

## FRANCHISE AGREEMENT

This Franchise Agreement (this "Agreement") is made and entered into on \_\_\_\_\_, 200\_\_, by and between GALARDI GROUP FRANCHISE CORP., a California corporation ("Franchisor"), GALARDI GROUP FRANCHISE & LEASING, LLC, a California limited liability company ("Service LLC") and \_\_\_\_\_ ("Franchisee") with reference to the following facts:

### RECITALS

Franchisor owns a unique, proprietary system (the "Original Hamburger Stand System") for developing and operating limited menu, self-service restaurants ("Original Hamburger Stand Restaurants"), identified by distinctive trademarks, service marks and the Original Hamburger Stand and Tastee-Freez trade names (the "Trademarks"). Service LLC operates and provides services to operators of Original Hamburger Stand Restaurants. Franchisor and Service LLC have established an excellent reputation and valuable goodwill concerning the quality of products and services at Original Hamburger Stand Restaurants. Franchisee wants a franchise to operate a Original Hamburger Stand Restaurant at a specific location. Franchisor is willing to grant a franchise to Franchisee on the terms in this Agreement. Accordingly, the parties now agree as follows:

### AGREEMENT

#### 1. GRANT OF LICENSE

Franchisor grants Franchisee a license to use the Trademarks and the Original Hamburger Stand System to operate a Original Hamburger Stand Restaurant at the location referred to in Section 3. Franchisee accepts the license on the terms in this Agreement.

#### 2. MANAGEMENT AND OWNERSHIP

Franchisor granted the license and entered into this Agreement with Franchisee in reliance on Franchisee's representations, warranties and agreement with Franchisor that:

- (a) Franchisee accurately described Franchisee's business organization to Franchisor;
- (b) Franchisee has the ability and financial resources, and is willing and committed, to fully perform Franchisee's obligations in this Agreement;
- (c) If Franchisee is a corporation, limited liability company or other form of entity, the owners of all ownership interests, legal and beneficial, voting and non-voting, are as follows:

<u>Name</u>	<u>Percentage of Ownership</u>
_____	_____
_____	_____
_____	_____
_____	_____

(d) Ownership of Franchisee shall continue to be by the individuals and in the percentages stated above;

(e) At all times, Franchisee (if Franchisee is an individual) and the equity owner(s) of at least fifty-one percent (51%) of Franchisee (if Franchisee is an entity) or Franchisee's general manager, shall have attended and successfully completed training pursuant to Section 7(b); and

(f) \_\_\_\_\_ is designated as initial general manager who shall have full operational control of the Original Hamburger Stand Restaurant unless and until a successor general manager is approved by Service LLC.

### 3. LICENSED PREMISES

(a) Franchisee's license to use the Original Hamburger Stand System and Trademarks is limited exclusively to \_\_\_\_\_ (the "Licensed Premises"). If the location is not stated in the preceding sentence when this Agreement is signed, then when selected and approved by Franchisor, the location shall be identified in an Exhibit which the parties shall initial, date and attach to this Agreement as Exhibit "A". When attached, that Exhibit shall be deemed to be part of this Agreement.

(b) Franchisor will not grant a franchise for, and will not open its own Original Hamburger Stand Restaurant, closer than one-half (1/2) mile from the Licensed Premises nor closer than one (1) mile from the Licensed Premises if the new restaurant would be on the exact same street, but Section 3(c) states exceptions to this limited exclusivity.

(c) Franchisor may open or franchise Original Hamburger Stand Restaurants anywhere, even closer than one-half (1/2) mile from the Licensed Premises, if the new restaurant is (1) in a stadium, airport, school, shopping mall, hotel, office building or other institutional location that Franchisor determines will not materially compete with the Licensed Premises; or (2) a temporary cart, booth, mobile vehicle or the like, at a fair, trade show, concert or similar event. Also, Section 3(b) does not grant marketing exclusivity. Franchisor and any franchisees may advertise restaurants and the Original Hamburger Stand brand anywhere, regardless of location.

(d) If Franchisor or Service LLC pays for or obtains any licenses or permits on behalf of Franchisee in the first twelve (12) months that the Licensed Premises are open for business after execution of this Agreement, then Franchisee shall reimburse all Franchisor's and Service LLC's expenses and costs incurred to obtain those licenses or permits. This Section 3(d) does not imply any obligation of Franchisor or Service LLC to pay for or obtain any license or permit.

(e) Franchisor's approval of a location is not a warranty or assurance of viability, profitability or suitability of the location.

#### 4. TERM

(a) The term of this Agreement starts on \_\_\_\_\_, 200\_\_ and ends at the close of business on the \_\_\_\_ the anniversary of that date.

(b) If applicable law requires Franchisor to give Franchisee notice of expiration or non-renewal at a specified time before expiration of this Agreement and Franchisor has not done so, then if Franchisee objects to the lack of notice, the term shall automatically extend on a month-to-month basis until Franchisor has given the notice required and the required time passes before expiration becomes effective.

#### 5. FRANCHISE FEE

(a) Franchisee shall pay to Franchisor an initial franchise fee totaling \_\_\_\_\_ dollars (\$\_\_\_\_\_).

(b) Franchisor acknowledges previously receiving \_\_\_\_\_ dollars (\$\_\_\_\_\_ ) from Franchisee pursuant to a Deposit Agreement dated \_\_\_\_\_, 200\_\_. This prior deposit shall apply as a credit against the total initial franchise fee referenced above.

(c) Franchisee shall pay Franchisor \_\_\_\_\_ dollars (\$\_\_\_\_\_) of the initial franchise fee by cash or check on signing this Agreement. Franchisee shall pay Franchisor the balance of \_\_\_\_\_ dollars (\$\_\_\_\_\_) on starting construction at the Licensed Premises. These amounts are each deemed to be fully earned by Franchisor when paid, and are non-refundable.

#### 6. FRANCHISE SERVICE FEE

(a) Franchisee shall pay to Service LLC on or before the seventh (7th) day of each month a monthly franchise service fee. The service fee shall equal five percent (5%) of Gross Sales, as defined below, for the preceding month.

(b) For this Agreement, Gross Sales means all revenue and income received by Franchisee on account of sales, and catering originating, from the Licensed Premises ("Gross Sales"). However, Gross Sales does not include (1) state sales tax separately identified, collected and actually paid to the taxing authority pursuant to requirements of law; (2) amount received from sales which Franchisee promptly

refunds at a customer's request; or (3) tips paid by a customer to an employee of Franchisee in cash or by credit card, separately shown on the credit card invoice and actually paid to the employee.

(c) Franchisee shall record in writing all Gross Sales. On or before the seventh (7th) day of each month Franchisee shall provide Service LLC a written statement of all Gross Sales for the preceding month. The statement shall include a tabulation of the cash register's or point of sale system's tape totals certified by Franchisee to be true and accurate. Franchisee shall provide all additional financial information that Service LLC requests from time to time in the form, at times and in the manner that Service LLC requests.

(d) Franchisee shall maintain all records, statements, and forms pertaining to Gross Sales in good order for a period of three (3) years. Franchisee shall make these records, statements and forms available to Service LLC's representatives for inspection, audit and copying at reasonable times.

(e) If Service LLC determines by inspection or audit that any one or more statement(s) of Gross Sales reported to Service LLC is or are understated or otherwise underpaid, then Franchisee shall immediately pay Service LLC the amount of the understatement plus interest as provided in Section 18(e). If the understatement or underpayment is more than two percent (2%) of total Gross Sales for any one year, then Franchisee shall also be responsible to pay the costs of the inspection or audit. The remedies in this Section 6(e) do not excuse any breach and are additional to and not in lieu of other available remedies.

## **7. SERVICES BY FRANCHISOR**

(a) Franchisor shall make available a Original Hamburger Stand Restaurant for occupancy by Franchisee under the terms of Franchisor's standard sublease, or furnish Franchisee with designs, drawings and specifications for construction of a Original Hamburger Stand Restaurant on the Licensed Premises.

(b) Franchisor shall provide Franchisee initial training in the operational aspects of a Original Hamburger Stand Restaurant. Franchisee shall attend and successfully complete the initial training.

(c) Franchisor shall loan to Franchisee a copy of Franchisor's confidential business policies and operations data instruction manual (the "Manual"). Franchisor may from time to time supplement or update the Manual by providing Franchisee with supplements and updates or, if the Manual is maintained on line, by supplementing or updating the on-line version of the Manual. Franchisee shall place all supplements and updates in the Manual and maintain the loaned copy of the Manual in its most current form. References in this Agreement to the Manual refer to the Manual as most recently updated and supplemented by Franchisor.

## **8. SERVICES BY SERVICE CORP.**

(a) Service LLC shall supervise and assist Franchisee at the initial opening of the Licensed Premises for a period of time that Service LLC determines.

(b) Service LLC shall provide promotion programs conducted under direction of Service LLC's marketing department for the initial opening of the Licensed Premises.

(c) Service LLC shall provide training seminars and meetings for continued training in operational aspects of a Original Hamburger Stand Restaurant and maintain a school for training franchisees, all as Service LLC considers appropriate. Franchisee shall attend, pay Service LLC's charges for, and successfully complete any training program that Service LLC arranges, at the times and locations Service LLC designates.

(d) Service LLC shall evaluate and test food and beverage items for possible use in the Original Hamburger Stand System and possible new operational methods of serving existing or new food, beverage and supply items.

(e) Service LLC shall provide Franchisee with selected merchandising, marketing and advertising research data and advice that Service LLC develops from time to time and considers helpful in the operation of franchised Original Hamburger Stand Restaurants.

(f) Service LLC shall provide Franchisee with recipe techniques, food preparation instructions and other operational developments that Service LLC develops from time to time and considers helpful in the operation of franchised Original Hamburger Stand Restaurants.

(g) Service LLC shall provide Franchisee a standardized accounting, cost control and portion control system.

(h) Service LLC's obligations in this Section 8 are not necessarily continuous and ongoing, but may be performed intermittently, as and when, Service LLC deems appropriate.

## **9. ADVERTISING OBLIGATIONS**

(a) All advertising and promotion by Franchisee or an Advertising Association shall be solely at Franchisee's cost and expense and shall be subject to prior written approval of Service LLC as to form and content. If no written disapproval is provided within fifteen (15) days after submission of proposed advertising and promotion to Service LLC, then Franchisee may use that particular advertising and promotion until such time as Service LLC delivers written disapproval. Approval or failure to disapprove does not waive Service LLC's right to later disapprove that or any other or future advertising and promotion. It is understood further that no trade name other than Original Hamburger Stand, or other trade names owned by Franchisor or Service LLC, shall be employed in any advertising or promotion.

(b) Franchisee's advertising and promotion shall not use any trade name other than (1) Original Hamburger Stand or other trade names owned by Franchisor or Service LLC; and (2) any additional brands that Franchisor specifically authorizes Franchisee to use in advertising as part of joint product promotions or co-branding opportunities made available by Franchisor.

(c) Franchisee shall execute Franchisor's Promotional Allowance Assignment assigning and conveying to Service LLC and Franchisor all of Franchisee's right, title and interest in and to any marketing or promotional allowances.

(d) Franchisee shall join, execute and fully perform all agreements and adhere to all by-laws of, and do all else needed to continuously be a member in good standing in, an Advertising Association approved by Service LLC and formed to serve a geographic area acceptable to Franchisor, that includes the Licensed Premises.

(e) Franchisor may require that the Advertising Association's geographic area be an Area of Dominant Influence ("ADI") (as defined by American Research Bureau or other organization designated by Franchisor) or other defined geographic market area that Franchisor designates. At any time when no Service LLC-approved Advertising Association exists in the ADI encompassing the Licensed Premises, then as soon as that ADI has multiple Original Hamburger Stand franchisees, Franchisee shall form an Advertising Association with the other franchisee(s) in that ADI and take all steps needed to obtain Service LLC's approval for that Advertising Association. If they cannot reach agreement on terms for forming the Association, Franchisee shall submit the matter to arbitration with Service LLC as arbitrator. Franchisee shall execute the Advertising Association determined by Service LLC acting as arbitrator.

(f) Franchisee shall pay contributions for advertising determined by the Advertising Association. Franchisee acknowledges being informed that as of the date of execution of this Agreement, if the Licensed Premises is in an area encompassed by an existing Advertising Association, the contribution rate required by that Advertising Association is \_\_\_\_\_ percent (\_\_\_\_%) of Gross Sales; and that there is no assurance that this rate will remain the same for any length of time.

(g) Franchisee's obligation to expend funds for advertising shall never be less than four percent (4%) of Gross Sales (the "Minimum Advertising Obligation"). If the contribution required by the Advertising Association is more than the Minimum Advertising Obligation, then Franchisee shall pay the required contribution to the Advertising Association. If the contribution required by the Advertising Association is less than the Minimum Advertising Obligation, then in addition to that contribution, Franchisee shall expend for advertising, each month, the difference between the Minimum Advertising Obligation and the contribution to the Advertising Association. If Franchisee's Advertising Association contribution and other advertising expenditures are (or it appears to Service LLC that they will be) less than four percent (4%) of Gross Sales for a year, then Service LLC has the option to require Franchisee to pay to Service LLC each month, the difference between four percent (4%) of Gross Sales and the total of the other advertising expenditures by Franchisee for that year.

(h) If there is no Advertising Association in the ADI of the Licensed Premises, then Franchisee shall spend at least the Minimum Advertising Obligation for advertising each month.

(i) Service LLC may require Franchisee to pay up to an additional one percent (1%) of Gross Sales to Service LLC for national and/or regional advertising. Franchisee shall make these payments to Service LLC on or before the seventh (7th) day of each. Payments to Service LLC under this Section 9(i) shall count toward satisfaction of the Minimum Advertising Obligation but shall not reduce any required contribution to any Advertising Association.

(j) In this Section 9, advertising refers to radio, television, newspapers, magazines, billboards, premiums, point of sale materials, printing and distribution of coupons, public relations activities, and other activities reasonably determined by Service LLC to promote sales of Original Hamburger Stand products.

## 10. STANDARDS OF OPERATION

(a) Franchisee acknowledges that Franchisor, Service LLC and Original Hamburger Stand franchisees have maintained high standards of quality for service, preparation and sale of food and methods of conducting business. Franchisee acknowledges that Franchisee's compliance with Sections 10(b) through 10(m) are necessary to continue to maintain high standards.

(b) Franchisee shall operate the Original Hamburger Stand Restaurant in compliance with the Manual.

(c) Franchisee shall assure that all food sold by Franchisee is of the highest quality and that preparation, composition and ingredients conform fully to specifications, standards and instructions that Service LLC provides to Franchisee in writing from time to time. Service LLC shall have the right to inspect the Licensed Premises from time to time without notice, during regular business hours to assess Franchisee's compliance with this Agreement. Franchisee shall cooperate with these inspections.

(d) Franchisee shall not serve, process, prepare, advertise, promote or sell any food products except as directed or consented to in writing by Service LLC. Franchisee shall sell food products only at retail and not wholesale. Franchisee shall not sell from any location other than the Licensed Premises, without prior written consent from Service LLC.

(e) Franchisee acknowledges that changes may occur in consumer preferences, technology, competitive circumstances and other factors affecting the Original Hamburger Stand System. Service LLC shall have the right to modify any and all aspects of food preparation, menus, service, techniques, procedures and all from time to time. Franchisee shall promptly comply with modifications on written notice from Service LLC. Modifications by Service LLC are deemed to occur pursuant to the exercise of Service LLC's rights in this Agreement and are not modifications of this Agreement.

(f) Franchisee shall at all times maintain and operate all food preparation areas, storage, displays, interiors, parking areas and all other aspects of the Licensed Premises at a high standard of sanitation and cleanliness, in compliance with all applicable laws and regulations. Franchisee shall assure that all personnel are properly dressed in compliance with Service LLC's requirements and highest standards of hygiene. When Franchisor or Service LLC requests, Franchisee shall, at Franchisee's sole cost and expense, send personnel designated by Franchisor or Service LLC to training programs of Franchisor or Service LLC.

(g) All food menus on the Licensed Premises shall be in the form, size, color and content specified by Service LLC. Service LLC shall have the right to change the form, size, color and content of menus from time to time and Franchisee shall conform to these changes within three (3) days after

receiving written notice. Service LLC shall have the right to require Franchisee to advertise locations and addresses of other Original Hamburger Stand Restaurants as well as specialty and novelty items that may be used or sold by Service LLC or other Original Hamburger Stand Restaurants.

(h) All interior and exterior decorating at the Licensed Premises shall conform strictly to the plans, specifications, designs and colors required by Service LLC. Service LLC shall have the right to change these plans, specifications, designs and colors from time to time. Franchisee shall conform to these changes within fifteen (15) days after receiving written notice.

Franchisee agrees to remodel the Licensed Premises at least every ten (10) years during the term of this agreement in accordance with Service LLC's then current remodel requirements.

(i) If any building or appurtenance is to be constructed or altered in any way on the Licensed Premises, the construction or alterations shall conform strictly with plans and specifications that Service LLC furnishes, as well as all applicable laws and regulations. Service LLC shall have the right to supervise construction or alteration to assure conformity. Franchisee shall not undertake construction or alteration of the Licensed Premises without Service LLC's prior written consent and shall not change any plan or specification in construction or alteration without Service LLC's prior written consent.

(j) Franchisee shall install and use on the Licensed Premises such furnishings, furniture, signs and equipment as Service LLC requires from time to time. Franchisee shall conform to the standards of quality, quantity, design, size, color and other specifications that Service LLC requires. If Service LLC, in its sole, subjective judgment, determines that new or additional equipment may provide new or improved services to customers and notifies Franchisee, Franchisee shall, at Franchisee's sole cost and expense, acquire and use that equipment within thirty (30) days after receipt of the written notice, and stop using any outmoded or superseded equipment. If Franchisee fails to acquire and use the equipment within that thirty (30) days, then Service LLC will have the right to acquire and install the equipment at Franchisee's sole cost and expense.

(k) The following only applies to the case of Franchisee being granted a term of at least twenty (20) years. Unless Franchisee, or Franchisee's seller, has complied with Service LLC's resale and/or renewal requirements during the initial ten (10) years of the term of this Agreement, then any time after the 10<sup>th</sup> anniversary of this Agreement, Service LLC can require Franchisee to remodel, refurbish, redecorate, modernize, refurbish, upgrade, and/or enhance the image of the Premises and Restaurant to conform to changes in, or prescribed in Service LLC's then-current standards and specifications, all as Service LLC determines in Service LLC's discretion. Any of the foregoing required by Service LLC may require a substantial further investment and expense by Franchisee. Service LLC makes no guarantee of any particular return on that investment and expense. Service LLC may specify, or require Franchisee to obtain Service LLC's consent to layouts, designs, and new equipment, furniture and furnishings Franchisee uses in any of the foregoing activities. Service LLC shall exercise in good faith in requiring Franchisee to engage in any of the above, and all such shall be required only on a nondiscriminatory basis.

(l) Franchisee shall assure that signs at the Licensed Premises display no trademark or trade name other than Original Hamburger Stand, or other trade names owned by Franchisor and Service LLC, and the location of the Licensed Premises. Franchisee shall assure that the color, size, design and



content of all signs are according to specifications that Service LLC provides. Representatives of Service LLC shall have the right to enter the Licensed Premises to remove any sign that does not conform to Service LLC's specifications.

(m) Franchisee shall not employ or use any vending machine, amusement device, video game, pinball machines, coin or token operated machine or computer gaming equipment on the Licensed Premises.

(n) Franchisee shall open the Licensed Premises for business during at least the hours and days that Service LLC specifies, which may be as many as 24 hours per day, and as many as 365 days per year (366 per leap year).

## **11. FOOD, SUPPLIES AND SERVICES**

(a) To protect the Original Hamburger Stand Trademarks, maintain uniformity and standards of quality and for other reasons beneficial to Franchisor, Franchisee shall comply with the provisions of Sections 11(b) through 11(f).

(b) Franchisee shall purchase for inventory, use and resale on the Licensed Premises, only food and supplies listed and identified in the Manual.

(c) Franchisee shall acquire from Service LLC or sources approved by Service LLC in writing from time to time, the food, supplies, materials, equipment and other items for use in operating the Original Hamburger Stand Restaurant, that Franchisor and Service LLC determine are needed for uniformity, consistent quality and to preserve and enhance the goodwill of the Trademarks.

(d) Service LLC shall furnish Franchisee at Franchisee's request the then current standards and specifications for any equipment, supplies, trademarked paper goods or other products required by Service LLC to be used in operating the Original Hamburger Stand Restaurant.

(e) If Franchisee wants to obtain required products from a manufacturer or supplier not then approved by Service LLC, Franchisee shall provide Service LLC with all information regarding the manufacturer or supplier that Service LLC requests. Franchisor shall have the right to require the manufacturer or supplier to provide product samples, access to facilities, payment of testing charges, and assurance they will adequately protect confidential information. On completion of procedures required by Service LLC to assess manufacturer or supplier's capacity, facilities, and capability to supply quantities, at times and with reliability needed for efficient operation, to protect confidential information, and any other factors Service LLC deems relevant, Service LLC shall notify Franchisee whether or not the manufacturer or supplier is approved to supply product to Franchisee; and the basis for any disapproval. Approval does not restrict Service LLC from later withdrawing approval if Service LLC decides circumstances warrant. The parties intend by this Section 11(e) to permit Franchisee to purchase products meeting Service LLC's standards and specifications from manufacturers and suppliers of Franchisee's choice, subject only to reasonable approval of Service LLC.

content of all signs are according to specifications that Service LLC provides. Representatives of Service LLC shall have the right to enter the Licensed Premises to remove any sign that does not conform to Service LLC's specifications.

(m) Franchisee shall not employ or use any vending machine, amusement device, video game, pinball machines, coin or token operated machine or computer gaming equipment on the Licensed Premises.

(n) Franchisee shall open the Licensed Premises for business during at least the hours and days that Service LLC specifies, which may be as many as 24 hours per day, and as many as 365 days per year (366 per leap year).

## **11. FOOD, SUPPLIES AND SERVICES**

(a) To protect the Original Hamburger Stand Trademarks, maintain uniformity and standards of quality and for other reasons beneficial to Franchisor, Franchisee shall comply with the provisions of Sections 11(b) through 11(f).

(b) Franchisee shall purchase for inventory, use and resale on the Licensed Premises, only food and supplies listed and identified in the Manual.

(c) Franchisee shall acquire from Service LLC or sources approved by Service LLC in writing from time to time, the food, supplies, materials, equipment and other items for use in operating the Original Hamburger Stand Restaurant, that Franchisor and Service LLC determine are needed for uniformity, consistent quality and to preserve and enhance the goodwill of the Trademarks.

(d) Service LLC shall furnish Franchisee at Franchisee's request the then current standards and specifications for any equipment, supplies, trademarked paper goods or other products required by Service LLC to be used in operating the Original Hamburger Stand Restaurant.

(e) If Franchisee wants to obtain required products from a manufacturer or supplier not then approved by Service LLC, Franchisee shall provide Service LLC with all information regarding the manufacturer or supplier that Service LLC requests. Franchisor shall have the right to require the manufacturer or supplier to provide product samples, access to facilities, payment of testing charges, and assurance they will adequately protect confidential information. On completion of procedures required by Service LLC to assess manufacturer or supplier's capacity, facilities, and capability to supply quantities, at times and with reliability needed for efficient operation, to protect confidential information, and any other factors Service LLC deems relevant, Service LLC shall notify Franchisee whether or not the manufacturer or supplier is approved to supply product to Franchisee; and the basis for any disapproval. Approval does not restrict Service LLC from later withdrawing approval if Service LLC decides circumstances warrant. The parties intend by this Section 11(e) to permit Franchisee to purchase products meeting Service LLC's standards and specifications from manufacturers and suppliers of Franchisee's choice, subject only to reasonable approval of Service LLC.

(f) Franchisee acknowledges that quality control of products used or sold by Original Hamburger Stand franchisees is both proper and important to the operation of Service LLC's system and to protection of the Trademarks, and that the provisions in this Section 11 are reasonable to maintain quality control.

## **12. OWNERSHIP AND PROTECTION OF INTELLECTUAL PROPERTY**

(a) Franchisee shall not disclose to any other person any information pertaining to ingredients, methods of conducting business, contents of the Manual or any other material or information that Franchisor designates as confidential, except that Franchisee may disclose to Franchisee's employees, the portions of that information that are essential for them to know to do their jobs. Franchisee shall cause Franchisee's employees to refrain from further disclosure. If requested by Franchisor, Franchisee shall require personnel specified by Franchisor to execute written agreements for Franchisor's benefit, agreeing to protect confidentiality of the foregoing.

(b) Franchisee shall fully and promptly disclose to Franchisor, all ideas, concepts, formulas, recipes, methods, techniques and other possible improvements relating to development or operation of a Original Hamburger Stand Restaurant which Franchisee conceives or becomes aware of due to conception or suggestion of others. Franchisor shall be deemed to be authorized to develop, modify, use and authorize others to use the matter disclosed, without compensation to Franchisee or others. Franchisee shall not test, offer, or sell any new product without Franchisor's prior written consent.

(c) To assist in protecting confidential information against intentional or inadvertent misuse, during the term of this Agreement and for two (2) years after it expires without renewal or terminates, Franchisee and Franchisee's stockholders, members, joint venturers, directors, officers, partners, managerial employees and equivalent of any of the foregoing, shall not have any direct or indirect interest as an owner, investor, partner, lender, director, officer, manager, employee, consultant, representative or agent or in any other capacity in any "Competing Business". Competing Business is a business that is both (a) located at or within a radius of 50 miles of the Licensed Premises or premises of any Original Hamburger Stand Restaurant; and (b) engaged in preparing, offering or selling food products that are the same as or substantially similar to those (x) offered or sold by the Original Hamburger Stand Restaurant or (y) in development by Franchisor or Service LLC during the one year prior to expiration or termination. Franchisee shall take all steps necessary to assure compliance with this provision by Franchisee's stockholders, members, joint venturers, directors, officers, partners, managerial employees and equivalent. Following expiration or termination of this Agreement, Franchisee shall never use any packaging techniques, processes or food preparation methods or formulas obtained, learned or used by Franchisee as a Original Hamburger Stand franchisee.

(d) Franchisee acknowledges that the scope of the restriction in Section 12(c) is narrow, and does not restrict anyone from engaging in the restaurant or food service business outside of the narrow scope of Section 12(c) or from engaging in an entire trade or profession, and that Franchisee has other considerable skills, experience and education which afford Franchisee the opportunity to derive income from other endeavors and therefore the covenants in Section 12(c) will not impose any undue hardship on Franchisee. Any violation of Section 12(c) shall be deemed to be a material breach of this Agreement by Franchisee.

(e) Franchisee acknowledges that "Original Hamburger Stand" and the other Trademarks, and related Original Hamburger Stand and Tastee-Freez domain names, is solely Franchisor's property. Nothing in this Agreement shall be construed to give Franchisee, or any other person, any right, title or interest therein, except for a license to use the Trademarks on the terms in this Agreement.

(f) A decision of a court that all or part of this Section 12 is unenforceable under the laws of a state other than where the Licensed Premises are located, shall not relieve Franchisee of the obligation to comply with this Section 12 in the state where the Licensed Premises are located. If a court of competent jurisdiction determines that all or part of this Section 12 is unenforceable in the state where the Licensed Premises are located but that the provision would be enforceable if its scope were reduced, then the provision shall be deemed to be reduced to encompass the maximum time, geography and activity that is permissible in that state, and as so reduced in scope shall be enforced.

### 13. ASSIGNMENT

(a) Franchisee shall have no right or power to, and shall not purport to sell, assign, transfer or encumber this Agreement or any right or interest in this Agreement, nor allow any assignment, transfer or encumbrance to occur by operation of law without first obtaining written consent of Franchisor and Service LLC. Any purported sale, assignment, transfer or encumbrance other than as provided in this Section 13 shall be void, of no effect and shall constitute a material breach of this Agreement.

(b) In the event of the death or disability of a Franchisee, then following written request, Franchisor and Service LLC shall consent to the transfer of the interest to Franchisee's spouse, heirs or relatives, by blood or by marriage, whether the transfer is made by will or by operation of law, provided that: (1) in Franchisor's and Service LLC's sole discretion and judgment the person or persons obtaining the interest are capable of conducting the business in a manner satisfactory to Franchisor and Service LLC; and (2) they satisfy the Franchisor's and Service LLC's then current requirements pertaining to assignment or subletting.

(c) Franchisee may sell and assign Franchisee's rights under this Agreement to a bona fide purchaser only (1) after first offering to sell those rights to Franchisor on the same terms as proposed to be sold and assigned to the other prospective purchasers' and (2) in compliance with Section 13(d).

(d) All offers shall be fully set forth in writing. Franchisor shall have thirty (30) days to accept any offer. If Franchisor has not accepted the offer within thirty (30) days, then Franchisee may complete the sale to the prospective purchaser only on the same terms, provided that Franchisee is not in breach of this Agreement and further provided that Franchisor and Service LLC may impose conditions to consenting to any assignment, which may include, without limitation, the following:

(1) Assignor must satisfy fully all obligations to Franchisor, Service LLC and others arising out of the operation of the franchised restaurant;

(2) The proposed assignee must satisfy Franchisor and Service LLC that assignee meets Franchisor's and Service LLC's then current financial and managerial criteria required of new franchisees;

(3) The proposed assignee shall have sufficient equity capital in the business to result in a debt-to-equity ratio of at least one-to-one, or other debt-to-equity ratio that Franchisor's and Service LLC's Chief Financial Officer(s) approve;

(4) The proposed assignee must meet with Franchisor's and Service LLC's staff personnel and successfully pass whatever tests are required by Franchisor and Service LLC to assess aptitude and ability to own and operate a Original Hamburger Stand Restaurant;

(5) The proposed assignee must successfully complete all training required of new franchisees and pay Franchisor's then current charges for training;

(6) Franchisee or the proposed assignee must pay to Service LLC a transfer fee of two thousand dollars (\$2,000);

(7) The proposed assignee must sign Franchisor's and Service LLC's then current forms of franchise and sublease agreements, which may contain provisions different from this Agreement, including amounts of fees to Franchisor and Service LLC, and amounts to be expended on advertising;

(8) The proposed assignee may pay to Service LLC a security deposit equal to one (1) month's payments to Service LLC under the Franchise Agreement, Sublease and any equipment lease;

(9) Franchisee and/or the proposed assignee must make improvements and additions to the facilities and equipment comprising the Original Hamburger Stand Restaurant as Service LLC requires;

(10) Franchisee shall execute Franchisor's then standard Continuing Guaranty guaranteeing to Franchisor and Service LLC the performance of all obligations by the proposed assignee.

(e) If Franchisee desires to conduct business in a corporate or limited liability company ("LLC") capacity, then Franchisor and Service LLC will consent to the assignment of this Agreement to a corporation or LLC approved by Franchisor and Service LLC provided there are no material circumstances or reasons for Franchisor to object and that Franchisee complies with any conditions Franchisor and Service LLC may require, which shall include but not be limited to Section 13(f) and the following conditions:

(1) The stockholders of the assignee corporation or unit holders of the assignee LLC shall be limited to those individuals whom Franchisor and Service LLC specify;

(2) Franchisee shall pay Franchisor a fee of two hundred fifty dollars (\$250);

(3) Franchisee shall be the legal and beneficial owner of the stock or units of the assignee corporation or LLC and shall be the entity's principal officer. Provided Franchisee retains controlling interest of the assignee entity, Franchisee may sell, transfer or assign stock or units in that entity to members of Franchisee's immediate family or to a trustee in trust for them, to its operating managers, or to other franchisees of Franchisor if the transferee of the stock or units is not then in default

of any terms of any agreement with Franchisor or Service LLC. Franchisee may sell, assign or transfer controlling interest of the assignee corporation or LLC only in compliance with Sections 13(c) and (d).

(f) The Articles of Incorporation and By-Laws of the assignee corporation, or Articles of Organization and Operating Agreement of the assignee LLC shall reflect that the issuance and transfer of shares of stock or units are restricted, and all stock certificates and units certificates shall bear the following legend, which shall be printed conspicuously on the face of each certificate:

"The transfer of this stock (units) represented by this Certificate is subject to the terms and conditions of a Franchise Agreement with Galardi Group Franchise Corp., a California corporation, and Galardi Group Franchise & Leasing, LLC, a California limited liability company, dated \_\_\_\_\_, 200\_\_ and restrictions in the Articles of (Incorporation/Organization) and the (Bylaws/Operating Agreement) of the (corporation/limited liability company). Reference is made to the Franchise Agreement and to the restrictive provisions of the Articles of (Incorporation/Organization) and (Bylaws/Operating Agreement)."

(g) Franchisee acknowledges that the purposes of the restrictions in this Section 13 are to protect the Original Hamburger Stand Trademarks, Franchisor's trade secrets and Franchisor's and Service LLC's high reputation and image and that any purported issuance, sale, transfer or assignment of any stock, units or other indicia of ownership other than as provided in this Section 13 without Franchisor's and Service LLC's prior written consent shall be a material breach of this Agreement and grounds for Franchisor and Service LLC to terminate Franchisee's rights under this Agreement without providing any opportunity to cure the breach.

#### **14. EVENTS OF DEFAULT**

(a) The occurrence of any of the following events shall be an event of default and good cause for Franchisor and Service LLC, at their option and without prejudice to any other rights or remedies under this Agreement or applicable law, to terminate Franchisee's rights under this Agreement if Franchisee fails to cure the default within three (3) days after written notification:

(1) Franchisee is adjudicated bankrupt, becomes insolvent, or a temporary or permanent receiver of any of Franchisee's property is appointed by a court; or Franchisee makes an assignment for the benefit of creditors, or a final judgment remains unsatisfied for thirty (30) days or longer (unless superseded bond is filed) or execution is levied against Franchisee's business or property; or suit to foreclose a lien or mortgage against the Licensed Premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days;

(2) Franchisee defaults in performing any term, condition or obligation or payment of any amount due to Franchisor or Service LLC, or to any supplier or anyone else arising out of the purchase of supplies or purchase or lease of equipment for the restaurant;

(3) Franchisee defaults in payment under any promissory note or other evidence of debt to Franchisor or payment of any franchise service fees or for any advertising or fails to submit any profit

and loss statements or other financial statements or data or report of gross sales or other report required by this Agreement, or Franchisee makes any false statement in any financial or other report to Franchisor;

(4) Franchisee fails to maintain the standards required by this Agreement, and as supplemented by the Manual;

(5) Franchisee repeatedly breaches this Agreement or repeatedly violates any requirements of the Manual;

(6) Franchisee suffers a violation of any law, ordinance, rule or regulation of a government agency in the operation of the franchised restaurant, and permits the violation to go uncorrected after notification, unless there is a bona fide dispute as to the violation or legality of the law, ordinance, rule or regulation, and Franchisee promptly resorts to courts or forums of appropriate jurisdiction to contest the violation or legality;

(7) Franchisee ceases to do business at the Licensed Premises or defaults under any lease or sublease or loses Franchisee's right to possession of the Licensed Premises;

(8) Franchisee violates any other term or condition of this Agreement.

(b) No failure by Franchisor or Service LLC to take action on account of any default by Franchisee, whether a single instance or repeatedly, shall be a waiver of any default or of the performance required of Franchisee. No express waiver by Franchisor or Service LLC of any obligation or performance or of any default by Franchisee shall be a waiver of any other or future obligation, performance, or default.

## **15. EFFECTS OF EXPIRATION OR TERMINATION**

(a) On expiration or termination of this Agreement, regardless of the reasons, Franchisee shall immediately and permanently (1) stop using the word "Original Hamburger Stand" or any other word similar in form, spelling or sound to "Original Hamburger Stand" anywhere in the world; (2) stop using all the other matter comprising the Trademarks; (3) refrain from identifying Franchisee as a franchisee or former Original Hamburger Stand franchisee; (4) stop using all trade secrets, formulas, menus, processes, signs, symbols, proprietary equipment, devices, recipes, food mixes or other materials constituting part of the Original Hamburger Stand System; (5) at Franchisee's sole cost remove from all premises owned or controlled by Franchisee all signs, menus, writings, notices and all other indicia or material related or referring to the Trademarks; (6) repaint the roof of the Licensed Premises to a color entirely dissimilar to the approved color at the time of termination or expiration; and (7) make other removals and changes in signs and colors of buildings and structures as Service LLC requests to distinguish the Licensed Premises from their former appearance and from other Original Hamburger Stand restaurants. If Franchisee fails to remove all items and repaint, and take the other actions required by this Section 15(a), then Service LLC shall have the right to enter any and all premises to do so, without further notice and Franchisee shall reimburse all Service LLC's costs incurred to do so.

(b) On expiration or termination of this Agreement, Franchisee is deemed to have granted to Service LLC the option to purchase any or all paper goods, containers, signs, menus and any and all insignia bearing any of the Original Hamburger Stand Trademarks, at the lower of cost or fair market value at the time of termination.

(c) In the event of termination due to default of Franchisee, the extent of all damages which Franchisor and Service LLC have suffered due to the default shall be and remain a lien in favor of Franchisor and Service LLC against any and all personal property, machinery, fixtures and equipment owned by Franchisee on the Licensed Premises at the time of the default.

(d) Any provision of this Agreement which imposes an obligation after termination or expiration shall survive termination or expiration of this Agreement and shall continue to be binding until fully performed or until, by its nature, the provision has expired.

## **16. VERIFICATION OF OBLIGATIONS**

Service LLC shall have the right to take any and all action Service LLC deems appropriate to directly or indirectly verify or encourage Franchisor's performance of obligations in this Agreement, including but not limited to installing in the Licensed Premises cash registers, security systems, computer systems, and other monitoring devices, receiving from Franchisee's distributors any information relating to products delivered to Franchisee, inspecting records, food products and other inventory, surveying or questioning customers, and any other action Service LLC deems appropriate.

## **17. RISK MANAGEMENT PROVISIONS**

(a) Franchisee shall indemnify, defend and hold Franchisor and Service LLC free and harmless from any debt or obligation that any person or entity claims was contracted or undertaken by Franchisee on Franchisor's or Service LLC's behalf; and from and against any other claim, lien, judgment or encumbrance arising from or relating to injury to, or statutory claim of, any person or entity, operation of the franchise Original Hamburger Stand Restaurant, activity at the Licensed Premises or any claimed act or omission of Franchisee.

(b) If Franchisor or Service LLC is sued for by reason of any matters referred to in Section 17(a), then Franchisee shall defend the action at Franchisee's expense, settle the action when possible at Franchisee's expense, and pay and discharge any judgment that may be rendered against the Franchisor or Service LLC in the action. If Franchisee fails or neglects to do so, Franchisor, Service LLC or both may defend the action and any expense, including legal fees which Franchisor or Service LLC pay or incur shall be repaid to Franchisor and Service LLC by Franchisee.

(c) Franchisee shall at all times maintain public liability, workers compensation, and food products liability insurance and insurance against additional hazards, in amounts and with insurers, as Service LLC may require. Franchisee shall assure that Franchisor and Service LLC are named as additional insureds under all policies. Service LLC shall have the right to notify Franchisee from time to time, in writing, of the nature and amounts of insurance required. Within ten (10) days after receiving each notice, Franchisee shall furnish to Service LLC written proof of insurance in the amounts and types required by Service LLC. If Franchisee fails to provide such proof of insurance, then without relieving



Franchisee's obligations to maintain that insurance, Service LLC may cause the insurance to be obtained at Franchisee's cost. That cost shall be additional rent payable by Franchisee to Service LLC within ten (10) days after demand.

(d) Neither Franchisor nor Service LLC shall be liable to Franchisee or other person by reason of any act, omission, neglect or default at the Licensed Premises, or of Franchisee or any of Franchisee's agents or employees. Franchisee shall pay all sums to be paid or discharged in case of action for any such damages or injuries.

## 18. ADDITIONAL PROVISIONS

(a) Guaranty. Franchisor guarantees the full performance of Service LLC's obligations in this Agreement.

(b) Waiver of Claim. Franchisee shall have no right to and shall not make any claim and Franchisee waives any claim for money damages, set off, counterclaim or defense based on any claim that Franchisor or Service LLC unreasonably withheld or delayed a requested consent or approval. Franchisee's sole and exclusive remedy for any such claim shall be an action or proceeding to enforce the provision or for specific performance or declaratory judgment concerning the consent or approval.

(c) Relationship of Parties. Franchisee is not and shall not be considered a joint venturer, partner or agent of Franchisor or Service LLC. Franchisee shall have no power and shall not purport to bind or obligate Franchisor or Service LLC. Neither Franchisor nor Service LLC shall be liable for any debt contracted by Franchisee.

(d) Confidentiality. Franchisee shall not communicate the contents of this Agreement to any third party without Franchisor's and Service LLC's prior written consent, except when Franchisee is required to reveal the contents to obtain bank credit, or required by a government agency or court of law, or in negotiating a sale to a bona fide purchaser in accordance with this Agreement.

(e) Payment of Monies. Any monies due to Franchisor or Service LLC by Franchisee shall be deemed delinquent if not paid on the dates stated in this Agreement, time being deemed of the essence. All monies are due and payable and must be received at Franchisor's and Service LLC's offices at 4440 Von Karman Avenue, Suite 222, Post Office Box 7460, Newport Beach, California 92660 on the dates stated in this Agreement. If Franchisee fails to pay on time, the past due amount shall bear interest at the lesser of the maximum lawful rate in the state where the Licensed Premises are located or eighteen percent (18%) per year, from the date due until date of payment. In addition to interest, Franchisee shall pay to Franchisor or Service LLC a sum equal to ten percent (10%) of the delinquent amount. Franchisee agrees that these amounts are reasonable compensation to Franchisor and Service LLC for the lost use of funds and additional services and expenses required due to the failure to pay.

(f) Financial/Business Information. Franchisee shall provide to Franchisor or Service LLC financial or business information, relating to the construction or operation of Franchisee's Restaurant, as may be reasonably requested by Franchisor or Service LLC.

(g) Sales Tax. If Franchisor or Service LLC is charged with any sales tax by an authorized taxing authority on account of sales made or licenses granted to Franchisee, or sales made by Franchisee, Franchisee shall pay the sales tax to Franchisor or Service LLC immediately after being notified to do so. If Franchisee fails to pay the tax when due or on demand, Franchisor or Service LLC may elect to pay the tax and Franchisee shall immediately reimburse Franchisor and Service LLC.

(h) Legal Fees. In the event of litigation between the parties relating to this Agreement, then the unsuccessful party in the litigation shall reimburse the successful party's reasonable attorney's fees, court costs and all other costs reasonably incurred by the successful party.

(i) Severability. If any part of this Agreement is declared invalid by a court of competent jurisdiction, then at Service LLC's option, that decision shall not affect the validity of the remainder of this Agreement. The invalid provision shall be deemed to be severed and the rest of this Agreement shall continue in effect as if this Agreement had been executed without the invalid portion.

(j) Venue. This Agreement shall be deemed to have been entered into at Franchisor's and Service LLC's principal office Newport Beach, California, and to require performance at that location. The parties acknowledge that in any action, the majority of witnesses and evidence will be located in or from this vicinity. Accordingly, the parties acknowledge and agree that any action or proceeding instituted under this Agreement shall at the option of Franchisor or Service LLC, be brought and tried only in courts in Orange County, California. Franchisee waives any rights to request or require the action or proceeding to be brought or tried elsewhere.

(k) Governing Law. This Agreement shall be interpreted and construed according to the laws of the State of California. The provisions of this Agreement shall be interpreted according to their fair meanings and not strictly for or against any party.

(l) Time of the Essence. Time is of the essence of the performance of Franchisee's obligations in this Agreement.

(m) Notice. All notices and payments shall be in writing and shall be sent by certified United States mail, return receipt requested, or by nationally-recognized overnight carrier, or delivered as appropriate, to Franchisee at the Licensed Premises, or at last known address of Franchisee and to Franchisor and Service LLC at its office at 4440 Von Karman Avenue, Suite 222, Post Office Box 7460, Newport Beach, California 92660 (or such other location as Franchisor and Service LLC so notify Franchisee in writing). Mailed notices shall be effective three (3) days after deposit in the United States mail.

(n) Successors and Assigns. This Agreement shall benefit and bind the parties and their permitted successors and assigns.

(o) Entire Agreement. This Agreement contains all of the provisions agreed upon by the parties with reference to the subject matter hereof. No other agreement, oral or otherwise, shall be deemed to exist and all prior agreements, understandings and representations are merged superseded by this Agreement. Franchisee represents that there is no other contemporaneous agreement or understanding between the parties that are not contained herein. No officer, employee or agent of

Franchisor or Service LLC has authority to make any representation or promise not stated in this Agreement, and Franchisee acknowledges that Franchisee is executing this Agreement without reliance on any representation or promise Franchisee may believe or later claim to believe Franchisee may have heard or been told. This Agreement cannot be modified or changed except by written instrument signed by all of the parties.

Executed the date stated in the introductory paragraph to this Agreement.

FRANCHISOR:

GALARDI GROUP FRANCHISE CORP.,  
a California corporation

By: \_\_\_\_\_  
Vice President

FRANCHISEE:

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

\_\_\_\_\_  
Signature

SERVICE LLC:

GALARDI GROUP FRANCHISE & LEASING, LLC  
a California limited liability company

By: Its Managing Member  
GALARDI GROUP FRANCHISE & LEASING, INC.

By: \_\_\_\_\_  
Vice President

**EXHIBIT A**

As used in the Franchise Agreement entered into between Galardi Group Franchise Corp. ("Franchisor"), Galardi Group Franchise & Leasing, LLC ("Service LLC") and \_\_\_\_\_ ("Franchisee"), dated \_\_\_\_\_, 200\_\_, the Licensed Premises shall be the following:

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

Dated: \_\_\_\_\_, 200\_\_

\_\_\_\_\_ (Franchisor)

\_\_\_\_\_ (Service LLC)

\_\_\_\_\_ (Franchisee)

## 5. FRANCHISE FEE

In addition to the franchise service fee stated below, Franchisee shall pay to Franchisor \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), payable as follows:

Franchisee shall pay Franchisor \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in cash on signing this Agreement.

Franchisee shall pay Franchisor the balance of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) payable in \_\_\_\_\_ (\_\_\_\_) equal monthly installments of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) starting on the 1st day of \_\_\_\_\_, 200\_\_ and ending on the 1st day of \_\_\_\_\_, 200\_\_. If the undersigned sells, conveys, sublets, transfers, or assigns, all or any part of its interest in this Agreement, or the Licensed Premises, the entire unpaid balance of the above fee shall immediately become due and payable to Franchisor.

The above amounts, as and when paid are deemed to be fully earned and are non-refundable.

Franchisee acknowledges that the grant of the franchise constitutes the sole consideration for the payment of the franchise fee and that the above amounts shall be deemed to be fully earned by Franchisor on execution and delivery of this Agreement. If a promissory note or other evidence of indebtedness is accepted by Franchisor as partial payment, then prompt and faithful payment is a material consideration for Franchisor entering into this Agreement. Failure of Franchisee to make each note payment on its due date shall be a material breach of this Agreement. Franchisor shall have no obligation to provide notice of the breach of Section 14 of this Agreement.

**(TO BE USED IN THE EVENT OF A PROMISSORY NOTE FOR PORTION OF FRANCHISE FEE)**

(o) This Agreement is made pursuant to the terms of an Offer to Purchase of even date herewith and notwithstanding the provisions of Section 13, neither this Agreement nor any interest in this Agreement may be sold, assigned, transferred, sublet, or encumbered in any manner.

Executed the date stated in the introductory paragraph to this Agreement.

FRANCHISOR:

GALARDI GROUP FRANCHISE CORP.,  
a California corporation

By: \_\_\_\_\_  
Vice President

FRANCHISEE:

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

\_\_\_\_\_  
Signature

SERVICE LLC:

GALARDI GROUP FRANCHISE & LEASING, LLC  
a California limited liability company

By: Its Managing Member  
GALARDI GROUP FRANCHISE & LEASING, INC.

By: \_\_\_\_\_  
Vice President

**(THIS PAGE USED FOR THREE YEAR PURCHASE OPTION FRANCHISE ONLY)**