except for your obligation to pay Royalty Fees and Marketing Fund payments, or as expressly provided to the contrary herein, each section, paragraph, term and provision of this Agreement, and any portion thereof, shall be considered severable and if for any reason any such provision of this Agreement is held to be invalid, contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that ruling shall not impair the operation of, or have any other effect upon, such other portions of this Agreement as may remain otherwise intelligible, which shall continue to be given full force and effect and bind the parties hereto. If any

applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of or refusal to grant a successor franchise than is required hereunder, or the taking of some other action not required hereunder, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice and/or other action required by such law or rule shall be substituted for the comparable provisions hereof, and we shall have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and shall be enforced as originally made and entered into in all other jurisdictions.

**b. Waiver of Obligations.**

i. We and you may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice thereof to the other or such other effective date stated in the notice of waiver. Any waiver granted by us shall be without prejudice to any other rights we may have, will be subject to continuing review by us and may be revoked, in our sole discretion, at any time and for any reason, effective upon delivery to you of ten (10) days' prior written notice. The parties shall not be deemed to have waived or impaired any right, power or option reserved by this Agreement (including, without limitation, the right to demand exact compliance with every term, condition and covenant herein or to declare any breach thereof to be a default and to terminate the Franchise prior to the expiration of its term) by virtue of any custom or practice of the parties at variance with the terms hereof; any failure, refusal or neglect of either party to exercise any right under this Agreement or to exercise any right under this Agreement or to insist upon exact compliance by the other with the other's obligations hereunder including, without limitation, any mandatory specification, standard or operating procedure; any waiver, forbearance, delay, failure or omission by us to exercise any right, power or option, whether of the same, similar or different nature, with respect to any other HuHot Restaurant; or the acceptance by us of any payments from you after any breach by you of this Agreement.

ii. We make no warranties or guaranties upon which you may rely, and assume no liability or obligation to you, by granting any waiver, approval or consent to you, or by reason of any neglect, delay or denial of any request therefor. Any waiver granted by us shall be without prejudice to any other rights we may have, will be subject to continuing review by us, and may be revoked, in our sole discretion, at any time and for any reason, effective upon delivery to you of ten (10) days' prior written notice.

iii. Neither we nor you shall be liable for loss or damage or deemed to be in breach of this Agreement if failure to perform obligations results from: (1) transportation shortages, inadequate supply of labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any federal, state or

municipal government or any department or agency thereof; (2) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state, or municipal government or any department or agency thereof; (3) acts of God; (4) acts or omissions of the other party; (5) fires, strikes, embargoes, war, or riot; or (6) any other similar event or cause. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that said causes will not excuse payment of amounts owed at the time of such occurrence or payment of Royalties and Marketing fees due on any sales thereafter.

c. **Rights of the Parties are Cumulative.** The rights of Franchisor and Franchisee hereunder are cumulative and no exercise or enforcement by Franchisor or Franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by Franchisor or Franchisee of any other right or remedy hereunder or which we or you are entitled by law to enforce.

d. **Costs and Attorneys' Fees.** If we incur attorney's fees in connection with collecting delinquent payments from you and/or enforcing compliance with this Agreement (whether or not legal proceedings are filed), you shall reimburse us our reasonable legal fees and costs so incurred. If a claim for amounts owed by you to us is asserted in any arbitration or judicial proceeding or appeal thereof, or if we or you are required to enforce this Agreement in an arbitration or judicial proceeding or appeal thereof, the party prevailing in such proceeding shall be entitled to reimbursement of its costs and expenses including, but not limited to, reasonable accounting, legal and attorneys' fees.

e. **Governing Law/Consent to Jurisdiction.** All matters relating to arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. 1 *et seq.*). Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Section 1051 *et seq.*) or other federal law, this Agreement and the Franchise shall be governed by the laws of the State of Montana. You agree that we may institute any action against you to enforce the provisions of this Agreement in the state court in the county where our principal business address is then located, or the federal court in the judicial district where our principal business address is then located. You irrevocably submit to the exclusive jurisdiction of such courts and waive any objection you may have to either the jurisdiction or venue of such court.

f. **Waiver of Jury Trial.** Each party irrevocably waives trial by jury in any action, proceeding or counterclaim, whether at law or in equity, brought by either party.

g. **Limitations of Claims.** Except for claims against you to recover unpaid monies due to us or our affiliates, any and all claims arising out of or relating to this Agreement or the relationship among the parties hereto or their affiliates shall be barred unless a legal action or arbitration proceeding is commenced within one (1) year from the date the party asserting such claims knew of the facts giving rise to such claims.

h. **Binding Effect.** This Agreement is binding upon the parties hereto, and their respective executors, administrators, heirs, assigns and successors in interest.

i. **Modification.** This Agreement shall not be modified except by written agreement signed by both you and us. Notwithstanding the preceding sentence, we may modify the Operations Manual, and/or Restaurant Development Manual pursuant to Paragraph 4.c.

j. **Construction.** The preambles and riders are a part of this Agreement, which constitutes the entire agreement of the parties, and there are no other oral, electronic, or written understandings or agreements between Franchisor and Franchisee relating to the subject matter of this Agreement. Except as otherwise set forth, nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto. Except where this Agreement expressly obligates us reasonably to approve or not unreasonably to withhold our approval of any action or request by you, we have the absolute right to refuse any request by you or to withhold our approval of any action or omission by you. The headings of the several sections and paragraphs hereof are for convenience only and do not define, limit or construe the contents of such sections or paragraphs. The term "attorneys' fees" shall include, without limitation, reasonable legal fees, whether incurred prior to, in preparation for or in contemplation of the filing of any written demand or claim, action, hearing or proceeding to enforce the obligations of this Agreement. The term "affiliate" as used herein is applicable to any company directly or indirectly owned or controlled by us or you, under common control with us or you or any principal of Franchisor or Franchisee. References to a "controlling interest" in Franchisee shall mean more than fifty percent (50+%) or more of the voting control of Franchisee. The term "Franchisee" as used herein is applicable to one or more persons, a corporation, a partnership, or L.L.C., as the case may be, and the singular usage includes the plural and the masculine and neuter usages include the other and the feminine. If two or more persons are at any time Franchisee hereunder, whether or not as partners or joint venturers, their obligations and liabilities to Franchisor shall be joint and several. This Agreement may be executed in multiple copies, each of which shall be deemed an original as to the parties signing it.

k. **Time is of the Essence.** Time is of the essence of this Agreement.

l. **Mandatory and Binding Arbitration.**

i. All disputes, controversies or claims arising out of or relating to this Agreement or the relationship of the parties hereto or their affiliates, or officers, directors, agents or employees of the parties or their affiliates, shall be submitted for arbitration to the American Arbitration Association on demand of any party to such dispute. Claims which must be submitted to arbitration pursuant to this provision include those against the parties hereto, their affiliates, or the officers, directors, members, agents, or employees of either. Such arbitration proceedings shall be conducted in Missoula, Montana and shall be heard by one arbitrator in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. All matters within the scope of the Federal Arbitration Act (9 U.S.C. Sec. 1 et seq.) shall be governed by it.

ii. The arbitrator shall have the right to award or include in his award any relief which he deems proper in the circumstances, including, without limitation, money damages

(with interest on unpaid amounts from the date due), specific performance, injunctive relief and attorneys' fees and costs in accordance with Paragraph 18.d., provided that the arbitrator shall not have the authority to award exemplary or punitive damages (except for your obligations to indemnify us for third party claims under Paragraph 7.d.), nor shall he have jurisdiction over any dispute relating to the ownership, validity or registration of any name or Mark licensed hereunder. The award and decision and judgment upon the award may be entered in any court of competent jurisdiction. Each party waives any right to contest the validity or enforceability of such award. The parties agree to be bound by the provisions of any limitation on the period of time by which claims must be brought. The parties further agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not submitted or filed in such proceeding shall be barred.

iii. We and you agree that arbitration shall be conducted on an individual, not a class-wide, basis and that an arbitration proceeding between Franchisor and Franchisee shall not be consolidated with any other arbitration proceeding involving Franchisor and any other person, association, corporation, partnership, L.L.C. or other entity.

iv. This provision shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

v. Notwithstanding the above and foregoing, we shall have the right to apply directly to a court of competent jurisdiction for a temporary restraining order, preliminary injunction or other emergency relief which may be available to protect the name, Marks or System licensed hereunder, without the necessity of first filing an arbitration demand.

m. **Franchisor's Right to Change Personnel.** You acknowledge that we maintain a staff to manage and operate the Franchise System and that staff members can change as employees come and go. You represent that you have not signed this Agreement in reliance on any particular shareholder, director, officer, or employee remaining with us in that capacity.

n. **Franchisor's Right to Implement, Change and Rescind Policies.** Any policies that we adopt and implement from time to time, including policies to guide us in our decision-making, are subject to change, are not a part of this Agreement, and are not binding on us.

o. **No Third Party Beneficiary Claims.** Except as provided in Subsection 7.d. on Indemnification, nothing in this Agreement is intended or deemed to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

## 19. **NOTICES AND PAYMENTS.**

All written notices and reports permitted or required to be delivered by the provisions of this Agreement or of the Operations Manual or Restaurant Development Manual shall be deemed so delivered at the time delivered by hand, one (1) business day after transmission by facsimile, telegraph or other electronic system, one (1) business day after being placed in the hands of a



commercial courier service for overnight delivery, or three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the parties as follows:

Franchisor:                   HuHot Mongolian Grills, LLC  
                                  223 East Main Street  
                                  Missoula, Montana 59802

**Franchisee: Name and Address of Person to Receive Notice for Franchise Owner.**

- (a) Name: \_\_\_\_\_  
(b) Postal Address: \_\_\_\_\_  
\_\_\_\_\_

or at the most current principal business address of which the notifying party has been notified. Any required payment or report not actually received by us during regular business hours on the date due (or postmarked by postal authorities at least two (2) days prior thereto) shall be deemed delinquent. You may change the person and/or address for notice only by giving us thirty (30) days' prior written notice.

Any notice that we send to you may be sent only to the one (1) person identified above, even if you have multiple owners. You acknowledge and agree that notice to the person identified above constitutes notice to you and to all the owners of Franchisee.

**20. ACKNOWLEDGEMENTS.**

You acknowledge that you have read this Agreement and our Uniform Franchise Offering Circular; and that you understand and accept the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain our high standards of quality and service and the uniformity of those standards and thereby to protect and preserve the goodwill of the Marks and the HuHot System. You acknowledge that you have conducted an independent investigation contemplated by this Agreement and recognize that it involves business risks and that the success of the venture is largely dependent upon your business abilities. You further represent to us, as an inducement to our entry into this Agreement, that you have made no misrepresentations in obtaining the Franchise. You further acknowledge that you understand that, other than what is contained in our Uniform Franchise Offering Circular: (a) that we do not furnish any oral or written information concerning the actual or potential sales, costs, income or profits of a HuHot Restaurant; (b) that we do not authorize our salespersons, officers, employees or other representatives to furnish such information, and (c) that you have not received any such information, either oral or written, concerning the actual or potential sales, costs, income or profits of a HuHot Restaurant.

**IN WITNESS WHEREOF** the parties hereto have executed, sealed, and delivered this Agreement in two (2) counterparts effective on the day and year first above written.

**THIS AGREEMENT IS NOT EFFECTIVE UNLESS AND UNTIL ACCEPTED BY THE**

**FRANCHISOR, AS EVIDENCED BY DATING AND SIGNING BY AN OFFICER OF FRANCHISOR.**

**Franchisor:**  
**HUHOT MONGOLIAN GRILLS, L.L.C.,**  
a Montana limited liability company

**Franchisee:**  
**Corporate Signature)**  
\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Accepted: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

Individual Signatures:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RIDER A to FRANCHISE AGREEMENT**

**FRANCHISEE'S LOCATION**

The parties hereto agree that the HuHot Restaurant to be operated by Franchisee pursuant to the Franchise Agreement shall be located at the following premises:

You acknowledge and agree that our approval of the premises for the Restaurant and any information communicated to you regarding the premises for the Restaurant do not constitute a representation or warranty of any kind, express or implied, as to the suitability of the premises for a HuHot Restaurant, of the economic terms of the lease or sublease, or for any other purpose. Our approval of the premises indicates only that we believe that the premises falls within the acceptable range under criteria applied by us as of the time period encompassing the evaluation. Both you and we acknowledge that application of criteria that have been effective with respect to other sites and premises may not be predictive of potential for all sites and premises. The uncertainty and instability of such criteria are beyond our control and you agree that we will not be responsible for the failure of a site and premises approved by us to meet expectations as to potential revenue or operational criteria. You further acknowledge and agree that your acceptance of a franchise for the operation of a HuHot Restaurant at the above premises is based on your own independent investigation of the suitability of the premises.

**HUHOT MONGOLIAN GRILLS, L.L.C.**  
a Montana limited liability company

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

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Franchisee

**RIDER B to FRANCHISE AGREEMENT**

**FRANCHISEE'S PROTECTED AREA**

Franchisee's Protected Area shall be that area located:

**HUHOT MONGOLIAN GRILLS, L.L.C.**  
a Montana limited liability company

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

\_\_\_\_\_

Franchisee

\_\_\_\_\_

Franchisee

\_\_\_\_\_

Franchisee

\_\_\_\_\_

Franchisee

\_\_\_\_\_

Franchisee

**RIDER C to FRANCHISE AGREEMENT**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS is given this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

In consideration of, and as an inducement to, the execution of that certain HuHot Franchise Agreement of even date herewith (the "Agreement") by HuHot Mongolian Grills, LLC (the "Franchisor"), each of the undersigned hereby personally and unconditionally (a) guarantees to Franchisor, and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that \_\_\_\_\_ ("Franchisee") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including without limitation the provisions of Paragraph 9.f. and 16.d.

Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of obligations hereby guaranteed; (4) any right he may have to require that an action be brought against Franchisee or any other person as a condition of liability; and (5) any and all other notices and legal or equitable defenses to which he may be entitled.

Each of the undersigned consents and agrees that: (1) his direct and immediate liability under this guaranty shall be joint and several; (2) he shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (4) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend his guaranty, which shall be continuing and irrevocable during the term of the Agreement.

**IN WITNESS WHEREOF**, each of the undersigned has hereunto affixed his signature on the same day and year as the Agreement was executed.

GUARANTOR(S)

PERCENTAGE OF  
OWNERSHIP OF FRANCHISEE

_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %