

request of the Franchisee, render reasonable advisory services and answer questions by telephone, electronic media or in writing pertaining to the operations of the Franchisee's Restaurant; (i) provide the Franchisee with a sample of the standard Big Boy menu, and all updates and modifications to the menu; and (j) loan the Franchisee one copy of the Operations Manual, and all supplements to the Operations Manual that may be published by the Franchisor, from time to time. If the Franchisee requests that the Franchisor provide management or operations assistance to the Franchisee at the Franchised Location or at any other location, then the Franchisee will pay the then current daily fee charged by the Franchisor for the management or operations personnel together with all Travel Expenses incurred by each of them.

## **ARTICLE 17** **ASSIGNMENT**

### **17.1 Assignment by Franchisor.**

This Agreement may be unilaterally Transferred by the Franchisor to a person or Entity without the approval of and without prior notice to the Franchisee and will inure to the benefit of the successors and assigns of the Franchisor. The Franchisor will provide the Franchisee with written notice of any assignment within 90 days after the assignment has been completed, and the assignee will be required to fully perform all obligations of the Franchisor under this Agreement.

### **17.2 Assignment by Franchisee to Owned or Controlled Entity.**

If the Franchisee is an individual or a partnership, this Agreement may be Transferred by the Franchisee to an Entity that is owned or controlled by the Franchisee without paying any Transfer Fee, provided that: (a) the Franchisee and the Owners of the new Entity sign or have signed a personal guaranty in the form attached to this Agreement; (b) the Franchisee furnishes prior written proof to the Franchisor substantiating that the assignee Entity will be financially able to perform all of the terms and conditions of this Agreement; and (c) none of the Owners operate, franchise, develop, manage or control any Competitive Restaurant. The Franchisee will give the Franchisor 15 days prior written notice of the Transfer of this Agreement to an Entity owned or controlled by the Franchisee; however, the Transfer of this Agreement will not be valid or effective until the Franchisor has received the documents which its attorneys deem reasonably necessary to properly and legally document the Transfer of this Agreement as provided herein.

### **17.3 Transfer by Individual Franchisee in Event of Death or Permanent Disability.**

If the Franchisee is an individual, then in the event of the death or permanent disability of the Franchisee, the provisions of Article 18 will be inapplicable and this Agreement may be Transferred (or bequeathed) by the Franchisee to any designated person or beneficiary without the payment of any Transfer Fee. However, the Transfer of this Agreement to the transferee or beneficiary of the Franchisee will be subject to the applicable provisions of Article 17.5, and will not be valid or effective until the Franchisor has received the properly executed legal documents which its attorneys deem necessary to properly and legally document the Transfer or bequest of this Agreement. The transferee or beneficiary must agree to be unconditionally bound by the terms and conditions of this Agreement and to personally guarantee the performance of the Franchisee's obligations under this Agreement. Furthermore, the transferee or beneficiary must complete the initial training program as set forth in Article 15.1 of this Agreement. There will be no charge to the transferee or beneficiary for the initial training program, but the Salary and Travel Expenses of the transferee or beneficiary will be paid in accordance with Article 15.5 of this Agreement.

### **17.4 Sale of Ownership Interest to Public.**

The Franchisee will not have the right to sell its Ownership Interests to the public or to more than 15 persons or Entities without the written approval of the Franchisor, which may be denied in the sole discretion of the Franchisor. If the Franchisee has received the required written approval from the

Franchisor and intends to sell any part of its Ownership Interests to the public or to more than 15 persons or entities under any foreign, federal or state securities laws, then the Franchisee will provide the Franchisor with written notice of the proposed offering and with a copy of the proposed prospectus for its review at least 20 days prior to the time that any such document is filed with any foreign or state securities commission or the Securities and Exchange Commission. The Owners of the Franchisee prior to the public offering will, at all times, retain a majority of the voting Ownership Interests of the Franchisee and will personally guarantee all obligations of the Franchisee under this Agreement. The Franchisor will have the absolute right to attend all "due diligence" meetings held in preparation for the offer to sell the Ownership Interests to the public, and the Franchisee will give the Franchisor at least five business days prior written notice of such meetings. The Franchisee will pay the Franchisor for the actual costs incurred by the Franchisor for the legal, accounting and related due diligence costs incurred by the Franchisor in connection with any public offering and will be payable to the Franchisor on a monthly basis and will be payable even if the Franchisee is unable to complete the public offering. The Franchisee will not have the right to sell any of its Ownership Interests to the public or to any other person or Entity until the Franchisee has complied in all respects with the applicable provisions of this Agreement.

#### **17.5 Assignment by Franchisee.**

Subject to the provisions of Article 18 of this Agreement, the rights granted to the Franchisee pursuant to this Agreement may be Transferred by the Franchisee only with the prior written approval of the Franchisor. The Franchisor will not unreasonably withhold its written consent to any Transfer of this Agreement if the Transfer does not violate Article 17.9 of this Agreement and if the Franchisee and/or the transferee franchisee complies with the following conditions: (a) the Franchisee has provided written notice to the Franchisor of the proposed Transfer of this Agreement at least 90 days prior to the transfer date; (b) all of the Franchisee's monetary obligations due to the Franchisor under this Agreement and under any other contract have been paid in full, and the Franchisee is not otherwise in default under this Agreement; (c) the Franchisee has executed a written agreement, in a form satisfactory to the Franchisor, in which the Franchisee agrees to observe all applicable obligations, covenants, and provisions of this Agreement that continue beyond the expiration or termination of this Agreement, including the covenants not to compete contained in Article 23 of this Agreement; (d) the Franchisor and the Franchisee have executed a joint and mutual release, in a form satisfactory to the Franchisor, of any and all claims against the Franchisor or the Franchisee and their respective officers, directors, shareholders, Owners, agents and employees, in their corporate and individual capacities arising from, in connection with, or as a result of this Agreement, any obligations of the Franchisor under this Agreement, or the Franchisee's initial purchase of the Franchise including, without limitation, all past and future claims arising under any federal or state franchising laws, unfair or deceptive trade practices laws, anti-trust laws, or any other federal, state or local law, rule or ordinance; provided, however, that the terms of the release between the Franchisor and the Franchisee will exclude (i) any claims or actions based on any unpaid Royalty Fees, Advertising Fees, or other amounts payable by the Franchisee on or before the date of this Agreement, (ii) any claims or actions brought by any third party against the Franchisor based on any event that occurred prior to the date of this Agreement, and (iii) any obligations of the Franchisor and the Franchisee arising out of or in connection with any other agreements or contracts executed by them that will remain in force and effect; (e) the transferee franchisee has demonstrated to the satisfaction of the Franchisor that he, she or it meets the managerial, financial and business standards required by the Franchisor for new franchisees, possesses a good business reputation and credit rating, and has the management team with the aptitude and ability to operate the Big Boy Restaurant in an economic and businesslike manner (as may be evidenced by prior related business experience or otherwise); (f) the transferee franchisee and all Owners of the transferee franchisee and the Personal Guarantors, execute the assignment agreement between the Franchisor, the Franchisee and the transferee franchisee and such other ancillary agreements as the Franchisor or its legal counsel may require for the Transfer of this Agreement for the Franchisee's Big Boy Restaurant to the transferee franchisee; provided, however, that the Franchisor, at its option, may require that the transferee franchisee and all Owners of the transferee franchisee and the Personal

Guarantors execute Franchisor's current form of Franchise Agreement and, in such event, this Agreement shall be terminated pursuant to a termination agreement between Franchisor and Franchisee; (g) the transferee franchisee has purchased the Franchised Location, acquired the Lease for the Franchised Location or otherwise acquired possession of and access to the Franchised Location for a term consistent with the remaining term of this Agreement or the new Franchise Agreement, as the case may be; (h) the transferee franchisee has, if the Restaurant has been approved by the Franchisor to sell liquor, purchased or otherwise acquired a valid liquor license and a valid food service license for the Big Boy Restaurant at the Franchised Location; (i) the Franchisee and the Franchisee's Personal Guarantors agree to guarantee the obligations of the transferee franchisee under the terms of this Agreement for a period of 12 months after the transfer and to extend the guarantee for an additional 12 months if any default occurs within such 12 month period, and (j) the transferee franchisee and the transferee's Management Team have successfully completed the initial training program as set forth in Article 15 of this Agreement.

**17.6 Documentation.**

Copies of the following documents will be delivered to the Franchisor at least 10 days before the effective date of the Transfer: (a) a Certificate of Good Standing for the transferee franchisee ; (b) a photocopy of a sample certificate of Ownership containing the legend required pursuant to Article 18.3; and (c) a copy of the resolution of the transferee franchisee's board of directors, board of governors, or other governing body authorizing the assumption of the Franchise and this Agreement or the new Franchise Agreement, as the case may be, and of the Lease if the Franchisee's Big Boy Restaurant is leased from Franchisor or its subsidiary, which copy shall be certified as correct by an officer or manager of the transferee franchisee.

**17.7 Acknowledgment of Restrictions.**

The Franchisee acknowledges and agrees that the restrictions on Transfer imposed herein are reasonable and necessary to protect the Restaurant System and the Marks, as well as the reputation and image of the Franchisor, and are for the protection of the Franchisor, the Franchisee and all other franchisees that own and operate Big Boy Restaurants. Any Transfer permitted by this Article will not be effective until the Franchisor receives a completely executed copy of all Transfer documents and the Franchisor consents to the Transfer in writing. Any attempted Transfer made without complying with the requirements of this Article will be void.

**17.8 Transfer Fee.**

If this Agreement is Transferred to another person or Entity, or if the Owners Transfer in the aggregate controlling interest in the Franchisee to a third party, then except as provided for in Article 17.2 or Article 17.3, the Franchisee will pay the Franchisor, on or before the date of Transfer, a Transfer Fee of \$10,000. The Transfer Fee is to reimburse the Franchisor for the costs incurred in connection with the Transfer, including attorneys' fees, accountants' fees, out-of-pocket expenses, long distance telephone calls, administrative costs, the time and related cost of its employees and officers, and the Franchisor's costs to provide the initial training program to the transferee franchisee and the transferee franchisee's General Manager at the Franchisor's headquarters or another approved training site designated by the Franchisor pursuant to Article 15. The Salaries and Travel Expenses incurred by the transferee franchisee's employees to attend the initial training program will be paid by the transferee franchisee in accordance with Article 15.5 of this Agreement.

**17.9 Transfer to Competitor Prohibited.**

The Franchisee and the Owners will not Transfer this Agreement or their Ownership Interests in the Franchisee or the Franchise to any person, partnership, corporation or Entity that owns, operates, franchises, develops, consults with, manages, is involved in, or controls any Competitive Restaurant. If the Franchisor refuses to permit a Transfer of this Agreement under this provision, then the Franchisee's and the Owners' only remedy will be to have the Arbitrator(s) determine whether the proposed transferee's business is a Competitive Restaurant.

**ARTICLE 18**  
**OPTION OF BIG BOY TO PURCHASE**

**18.1 Notice of Proposed Sale.**

Neither the Franchisee nor any Affiliated Owner will Transfer any interest in or any part of the Business Assets to any party without first offering them to the Franchisor in a written offer that contains all of the material terms and conditions of the proposed Transfer, including price and payment terms. Within 10 business days after receipt by the Franchisor of the written offer specifying the proposed price and terms of the proposed sale, the Franchisor will give the Franchisee, or the Affiliated Owner, as the case may be, written notice which will either waive its option to purchase, or will state an interest in negotiating to purchase according to the proposed terms. If the Franchisor commences negotiations to purchase the Business Assets as set forth herein, then neither the Franchisee nor any Affiliated Owner may sell the Business Assets to a third party for at least 60 days or until the Franchisor and the Franchisee or the Affiliated Owner, as the case may be, agree in writing that the negotiations have terminated, whichever comes earlier. If the Franchisor waives its right to purchase the Business Assets, then the Franchisee and the Affiliated Owners will have the right to complete the Transfer according to the terms set forth in the written notice to the Franchisor; however, any Transfer to a third party will be expressly subject to the terms and conditions of this Agreement. This provision will not apply to the assignment or pledge of any of Business Assets (with the exception of this Agreement) by the Franchisee or any Affiliated Owner to a bank, financial institution or other lender in connection with the Franchisee's financing of the leasehold improvements, FF&E, supplies and inventory or operating funds for the Franchisee's Big Boy Restaurant.

**18.2 Compliance with Agreement.**

The Franchisee's obligations under this Agreement including, but not limited to, its obligations to pay the Royalty Fees and Advertising Fees and to operate the business as a Big Boy Restaurant, will in no way be affected or changed because of non-acceptance by the Franchisor of the Franchisee's written offer to purchase the Business Assets, and as a consequence, the terms and conditions of this Agreement will remain in full force and effect. The decision by the Franchisor not to exercise the rights granted to it pursuant to this Article will not, in any way, be deemed to grant the Franchisee the right to terminate this Agreement and will not affect the Term of this Agreement. Moreover, if the Franchisor does not exercise the rights granted to it pursuant to this Article and if the Franchisee sells or otherwise disposes of its Business Assets to a third party, then both the Franchisee and the third party purchaser will be required to comply in all respects with the terms and conditions of this Agreement. Any Transfer of the Business Assets of the Franchisee's Big Boy Restaurant that does not include an assignment of this Agreement to the transferee will constitute a wrongful termination of this Agreement.

**18.3 Transfer of Ownership Interest.**

The Ownership Interests owned by the Franchisee or by the Owners may not be Transferred by the Franchisee or the Owners until the Ownership Interests have first been offered to the Franchisor in writing under the same terms and conditions offered to any third party. If the Franchisee or the Owners desire to Transfer their Ownership Interests or any portion thereof, then they will first offer them to the Franchisor in writing under the same terms and conditions as being offered to any third party. The Franchisor will have 30 business days to accept any offer to acquire any Ownership Interest. Notwithstanding the terms of this Article, the Franchisee or the Owners may bequeath or Transfer their Ownership Interests to any of the other Owners without first offering them to the Franchisor, provided that each proposed transferee Owner who will be involved in the management of the Restaurant has: (a) successfully completed the training program required by the Franchisor, and (b) been certified by the Franchisor as being qualified to operate the Restaurant. The Franchisee and the Owners must provide the Franchisor with written notice of all proposed Transfers of Ownership Interests, and the proposed transferee Owners must: (a) be approved by Big Boy; (b) agree to be personally liable under this Agreement; and (c) enter into a written agreement

pursuant to which they agree to perform all of the terms and conditions contained in this Agreement, including the covenants not to compete. All Ownership Interests issued by the Franchisee must bear the following legend:

The ownership interest represented by this document is subject to a written Franchise Agreement which grants Big Boy Franchise Management LLC the option to purchase the ownership interest represented by this document. Any person or entity acquiring the ownership interest represented by this document will be subject to the terms and conditions of the Franchise Agreement between the entity specified on the face of this document and Big Boy Franchise Management LLC, which includes provisions containing covenants not to compete that apply to all owners of the entity specified on the face of this document.

**18.4 Acknowledgment of Restrictions.**

The Franchisee and the Owners acknowledges and agree that the restrictions on Transfer imposed herein are reasonable and are necessary to protect the Restaurant System and the Marks, as well as the reputation and image of the Franchisor, and are for the protection of the Franchisor, the Franchisee and all other franchisees who own and operate Big Boy Restaurants. Any Transfer permitted by this Agreement will not be effective until the Franchisor receives a completely executed copy of all Transfer documents and the Franchisor consents to the Transfer in writing.

**18.5 Owners Subject to Covenant Not to Compete.**

Any Owner that sells or purchases its Ownership Interest will be subject to the covenants not to compete and the other provisions of Article 23 of this Agreement and all other provisions of this Agreement that apply to a selling or purchasing Owner.

**18.6 Right to Purchase Business Assets.**

If this Agreement expires or is terminated by either the Franchisor or the Franchisee for any reason whatsoever, or if the Franchisee wrongfully terminates this Agreement by failing to comply with Article 21 or otherwise, or if the Franchisee at any time ceases to do business at the Franchised Location as a Big Boy Restaurant, then the Franchisor will have the right, but not the obligation, to purchase all or any portion of the then-usable Business Assets from the Franchisee and/or Affiliated Owners. The Franchisor will not purchase any Business Assets from the Franchisee or an Affiliated Owner that have not been approved by the Franchisor for use in the operation of a Big Boy Restaurant. The Franchisee and the Affiliated Owners of the Business Assets must give the Franchisor written notice listing the cost of each one of the Business Assets in detail and the asking price for the Business Assets within 24 hours after the Franchisee ceases to do business as a Big Boy Restaurant, or after this Agreement expires or is terminated by either party, or is wrongfully terminated by the Franchisee.

**18.7 Determination of Fair Market Value.**

If the Franchisee or any Affiliated Owner of the Business Assets fails to give the Franchisor written notice of the asking price of the Business Assets within the 24 hour period provided for in Article 18.6, or if the Franchisor and the Franchisee or Affiliated Owner cannot agree on the price of the Business Assets, then either party will have the right to demand that the price of the Business Assets be determined by arbitration in accordance with the Code of Procedure of the National Arbitration Forum. The arbitration hearing will be held as soon as possible, but in no event later than 15 business days after the date arbitration is demanded by either party and the appointed Arbitrator(s) will determine the fair market value of the Business Assets. The Arbitrator(s) will not consider any value for goodwill associated with the Marks or for going concern value in determining the fair market value of the Business Assets since the right of purchase granted to the Franchisor pursuant to this provision applies only after this Agreement expires or has been terminated, or the Franchisee has ceased doing business. Furthermore, the

Arbitrator(s) will not consider any value for the Lease for the Franchised Location if the Franchisor agrees to assume the Lease and pay the rental and operating costs for the remaining term of the Lease. If the Arbitrator(s) is unable to determine the fair market value of any of the Business Assets, then those Business Assets will be valued at book value (cost less depreciation). The Franchisor will have the right, but not the obligation, to purchase any or all of the Business Assets from the Franchisee or the Affiliated Owners for cash within 30 business days after the fair market value of the Business Assets has been established by the Arbitrator(s) in writing. If any of the Business Assets are subject to a lien or other encumbrance, then the total amount of purchase price for the Business Assets purchase by the Franchisor will be reduced by the amount of the lien or encumbrance. The Franchisee will provide the Franchisor with a bill of sale for the Business Assets purchased upon receipt of the purchase price from the Franchisor. Nothing in this Article will prohibit the Franchisor from enforcing any terms and conditions of this Agreement, including any covenants not to compete.

**18.8 Right to Record Instrument.**

Franchisee and the Affiliated Owners hereby acknowledge and agree that Franchisor shall have the right to record a memorandum or other notice of the options granted to the Franchisor pursuant to this Article 18 with the Register of Deeds (or other applicable office which maintains the public land records) in the county where the land and building for the Franchisee's Big Boy Restaurant is located.

**ARTICLE 19**  
**LEASE AS SECURITY; TERMINATION OF LEASE**

**19.1 Review of Lease.**

The Franchisee will submit the Lease for the Franchised Location to the Franchisor for review by the Franchisor prior to the Franchisee's signing the Lease. The Franchisor may, but is not under any obligation to, make recommendations regarding various terms and conditions of the Lease. At a minimum, the Lease must: (a) give the Franchisor the right to enter the premises of the Franchised Location to conduct inspections at any time during regular business hours; and (b) give the Franchisor the right (but not the duty) to assume the Lease for the remaining term of the Lease in accordance with the provisions of this Article if, prior to the expiration of the Lease, (i) the Franchisee is evicted by the Landlord, (ii) the Lease is terminated by either the Franchisee or the Landlord, or (iii) this Agreement expires or is terminated by either the Franchisor or the Franchisee for any reason. The review of the Lease by the Franchisor prior to execution of the Lease will not be for the purpose of approving the legal aspects or rental terms of the Lease. Accordingly, the Franchisee will retain attorney or other legal advisor to review the terms and conditions of the Lease and to advise the Franchisee as to the legal and economic terms of the Lease. The Franchisor will have no responsibility to the Franchisee for any terms or conditions of the lease or for the enforceability, economics or legality of the Lease. The Franchisee will not sign the Lease until this Agreement has been signed by both the Franchisee and the Franchisor, and the Franchisor has approved the Lease in writing.

**19.2 Franchisee's Assignment of Lease.**

The Franchisee hereby assigns all of its right, title and interest in and to the Lease (which is incorporated herein by reference) to the Franchisor as security for the Franchisee's performance of the terms and conditions of this Agreement. If this Agreement is terminated by the Franchisor in accordance with the terms and conditions of this Agreement, if the Franchisee wrongfully terminates this Agreement by failing to comply with the applicable termination provisions this Agreement, if the Franchisee at any time ceases to do business at the Franchised Location as a Big Boy Restaurant, or if this Agreement expires and the Franchisee does not reacquire the Franchise for the Franchised Location (hereinafter referred to as "Events of Default"), then the Franchisor will have the right and option, but not the obligation, to take and assume the Lease for the remaining term of the Lease under the same terms and conditions, including rental, as originally contracted by the Franchisee. The Franchisee will execute a UCC-1 Financing

Statement and other documents as may be reasonably required by the attorneys for the Franchisor to perfect and record the security interest of the Franchisor in the Lease.

**19.3 Perfected Assignment; Notice.**

The assignment of all of the Franchisee's right, title and interest in the Lease pursuant to this Article will constitute a perfected, absolute and present assignment. However, the Franchisor will have no right to enforce the assignment provisions of this Article until there has been an Event of Default. After an Event of Default, the Franchisor will have the right, but not the obligation, to enforce the provisions of this Article and to take possession of the Franchised Location by giving the Franchisee and the Landlord written notice that the Franchisor has affirmatively exercised its rights under this assignment. The written notice will state: (a) that the Franchisor is taking and assuming the Lease from the Franchisee; (b) the date that the Franchisor will take physical possession of the Franchised Location; and (c) that the Franchisor agrees to be bound by the terms and conditions of the Lease being assumed for the remaining term of the Lease. The Franchisor will execute an assignment form at the time it gives such written notice to the Franchisee and the Landlord.

**19.4 No Prior Assignments.**

The Franchisee represents and warrants that there have been no prior assignments of the Lease by the Franchisee, that it has good right to assign the Lease, that the Lease is a valid and enforceable agreement, that neither party is in default to the other under the Lease and that all covenants, conditions and agreements have been performed as required therein, except those not due to be performed until after the date hereof. No change in the terms of the Lease will be valid without the written approval of the Franchisor. The Franchisee will not Transfer its interest in the Lease so long as this assignment is in effect. During the Term of this Agreement, the Franchisee will not lease or sublease all or any part of the Franchised Location without the prior written consent of the Franchisor.

**19.5 Enforcement of Franchisee's Rights.**

The Franchisee hereby irrevocably constitutes and appoints the Franchisor as its attorney-in-fact to demand, receive and enforce the Franchisee's rights with respect to the Lease, to make payments under the Lease and give appropriate receipts, releases and satisfactions for and on behalf of and in the name of the Franchisee or, at the option of the Franchisor, in the name of the Franchisor, with the same force and effect as the Franchisee could do if this assignment had not been made.

**19.6 Rights and Remedies of Franchisor.**

Upon taking physical possession of the Franchised Location, the Franchisor may, without affecting any of its rights or remedies against the Franchisee under any other instrument, document or agreement, exercise its rights under this assignment as the Franchisee's attorney-in-fact in any manner permitted by law. In addition, the Franchisor will have and possess, without limitation, any and all rights and remedies of a secured party under the Uniform Commercial Code, as enacted in the jurisdiction in which enforcement is sought, or otherwise provided by law.

**19.7 Proration of Rents and Expenses.**

At the time the Franchisor takes physical possession of the Franchised Location, all charges, real estate taxes, utilities and rentals will be prorated between the Franchisor and the Franchisee. The Franchisor will have no obligation to pay any past due obligations or arrearages of the Franchisee to any person or Entity, including the Landlord, as a condition to assuming the Lease.

**19.8 Possession; Obligations of Franchisor and Franchisee.**

The Franchisor will hold the Franchisee harmless from any and all obligations to the Landlord, including rental payments, arising out of the use of the Franchised Location from the date that the Franchisor takes physical possession of the Franchised Location. The Franchisee will pay all amounts due to the Landlord

and other parties under the Lease including, but not limited to, rentals, insurance, rental overrides, real estate taxes, repairs and maintenance, up to and including the date that the Franchisor takes physical possession of the Franchised Location. With the specific and limited exception of rental payments and other obligations to the Landlord arising from use of the Franchised Location by the Franchisor after taking physical possession of the premises, the Franchisee will indemnify and hold the Franchisor harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, costs and expenses, including attorneys' fees, to which the Franchisor may become exposed, or which the Franchisor may incur, in exercising any of its rights under this assignment.

**19.9 Landlord's Consent.**

The Franchisee will secure the Landlord's written consent to the provisions contained in this Article in the form of consent attached to this Agreement.

**19.10 Transfer by the Franchisor.**

The Franchisor will have the right to Transfer its right, title and interest in the Lease to any persons or entities by giving written notice to the Franchisee and the Landlord without any consent whatever from the Franchisee or the Landlord, and any such Transfer will be valid and binding upon the Franchisee and the Landlord as fully as if each had expressly approved the Transfer. Subject to the limitation on further Transfer by the Franchisee contained in Article 20.3, a Transfer of the Lease by the Franchisor will be binding upon and inure to the benefit of the heirs, legal representatives, assigns and successors in interest of the Franchisee, the Franchisor and the Landlord.

**19.11 Effective Date.**

The provisions of Articles 19.2, 19.3, and 19.5 of this Agreement will take effect immediately upon the execution of the Lease. The representations of the Franchisee contained in Article 19.4 will be true and complete as of, and will be deemed to have been made at, the time the Lease is executed. The Franchisee agrees to execute any additional documents as may be required by the attorneys for the Franchisor to perfect the assignment of the Lease to the Franchisor.

## **ARTICLE 20**

### **TERMINATION RIGHTS OF FRANCHISOR**

**20.1 Termination within 120 Days.**

The Franchisor will, unless provided otherwise in a separate written agreement between the Franchisor and the Franchisee, have the right to terminate this Agreement at any time within 120 days after the date of this Agreement if: (a) any required or other financial, personal or other information provided by the Franchisee to the Franchisor is materially false, misleading, incomplete or inaccurate; (b) the Franchisee has not purchased or leased a site for the Franchised Location or has done so in a manner not in compliance with Article 2.4 or Article 10 of this Agreement; (c) the Franchisee fails to apply for and obtain a valid license for the service of food for its Big Boy Restaurant from the appropriate governmental agencies; or (d) the Franchisee fails to apply for and obtain a valid liquor license for its Big Boy Restaurant from the appropriate governmental authorities if the Franchisor has authorized the Franchisee to sell alcoholic beverages at the Restaurant. This provision is self-executing and no notice or cure period will be required for termination to be effective after a written notice of termination has been sent to the Franchisee. However, if this Agreement is governed by the laws of the state which requires notice and an opportunity to cure prior to termination, then this Article will be modified to conform to the laws of that state.

**20.2 Termination; Conditions of Breach.**

In addition to its other rights of termination contained in this Agreement, the Franchisor will have the right to terminate this Agreement if: (a) the Franchisee fails to open and commence operations of its Big



Boy Restaurant within 12 months after the date of this Agreement or when the Franchised Location is ready for the Franchisee's occupancy, whichever is earlier; (b) the Franchisee violates any material provision, term or condition of this Agreement including, but not limited to, the failure to timely pay the Initial Fee, Royalty Fees, Advertising Fees or any other monetary obligations or fees due pursuant to this Agreement; (c) the Franchisee or any of its partners, directors, officers or majority Owners are convicted of, or plead guilty to or no contest to, a charge of violating any law relating to the Franchisee's Big Boy Restaurant, or any felony; (d) the Franchisee fails to timely pay any of its obligations or liabilities due and owing to the Franchisor, suppliers, banks, purveyors, other creditors or to any federal, state or municipal government (including, if applicable, federal and state income, sales, property, withholding and unemployment taxes); (e) the Franchisee is determined to be insolvent within the meaning of applicable state or federal law, any involuntary petition for bankruptcy is filed against the Franchisee, or the Franchisee files for bankruptcy or is adjudicated a bankrupt under applicable state or federal law; (f) the Franchisee makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors; (g) any check issued by the Franchisee is dishonored because of insufficient funds (except where the check is dishonored because of an error in bookkeeping or accounting) or closed accounts; (h) the Franchisee voluntarily or otherwise abandons the franchised Restaurant; (i) the Franchisee is involved in any act or conduct which materially impairs the goodwill associated with the name "Big Boy®" or any other Marks or the Restaurant System; (j) the Lease for the Franchised Location is terminated or canceled for non-payment of rent or other legal reasons, or the Franchisee otherwise loses possession of all or a significant portion of the Franchised Location; (k) the Franchisee's food service license or liquor license for the Franchised Location is terminated or canceled for any reason, or the Franchisee otherwise loses the food service license or liquor license for its Big Boy Restaurant; (l) the Franchisee fails to timely file any federal or state income or sales tax return or fails to timely pay any federal or state income or sales taxes; (m) the Franchisee fails any Inspection conducted by the Franchisor pursuant to Article 7.33 and fails to correct the operational deficiencies with the required time, (n) the Franchisee or any of the Owners or Affiliated Owner make an unapproved transfer of any interest in the Business Assets or any Ownership Interest in violation of the terms of this Agreement; or (o) the Franchisee refuses to provide the documents, records and other materials requested by the Franchisor to substantiate the Weekly Report and Financial Statements pursuant to Article 6.2 or to permit the Franchisor to audit the Franchisee's Financial Records in accordance with Article 6.4 of this Agreement.

### **20.3 Notice of Breach.**

Except as provided in Article 20.1, Article 20.5 and Article 20.6 of this Agreement, the Franchisor will not have the right to terminate this Agreement until: (a) written notice setting forth the alleged breach in detail has been delivered to the Franchisee by the Franchisor; and (b) after receiving the written notice, the Franchisee fails to correct the alleged breach within the period of time specified by applicable law. If applicable law does not specify a time period to correct an alleged breach, then the Franchisee will have 30 days after receipt of the written notice to correct the alleged breach, except where the written notice states that the Franchisee is delinquent in the payment of the Initial Fee, the Royalty Fees, the Advertising Fees or other payments due to the Franchisor pursuant to this Agreement, in which case the Franchisee will have 10 days after receipt of written notice to correct the breach by making full payment (including Administrative Fees and interest as provided for herein) to the Franchisor. If the Franchisee fails to correct the alleged breach set forth in the written notice within the applicable period of time, then this Agreement may be terminated by the Franchisor as provided for herein. For the purposes of this Agreement, an alleged breach of this Agreement by the Franchisee will be deemed to be "corrected" if both the Franchisor and the Franchisee agree in writing that the alleged breach has been corrected.

### **20.4 Arbitration.**

If the Franchisee commences arbitration in accordance with Article 26 of this Agreement within the time period established in Article 20.3 for correcting the alleged breach, then the Franchisor will not have the

right to terminate this Agreement until the facts of the alleged breach have been submitted to arbitration, the Arbitrator(s) determines that the Franchisee has breached this Agreement, and the Franchisee fails to correct the breach within the applicable time period. If the Arbitrator(s) determines that the Franchisee has violated or breached this Agreement as alleged by the Franchisor in the written notice given to the Franchisee, then unless applicable law specifies otherwise, the Franchisee will have 30 days after the date the Arbitrator(s) issues a written determination on the matter to correct the specified breach or violation of this Agreement, except where the Franchisee's breach is for failure to pay any fees or other payments to the Franchisor, in which case the Franchisee will have 10 days to make full payment, including all interest and Administrative Fees, to the Franchisor. If the Franchisee does timely correct the specified breach or violation of this Agreement, then this Agreement will remain in full force and effect. For the purpose of this Agreement, any controversy or dispute on the issue of whether the Franchisee has timely corrected the specified breach or violation of this Agreement will also be subject to arbitration as provided for herein. The time limitations set forth in this Article within which the Franchisee may demand arbitration of a dispute or controversy relating to the right of the Franchisor to terminate this Agreement for an alleged breach are mandatory. If the Franchisee fails to comply with the time limitations set forth in this Article, then the Franchisor may terminate this Agreement as provided for herein.

#### **20.5 Notice of Termination.**

Except as provided in Article 20.6 and Article 20.7, if the Franchisor has complied with the provisions of Article 20.3 and the Franchisee has not corrected the alleged breach set forth in the written notice within the applicable time period specified in this Agreement, then the Franchisor will have the absolute right to terminate this Agreement by giving the Franchisee written notice of termination and in that event, the effective date of termination of this Agreement will be the day the written notice of termination is received by the Franchisee.

#### **20.6 Immediate Termination Rights of Franchisor.**

The Franchisor will have the absolute right, unless specifically precluded by applicable law, to immediately terminate this Agreement (except as provided in Article 20.7(b)) if: (a) the Franchisee or any of its partners, directors, officers or majority Owners are convicted of, or plead guilty to or no contest to a charge of violating any law relating to the Franchisee's Big Boy Restaurant, or any felony; (b) the Franchisee is deemed insolvent within the meaning of applicable state or federal law, any involuntary petition for bankruptcy is filed against the Franchisee, or the Franchisee files for bankruptcy or is adjudicated a bankrupt under applicable state or federal law; (c) the Franchisee makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors; (d) the Franchisee voluntarily or otherwise abandons the Restaurant; (e) the Franchisee fails or refuses to provide the Financial Records requested by the Franchisor to substantiate the Weekly Report and Financial Statements pursuant to Article 6.2 or to produce and permit the Franchisor to audit the Franchisee's Financial Records in accordance with Article 6.4 of this Agreement; (f) the Franchisee is involved in any act or conduct which materially impairs the goodwill associated with the Marks or with the Restaurant System and the Franchisee fails to correct the breach within 24 hours of receipt of written notice from the Franchisor of the breach; or (g) the Franchisee violates any provision, term or condition of this Agreement three or more times during a 12 month period, without regard to whether the breach or violation was of a similar or different nature or whether the breach or violation was corrected within the prescribed cure period after receipt of written notice of the breach or violation.

#### **20.7 Notice of Immediate Termination.**

Except as set forth in Article 20.6(f), if this Agreement is terminated by the Franchisor pursuant to Article 20.6 above, then the Franchisor will give the Franchisee written notice by personal service or prepaid registered or certified mail that this Agreement is terminated and in that event, the effective date of termination of this Agreement will be the day the written notice of termination is received by the Franchisee. If this Agreement is terminated by the Franchisor pursuant to Article 20.6(f), then this

Agreement will terminate on the first minute of the 25th hour after receipt of the written notice of termination if the Franchisee did not correct the alleged breach within 24 hours after receiving the written notice of termination from the Franchisor.

**20.8 Other Remedies.**

Nothing in this Article will preclude the Franchisor from seeking other remedies or damages under state or federal laws, common law, or under this Agreement against the Franchisee including, but not limited to, attorneys' fees and injunctive relief. If this Agreement is terminated by the Franchisor pursuant to this Article, or if the Franchisee breaches this Agreement by a wrongful termination or a termination that is not in strict compliance with the terms and conditions of Article 21 of this Agreement, then the Franchisor will be entitled to recover all damages from the Franchisee that the Franchisor has sustained and will sustain in the future as a result of the Franchisee's breach of this Agreement.

**ARTICLE 21**  
**FRANCHISEE'S TERMINATION RIGHTS**

**21.1 Conditions of Breach.**

The Franchisee will have the right to terminate this Agreement, as provided herein, if the Franchisor violates any material provision, term or condition of this Agreement, or fails to timely pay any material uncontested obligations due and owing to the Franchisee.

**21.2 Notice of Breach.**

The Franchisee will not have the right to terminate this Agreement or to commence any action, lawsuit or proceeding against the Franchisor for breach of this Agreement, injunctive relief, violation of any state, federal or local law (including alleged violations of franchise laws), violation of common law (including allegations of fraud and misrepresentation), rescission, Claims and Damages, or termination, unless and until: (a) written notice setting forth the alleged breach or violation in detail has been delivered to the Franchisor by the Franchisee; and (b) the Franchisor fails to correct the alleged breach or violation within 30 days after receipt of the written notice. If the Franchisor fails to correct the alleged breach or violation within 30 days after receiving written notice, then this Agreement may be terminated by the Franchisee as provided for in this Agreement. For the purposes of this Agreement, an alleged breach or violation of this Agreement by the Franchisor will be deemed to be "corrected" if both the Franchisor and the Franchisee agree in writing that the alleged breach or violation has been corrected.

**21.3 Arbitration.**

If the Franchisor notices arbitration in accordance with Article 26 of this Agreement within 30 days after the date the Franchisor receives written notice of any alleged breach of this Agreement from the Franchisee, then the Franchisee will not have the right to terminate this Agreement until the facts of the alleged breach have been submitted to arbitration, the Arbitrator(s) determines that the Franchisor has breached this Agreement and the Franchisor fails to timely correct the breach as set forth in this Agreement. If the Arbitrator(s) determines that the Franchisor has violated or breached this Agreement as alleged by the Franchisee in the written notice given to the Franchisor, then the Franchisor will have 30 days after the date the Arbitrator(s) issues a written determination on the matter to correct the specified breach or violation of this Agreement. If the Franchisor does timely correct the specified breach or violation of this Agreement, then this Agreement will remain in full force and effect. If the Franchisor does not correct the specified breach or violation of this Agreement, then the Franchisee will have the right to terminate this Agreement by giving the Franchisor written notice of termination and in that event, the effective date of termination of this Agreement will be the day the written notice of termination is received by the Franchisor. For the purpose of this Agreement, any controversy or dispute on the issue of whether the Franchisor has timely corrected the specified breach or violation of this Agreement will also be subject to arbitration as provided for herein. The time limitation set forth in this Article within which

the Franchisor may demand arbitration of a dispute or controversy relating to the right of the Franchisee to terminate this Agreement for an alleged breach is mandatory. If the Franchisor fails to comply with the time limitation set forth in this Article, then the Franchisee may terminate this Agreement as provided for herein.

**21.4 Waiver.**

The Franchisee must give the Franchisor immediate written notice of any alleged breach or violation of this Agreement after the Franchisee has knowledge of, believes, determines, is of the opinion, or becomes aware of facts and circumstances reasonably indicating that there has been an alleged breach or violation of this Agreement by the Franchisor. If the Franchisee fails to give written notice to the Franchisor as provided for herein of any alleged breach or violation of this Agreement within one year after the date that the Franchisee has knowledge of, believes, determines, is of the opinion that, or becomes aware of facts and circumstances reasonably indicating that the Franchisee may have a claim under any state law, federal law or common law because there has been an alleged breach or violation by the Franchisor or the Franchisor's officers or directors, then the alleged breach or violation by the Franchisor will be deemed to be condoned, approved and waived by the Franchisee, the alleged breach or violation by the Franchisor will not be deemed to be a breach or violation of this Agreement by the Franchisor, and the Franchisee will be barred from commencing any action against the Franchisor for that specific alleged breach or violation.

**ARTICLE 22**

**FRANCHISEE'S OBLIGATIONS UPON TERMINATION OR EXPIRATION**

**22.1 Termination of Use of Marks; Other Obligations.**

If this Agreement is canceled or terminated for any reason or this Agreement expires, then the Franchisee will: (a) within five days after termination, pay all Royalty Fees, Advertising Fees and other fees and other amounts due and owing by the Franchisee to the Franchisor under this Agreement or under any other contract, promissory note or other obligation; (b) immediately return to the Franchisor by first class prepaid United States mail the Operations Manual, menus, advertising materials and all other printed materials pertaining to the Restaurant or the Restaurant System; and (c) comply with all other applicable provisions of this Agreement. Upon termination or expiration of this Agreement for any reason, the Franchisee's right to use the name "Big Boy®" and the other Marks and the Restaurant System will terminate immediately in all respects, and the Franchisee will not thereafter have any right to conduct or promote any business under any name that is similar to the Marks or in any manner that might tend to give the general public the impression that the Franchisee is continuing to operate as a franchisee of the Franchisor. Without limiting the generality of the foregoing, the Franchisee will immediately cease any and all advertising that includes any of the Marks, will delete all content containing the Marks or any references to the Franchisor or the Franchisee's Big Boy Restaurant from any Home Page maintained by the Franchisee, and will cease using any and all items or materials which bear or include any of the Marks.

**22.2 Alteration of Franchised Location.**

If this Agreement expires or is terminated for any reason or if the Franchised Location ever ceases to be used for the Franchisee's Big Boy Restaurant, then within 15 days after the date of the expiration or termination of this Agreement the Franchisee will, at its expense, alter, modify and change both the exterior and interior appearance of the building and the Franchised Location so that it will be clearly distinguished from the standard appearance of a Big Boy Restaurant. At a minimum, such changes and modifications to the Franchised Location will include: (a) repainting and, where applicable, recovering both the exterior and interior walls of the Franchised Location with totally different colors, including removing any distinctive colors and designs from the walls; (b) removing all FF&E and other decor items associated with a Big Boy Restaurant and replacing them with other decor items not of the general type

and appearance customarily used in Big Boy Restaurants; (c) removing all Signs; (d) immediately discontinuing use of the approved wall decor items and window decals, and refraining from using any products or items that may be confusingly similar to those used in a Big Boy Restaurant; and (e) modifying the premises as necessary to comply with the covenant not to compete provisions set forth in Article 23.3 of this Agreement.

**22.3 Cancellation of Telephone Directory Listings.**

Upon termination or expiration of this Agreement, or if the Franchisor acquires the Franchisee's Big Boy Restaurant pursuant to this Agreement, the Franchisor will have the absolute right to notify the telephone company and all listing agencies of the termination or expiration of the Franchisee's right to use all telephone numbers and all classified and other directory listings for the Restaurant and to authorize the telephone company and all listing agencies to Transfer to the Franchisor or its assignee all telephone numbers and directory listings of the Franchisee's Big Boy Restaurant. The Franchisee acknowledges and agrees that the Franchisor has the absolute right and interest in and to all telephone numbers and directory listings associated with the Marks, and the Franchisee hereby authorizes the Franchisor to direct the telephone company and all listing agencies to Transfer the Franchisee's telephone numbers and directory listings to the Franchisor or to an assignee of the Franchisor, if this Agreement expires or is terminated or if the Franchisor acquires the Franchisee's Big Boy Restaurant. The telephone company and all listing agencies may accept this Agreement as evidence of the exclusive rights of the Franchisor to such telephone numbers and directory listings and this Agreement will constitute the authority from the Franchisee for the telephone company and listing agency to Transfer all such telephone numbers and directory listings to the Franchisor. This Agreement will constitute a release of the telephone company and listing agencies by the Franchisee from any and all Claims and Damages that the Franchisee may at any time have the right to allege against them in connection with this Article.

**22.4 Continuation of Obligations.**

The indemnities and covenants contained in this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

**ARTICLE 23**  
**FRANCHISEE'S COVENANTS NOT TO COMPETE**

**23.1 Consideration.**

The Franchisee, the Owners and the Personal Guarantors acknowledge that the Franchisee, its partners or officers and employees will receive specialized training, marketing and advertising plans, business strategies, confidential recipe, cooking, and food preparation information, and trade secrets from the Franchisor pertaining to the Restaurant System and the operation of the Big Boy Restaurant. In consideration for the Franchisor providing this information, the Franchisee, the Owners and the Personal Guarantors will comply in all respects with the provisions of this Article. The Franchisor has advised the Franchisee that this provision is a material provision of this Agreement, and that the Franchisor will not sell a Big Boy Restaurant Franchise to any person or Entity that owns or intends to own, operate or be involved in any Competitive Restaurant; provided however, that the Franchisor may, under certain circumstances, exclude from the coverage of Article 23.2 and Article 23.3 existing operational restaurant(s) owned and operated by the Franchisee as of the date of this Agreement, and the Franchisee may, with the written consent of the Franchisor, continue to own and operate such restaurants during the Term of this Agreement and thereafter.

**23.2 In-Term Covenant Not to Compete.**

The Franchisee, the Owners and the Personal Guarantors will not, during the Term of this Agreement, on their own account or as an employee, agent, consultant, affiliate, licensee, partner, officer, director, or shareholder of any other person, firm, entity, partnership or corporation, own, operate, lease, franchise,

conduct, engage in, be connected with, have any interest in, or assist any person or Entity engaged in any Competitive Restaurant, except with the prior written consent of the Franchisor.

**23.3 Post-Term Covenant Not to Compete.**

The Franchisee, the Owners and the Personal Guarantors will not, for a period of 12 months after the termination or expiration of this Agreement: (a) on their own account or as an employee, principal, agent, independent contractor, consultant, affiliate, licensee, partner, officer, director or shareholder of any other person, firm, entity, partnership or corporation, own, operate, manage, lease, franchise, conduct, consult with, engage in, be connected with, have any interest in or assist any person or Entity that owns, operates or manages any Competitive Restaurant which is located within a five mile radius of the Franchised Location, within five miles of any other Big Boy Restaurant, or within any exclusive area granted by the Franchisor to any franchisee or area developer of the Franchisor pursuant to a development agreement or other territorial agreement; or (b) convert the Franchised Location to a Major Brand Name Restaurant. The Franchisee, the Owners and the Personal Guarantors expressly agree that the time and geographical limitations set forth in this provision are reasonable and necessary to protect the Franchisor and its franchisees if this Agreement expires or is terminated by either party for any reason, and that this covenant not to compete is necessary to permit the Franchisor the opportunity to resell and/or develop a new Big Boy Restaurant at or in the area near the Franchised Location.

**23.4 Injunctive Relief.**

The Franchisee, the Owners and the Personal Guarantors agree that the provisions of this Article are necessary to protect the legitimate business interest of the Franchisor and its franchisees including, without limitation, preventing the unauthorized dissemination of marketing, promotional and other confidential information to competitors of the Franchisor and its franchisees, protecting recipes, cooking and food preparation techniques and other trade secrets, protecting the integrity of the franchise system preventing duplication of the Restaurant System by unauthorized third parties, and preventing damage to and/or loss of goodwill associated with the Marks. The Franchisee, the Owners and the Personal Guarantors also agree that damages alone cannot adequately compensate the Franchisor if there is a violation of this Article by the Franchisee, the Owners or the Personal Guarantors, and that injunctive relief against the Franchisee is essential for the protection of the Franchisor and its franchisees. The Franchisee, the Owners and the Personal Guarantors agree therefore, that if the Franchisor alleges that the Franchisee, the Owners or the Personal Guarantors have breached or violated this Article, then the Franchisor will have the right to petition a court of competent jurisdiction for injunctive relief against the Franchisee, the Owners and the Personal Guarantors, in addition to all other remedies that may be available to the Franchisor. The Franchisor will not be required to post a bond or other security for any injunctive proceeding. If the Franchisor is granted ex parte injunctive relief against the Franchisee, the Franchisee's Owners or the Personal Guarantors, then the Franchisee, the Owners or the Personal Guarantors will have the right to petition the court for a hearing on the merits at the earliest time convenient to the court.

**23.5 Severability.**

It is the desire and intent of the parties to this Agreement, including the Owners and the Personal Guarantors, that the provisions of this Article be enforced to the fullest extent permissible under the laws and public policy applied in each jurisdiction in which enforcement is sought. Accordingly, if any part of this Article is adjudicated to be invalid or unenforceable, then this Article will be deemed to modify or delete that portion thus adjudicated to be invalid or unenforceable, such modification or deletion to apply only with respect to the operation of this Article in the particular jurisdiction in which the adjudication is made. Further, to the extent any provision of this Article is deemed unenforceable by virtue of its scope or limitation, the parties to this Agreement, including the Owners and the Personal Guarantors, agree that the scope and limitation provisions will nevertheless, be enforceable to the fullest extent permissible under the laws and public policies applied in such jurisdiction where enforcement is sought.

**ARTICLE 24**  
**INDEPENDENT CONTRACTORS**

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

**ARTICLE 25**  
**INDEMNIFICATION**

**25.1 Indemnification.**

The Franchisor, its sole member or affiliates ("Indemnitees"), will not be obligated to any person or Entity for any Claims and Damages incurred as a result of the Franchisee's negligence, wrongdoing or operation of its Big Boy Restaurant. Therefore, the Franchisee will indemnify, defend and hold the Indemnitees harmless against, and will reimburse the Indemnitees for, all Claim and Damages for which the Indemnitees are held liable arising from, out of, in connection with, or as a result of the Franchisee's negligence, the Franchisee's wrongdoing; or the operation of the Franchisee's Big Boy Restaurant including, without limitation, all Cost and Expenses. The Franchisee will indemnify the Indemnitees, without limitation, for all Claims and Damages arising from, out of, in connection with, or as a result of: (a) any personal injury, property damage, commercial loss or environmental contamination resulting from any act or omission of the Franchisee or its employees, agents or representatives; (b) any failure on the part of the Franchisee or its employees, agents or representatives to comply with any requirement of any federal, state, or local laws or any governmental rules or regulations, (c) any failure of the Franchisee to pay any of its uncontested obligations to any person or Entity; (d) any failure of the Franchisee or its employees, agents or representatives to comply with any requirement or condition of this Agreement or any other agreement with the Franchisor; (e) any misfeasance or malfeasance by the Franchisee or its employees, agents or representatives; and (f) any tort committed by the Franchisee or its employees, agents or representatives. The Indemnitees will have the right to defend any claim made against them arising from, out of, as a result of, or in connection with the operation of the Franchisee's Big Boy Restaurant.

**25.2 Payment of Costs and Expenses.**

The Franchisee will pay all Costs and Expenses incurred by the Franchisor in successfully enforcing any term, condition or provision of this Agreement against the Franchisee or in enjoining any violation of this Agreement by the Franchisee.

**25.3 Interest on Unpaid Fees; Administrative Fee.**

If the Franchisee fails to timely pay any Royalty Fees, Advertising Fees or other amounts due to the Franchisor under this Agreement, then the amount which is unpaid and past due will bear simple interest at the lesser of: (a) the maximum legal rate allowable by applicable law; or (b) 18% simple interest per annum. In addition, the Franchisee will pay the Franchisor an Administrative Fee of \$150 for each payment that is over 10 days delinquent.

**25.4 Continuation of Obligations.**

The indemnification and other obligations contained herein will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

## **ARTICLE 26**

### **ARBITRATION**

#### **26.1 Disputes Subject to Arbitration.**

Except as expressly provided to the contrary in Article 26.6 of this Agreement, all disputes and controversies ("dispute" or "disputes") between the Franchisee and the Franchisor and their respective officers, directors, shareholders, members, governors, partners, employees, and agents, including (a) allegations of fraud, misrepresentation and violation of any federal, state, municipal or local laws, rules or regulations, and (b) claims against any officer, director, shareholder, member, governor, partner, employee or agent arising under, as a result of, or in connection with this Agreement, the Franchised Location or the Franchisee's Big Boy Restaurant will be resolved exclusively by arbitration conducted in accordance with the Code of Procedure of the National Arbitration Forum, Post Office Box 50191, Minneapolis, MN, 1-800-474-2371([www.arb-forum.com](http://www.arb-forum.com)) (the "NAF").

#### **26.2 Notice of Dispute.**

The party alleging the dispute must provide the other party with written notice setting forth the alleged dispute in detail. The party who receives written notice alleging the dispute will have 20 days after receipt of the written notice to correct, settle or compromise the dispute specified in the written notice. If the written notice alleges that the Franchisee is delinquent in the payment of any fees or other payments payable to the Franchisor, the Franchisee will have 10 days to make full payment (including interest and Administrative Fees as provided for herein) to the Franchisor.

#### **26.3 Demand for Arbitration.**

If the dispute alleged by any party has not been corrected, settled or compromised within the time period provided for in this Agreement, then any party may demand arbitration by giving written notice to the other party and to the office of the NAF. Any party will have the right to have three Arbitrators appointed to hear the matter, one of which must be a retired appellate or trial court judge. The Arbitrator(s) will be appointed as provided herein within 30 days after a written demand for arbitration has been made by either party.

#### **26.4 Venue and Jurisdiction.**

All arbitration hearings will take place exclusively in Warren, Michigan, and will be held no later than six months after the Arbitrator(s) has been selected. The Franchisor and its officers, managers, directors or governors and the Franchisee and its respective partners, officers, managers, directors, governors and Owners and the Personal Guarantors do hereby agree and submit to personal jurisdiction in the State of Michigan in connection with any arbitration hearings hereunder and any suits brought to enforce the decision of the Arbitrator(s), and do hereby waive any rights to contest venue and jurisdiction in the State of Michigan and any claims that venue and jurisdiction are invalid.

#### **26.5 Powers of Arbitrator(s).**

The authority of the Arbitrator(s) will be limited to making a finding, judgment, decision and award relating to the interpretation of or adherence to the written provisions of this Agreement. The Federal Rules of Evidence (the "Rules") will apply to all arbitration hearings and the introduction of all evidence, testimony, records, affidavits, documents and memoranda in any arbitration hearing must comply in all respects with the Rules and legal precedents interpreting the Rules. Both parties will have the absolute right to cross-examine any person who has testified against them or in favor of the other party. The Arbitrator(s) will have no authority to add to, delete or modify in any manner the terms and provisions of this Agreement. All findings, judgments, decisions and awards of the Arbitrator(s) will be limited to the dispute set forth in the written demand for arbitration, and the Arbitrator(s) will have no authority to decide any other issues. The Arbitrator(s) will not have the right or authority to award punitive damages to either the Franchisor or the Franchisee or their partners, officers, managers, directors, governors,



members, shareholders, Owners and Personal Guarantors, and all parties expressly waive their rights to plead or seek punitive damages. All findings, judgments, decisions and awards by the Arbitrator(s) will be in writing, will be made within 60 days after the arbitration hearing has been completed, and will be final and binding on the Franchisor and the Franchisee. The written decision of the Arbitrator(s) will be deemed to be an order, judgment and decree and may be entered as such in any court of competent jurisdiction by either party. If, during the course of Arbitration, either party fails to appear at a meeting or hearing duly scheduled in accordance with the Code of Procedure of the NAF, then the Arbitrator(s) will have the absolute right to enter a default judgment against the party failing to appear and may grant the appropriate remedy and/or relief in favor of the appearing party, including the awarding of attorneys' fees.

**26.6 Disputes Not Subject to Arbitration.**

Notwithstanding the provisions of this Article 26, the disputes set forth in Article 27.1 will not be subject to arbitration.

**26.7 No Collateral Estoppel or Class Actions.**

All arbitration findings, conclusions, orders and awards made by the Arbitrator(s) will be final and binding on the Franchisor and the Franchisee; however, in recognition of the fact that arbitration proceedings are not subject to the same standards as those afforded the parties in a court of law, the arbitration findings, conclusions, orders and awards may not be used to collaterally estop either the Franchisee or the Franchisor from raising any like or similar issue or defense in any subsequent arbitration, litigation, court hearing or other proceeding involving third parties and other franchisees. No person or Entity except the Franchisor and the Franchisee, and their partners, officers, managers, directors, governors, members, shareholders, Owners and the Personal Guarantors, will have the right to join in or participate in any arbitration proceeding arising under this Agreement, and therefore, the Arbitrator(s) will not be authorized to permit class actions or to permit any other person or Entity to be involved in or be named as a party to any arbitration proceeding brought by either party under this Agreement. The Franchisee and the Franchisor agree that neither party will be entitled to allege or recover punitive damages. Thus, the Arbitrator(s) will not have the right to award punitive damages to either party and both parties expressly waive their rights allege or claim punitive damages.

**26.8 Confidentiality.**

All evidence, testimony, records, documents, findings, decisions, judgments and awards pertaining to any arbitration hearing between the Franchisor and the Franchisee will be secret and confidential in all respects. The Franchisor and the Franchisee will not disclose the decision or award of the Arbitrator(s) and will not disclose any evidence, testimony, records, documents, findings, orders, or other matters from the arbitration hearing to any person or Entity except as required by law. Nothing herein will prevent either party from disclosing or using any information presented in any arbitration proceeding in any appropriate subsequent court hearing brought by either party.

**26.9 Performance During Arbitration of Disputes.**

The Franchisor and the Franchisee will fully comply with all of the terms and conditions of this Agreement and will fully perform their respective obligations under this Agreement during the entire time of the arbitration process.

**26.10 Federal Arbitration Act.**

This Agreement and any issue regarding arbitration arising under this Agreement will be governed by the Federal Arbitration Act and the federal common law of arbitration.

## **ARTICLE 27** **ENFORCEMENT**

### **27.1 Injunctive Relief.**

Notwithstanding the provisions of Article 26, the Franchisor and the Franchisee will have the right to petition a court of competent jurisdiction for the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement for any action relating to: (a) the Franchisee's use of the Marks or the Restaurant System; (b) the obligations of the Franchisee upon termination or expiration of this Agreement; (c) the Transfer of this Agreement, the Business Assets or the Ownership Interests in the Franchisee; (d) the violation of the provisions of this Agreement relating to confidentiality including, but not limited to, those contained in Articles 6.7, 9.3, 9.4, 12.6 and 26.8, (e) the violation of the provisions of this Agreement relating to the covenants not to compete including, but not limited to, those contained in Article 23; (f) any dispute involving the immediate termination of this Agreement by the Franchisor, and (g) any act or omission by the Franchisee or the Franchisee's employees that (1) constitutes a violation of any applicable federal, state or local law, ordinance or regulation, (2) is dishonest or misleading to the guests or customers of the Franchisee's Restaurant or other Big Boy Restaurants, (3) constitutes a danger to the employees, public, guests or customers of the Franchisee's Restaurant, or (4) may impair the goodwill associated with the Marks or the Restaurant System.

### **27.2 Severability.**

All provisions of this Agreement are severable and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein and partially valid and enforceable provisions will be enforced to the extent valid and enforceable. If any applicable law or rule of any jurisdiction requires a greater prior notice of the termination of this Agreement than is required hereunder or the taking of some other action not required hereunder, or if under any applicable law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by the Franchisor is invalid or unenforceable under applicable law, then the prior notice or other action required by such law or rule will be substituted for the notice requirements hereof, or such invalid or unenforceable provision, specification, standard or operating procedure will be modified to the extent required to be valid and enforceable. Such modifications to this Agreement will be effective only in such jurisdiction.

### **27.3 Waiver.**

The Franchisor and the Franchisee may, by written instrument signed by the Franchisor and the Franchisee, waive any obligation of or restriction upon the other under this Agreement. Acceptance by the Franchisor of any payment by the Franchisee and the failure, refusal or neglect of the Franchisor to exercise any right under this Agreement or to insist upon full compliance by the Franchisee of its obligations hereunder including, without limitation, any mandatory specification, standard or operating procedure, will not constitute a waiver by the Franchisor of any provision of this Agreement. The Franchisor will have the absolute right to waive obligations or restrictions for other franchisees under their franchise agreements without waiving those obligations or restrictions for the Franchisee and, except to the extent provided by law, the Franchisor will have the right to negotiate terms and conditions, grant concessions and waive obligations for other Big Boy franchisees without granting those same rights to the Franchisee and without incurring any liability or obligation to the Franchisee whatsoever.

### **27.4 Payments to Franchisor.**

The Franchisee will not, on grounds of the alleged nonperformance by the Franchisor of any of its obligations under this Agreement, any other contract between the Franchisor and the Franchisee, or for any other reason, withhold payment of any Royalty Fees, Advertising Fees or any other fees or payments due the Franchisor under this Agreement or pursuant to any other contract or agreement with the

Franchisor. The Franchisee will not have the right to “offset” or withhold any liquidated or unliquidated amounts, damages or other funds allegedly due to the Franchisee by the Franchisor against any Royalty Fees, Advertising Fees or any other fees or payments due to the Franchisor by the Franchisee under this Agreement.

**27.5 Effect of Wrongful Termination.**

If either the Franchisor or the Franchisee takes any action to terminate this Agreement or the Franchisee takes any action to convert its Big Boy Restaurant to another restaurant or other business, and such actions were taken without first complying with the terms and conditions of Article 20 or Article 21 of this Agreement, as applicable, then such actions will not relieve either party of, or release either party from, any of its obligations under this Agreement, and the terms and conditions of this Agreement will remain in full force and effect and the parties will be obligated to fully perform all terms and conditions until such time as this Agreement expires or is terminated in accordance with the provisions of this Agreement and applicable law, as determined by arbitration or a court of competent jurisdiction.

**27.6 Cumulative Rights.**

The rights of the Franchisor hereunder are cumulative and no exercise or enforcement by the Franchisor of any right or remedy hereunder will preclude the exercise or enforcement by the Franchisor of any other right or remedy hereunder or which the Franchisor is entitled by law to enforce.

**27.7 Binding Agreement.**

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

**27.8 Joint and Several Liability.**

If the Franchisee consists of more than one person or Entity, their liability under this Agreement will be deemed to be joint and several.

**27.9 No Oral Modification.**

No modification, change, addition, rescission, release, amendment or waiver of this Agreement and no approval, consent or authorization required by any provision of this Agreement may be made by any person except by a written agreement signed by a duly authorized officer, manager or partner of the Franchisee and the Chief Executive Officer, the Chief Financial Officer or a Vice President of the Franchisor.

**27.10 Entire Agreement.**

This Agreement supersedes and terminates all prior agreements, either oral or in writing, between the parties involving the franchise relationship and therefore, representations, inducements, promises or agreements alleged by either the Franchisor or the Franchisee that are not contained in this Agreement will not be enforceable. The Introduction is part of this Agreement, which constitutes the entire agreement of the parties, and there are no other oral or written understandings or agreements between the Franchisor and the Franchisee relating to the subject matter of this Agreement. This Agreement will not supersede any written agreements or contracts that are signed concurrently with this Agreement or agreements or contracts that do not conflict with the terms and conditions of this Agreement.

**27.11 Headings; Terms.**

The headings of the Articles are for convenience only and do not in any way define, limit or construe the contents of such Articles. The term “Franchisee” as used herein is applicable to one or more individuals, a general or limited partnership, a corporation, a limited liability Franchisor, or a partnership, as the case may be, and the singular usage includes the plural, the masculine usage includes the neuter and the feminine, and the neuter usage includes the masculine and the feminine. References to “Franchisee,”

“assignee” and “transferee” which are applicable to an individual or individuals will mean the Owner or Owners of the equity and operating control.

**27.12 Venue and Jurisdiction.**

All litigation, court proceedings, arbitration proceedings, lawsuits, court hearings and other hearings initiated by the Franchisee or the Franchisor, including any action commenced by either party contesting the arbitration provisions of this Agreement, must and will be venued exclusively in Macomb County, Michigan. The Franchisor and the Franchisee, and their partners, officers, managers, directors, governors, Owners, and Personal Guarantors do hereby agree and submit to personal jurisdiction in the State of Michigan for the purposes of any suit, proceeding or hearing brought in any court to enforce or construe the terms of this Agreement or to resolve any dispute or controversy arising under, as a result of, or in connection with this Agreement, the Franchised Location or the Franchisee’s Big Boy Restaurant, and agree and stipulate that all such suits, proceedings and hearings will be exclusively venued and held in Macomb County, Michigan. The Franchisee and each of its partners, officers, managers, directors, governors, Owners, and Personal Guarantors waive any rights to contest such venue and jurisdiction and any claims that such venue and jurisdiction are invalid.

**27.13 Contractual Statute of Limitations.**

Except as provided otherwise in this Agreement or by applicable law, any and all claims and actions arising out of, in connection with, or relating to this Agreement, the relationship between the Franchisee and the Franchisor, or the Franchisee’s operation of the Restaurant, brought by either party against the other, whether in arbitration or in any other appropriate proceeding, must be commenced within 12 months after the occurrence of the facts giving rise to such claim or action. If the complaining party fails to commence an arbitration proceeding or other appropriate proceeding within 12 months after the occurrence of the facts giving rise to such claim or action, then such claim or action will be absolutely barred and waived and the complaining party will have no further right to pursue any action based on such claim or action.

**27.14 Franchisee’s Grant of Security Interest to Franchisor**

Franchisee shall grant Franchisor a security interest in all of the furniture, fixtures, equipment and other personal property of the Franchised Unit to secure Franchisee’s prompt payment of any financial obligations it incurs with Franchisor under this Agreement. Franchisee acknowledges Franchisor will file a financing statement as evidence of the Security Agreement. If the acquisition or development of the Franchised Unit is to be financed by the Franchisee, Franchisor will subordinate its security interest to Franchisee’s principal lender, upon written request by Franchisee.

**ARTICLE 28**

**ACKNOWLEDGMENTS; DISCLAIMER**

**28.1 Disclaimer.**

The Franchisor does not warrant or guarantee to the Franchisee that the Franchisee will derive income or profit from the Big Boy Restaurant, or that the Franchisor will refund all or part of the Initial Fee or the price paid for the Franchisee’s Restaurant or repurchase any of the supplies, products, technology or equipment supplied or sold by the Franchisor or by an Approved Supplier or Designated Supplier if the Franchisee is in any way unsatisfied with the purchase of the Franchise or the operation of its Restaurant. The Franchisor expressly disclaims the making of any express or implied representations or warranties regarding the sales, earnings, income, profits, Gross Revenues, business or financial success, or value of the Franchisee’s Restaurant except as contained in the Franchisor’s Uniform Franchise Offering Circular received by the Franchisee.

**28.2 Acknowledgments by Franchisee.**

The Franchisee acknowledges that it has conducted an independent investigation of the Big Boy Restaurant and recognizes that the business venture contemplated by this Agreement involves business and economic risks. The Franchisee acknowledges that the financial, business and economic success of the Franchisee's Big Boy Restaurant will be primarily dependent upon the personal efforts of the Franchisee, its Management Team and its employees, and on economic conditions in the area where the Franchised Location is located and economic conditions of the United States in general. The Franchisee acknowledges that it has not received any estimates, projections, representations, warranties or guaranties, expressed or implied, regarding potential sales, Gross Revenues, income, profits, earnings, expenses, financial or business success, value of the Restaurant, or other economic matters pertaining to the Franchisee's Restaurant from the Franchisor or any of its agents that were not expressly set forth in the Franchisor's Uniform Franchise Offering Circular received by the Franchisee from the Franchisor (hereinafter referred to in this provision as "Representations"). The Franchisee further acknowledges that if it had received any such Representations, it would not have executed this Agreement, and that it would have promptly notified an officer of the Franchisor in writing of the name of the person or persons making such Representations and provided the Franchisor with a specific written statement detailing the Representations made.

### **28.3 Representations of Entity Franchisee.**

If the Franchisee is an Entity, the Owners represent and warrant that: (a) the Franchisee is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) the Franchisee is qualified to do business in the state in which the Franchisee's Big Boy Restaurant is located; (c) the Franchisee has delivered to the Franchisor a copy of its corporate charter or certificate of organization and current good standing certificates from all states in which the Franchisee is incorporated / organized or qualified to do business; and (d) the Ownership Interests of the Franchisee are accurately stated in the connection with the signatures of the Owners appearing below.

### **28.4 Other Franchisees.**

The Franchisee acknowledges that other Big Boy franchisees have or will be granted franchises at different times, different locations, under different economic conditions and in different situations, and further acknowledges that the Royalty Fees, Advertising Fees, payments, rights, obligations, economics, and terms and conditions of other franchise agreements may vary substantially in form and in substance from those contained in this Agreement. The Franchisee further acknowledges that in the future the Franchisor may operate and franchise or license restaurant operations under various trade names, and that nothing in this Agreement shall be deemed to restrict the Franchisor from operating or franchising any restaurant or other operation under any trade name at any location.

### **28.5 Receipt of Agreement and Uniform Franchise Offering Circular.**

The Franchisee acknowledges that it received a copy of this Agreement with all material blanks fully completed at least five business days prior to the date that this Agreement was executed by the Franchisee. The Franchisee further acknowledges that it received a copy of the Franchisor's Uniform Franchise Offering Circular at least 10 business days prior to the date on which this Agreement was executed.

## **ARTICLE 29** **FRANCHISEE'S LEGAL COUNSEL**

The Franchisee acknowledges that this Agreement constitutes a legal document which grants certain rights to and imposes certain obligations upon the Franchisee. The Franchisee has been advised by the Franchisor to retain an attorney or advisor prior to the execution of this Agreement to review the Franchisor's Uniform Franchise Offering Circular, to review this Agreement in detail, to review all legal documents, to review the economics, operations and other business aspects of the Big Boy Restaurant, to

determine compliance with franchising and other applicable laws, and to advise the Franchisee on economic risks, liabilities, obligations and rights under this Agreement and to advise the Franchisee on tax issues, financing matters, applicable state and federal laws, liquor laws, health and safety laws, environmental laws, employee issues, insurance, structure of the Restaurant business, and other business matters. The name and telephone number of the Franchisee's attorney or other advisor is: \_\_\_\_\_

\_\_\_\_\_  
telephone number (\_\_\_\_) \_\_\_\_\_.

### **ARTICLE 30 NOTICES**

All notices to the Franchisor will be in writing and will be addressed to the Chief Executive Office of the Franchisor with copies to Jennifer Bourgoïn, Esq., Vice President and General Counsel, Big Boy Franchise Management LLC, Attn: Legal Department, One Big Boy Drive, MI 48091, or such other address as the Franchisor may subsequently designate in writing. Except as otherwise provided by applicable law, all notices under this Agreement will be in writing and delivered to the addressee by any of the following means: (a) by personal service, (b) by prepaid certified U. S. mail, (c) by facsimile, e-mail or other electronic transmission, or (d) by a recognized overnight delivery service (such as Federal Express, United States Express Mail, Airborne Express or UPS) which requires a written receipt or acknowledgement of delivery. All notices to the Franchisee will be sent to the Franchised Location, or such other address as the Franchisee may subsequently designate in writing. For the purposes of this Agreement, written notice will be deemed received by the addressee (i) on the day received, if it is sent by personal service, U.S. certified mail or by a recognized overnight delivery service, (ii) on the date of transmission, if it is sent by facsimile and the transmission has been confirmed by the sender, or (iii) on the date of transmission, if sent by e-mail or other electronic transmission and the sender does not receive a notice of non-delivery.

### **ARTICLE 31 GOVERNING LAW; STATE MODIFICATIONS**

#### **31.1 Governing Law**

Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §1051 et seq.), this Agreement and the relationship between the Franchisor and the Franchisee will be governed by the laws of the state in which the Territory is located. The provisions of this Agreement which conflict with or are inconsistent with applicable governing law will be superseded and/or modified by such applicable law only to the extent such provisions are inconsistent. All other provisions of this Agreement will be enforceable as originally made and entered into upon the execution of this Agreement by the Franchisee and the Franchisor.

#### **31.2 State Modifications**

If the Franchised Location is located in any one of the states indicated below in this Article 31.2, or if the laws of any such state are otherwise applicable, then the designated provisions of this Agreement will be amended and revised as follows:

- (a) California. If this Agreement is governed by the laws of the State of California, then: (1) California Business and Professions Code, Sections 20000 through 20043 provides rights to the Franchisee concerning the termination and nonrenewal of the Franchise which will supersede any inconsistent provisions of this Agreement; (2) California Corporations Code, Section 31125 requires the that the Franchisor give the Franchisee a disclosure document, approved by the Department of Corporations, prior to a solicitation of a proposed material modification of this Agreement; (3) the provisions of this Agreement

which allow the Franchisor to terminate this Agreement when an involuntary petition for bankruptcy is filed against the Franchisee, or the Franchisee files for bankruptcy or is adjudicated a bankrupt may not be enforceable under federal bankruptcy law (11 U.S.C.A. Section 101, et seq.); and (4) the covenant not to compete upon termination or expiration of this Agreement contained in Article 23.3 of this Agreement may be unenforceable, except in certain circumstances provided by law;

- (b) Illinois. If this Agreement is governed by the laws of the State of Illinois, then: (1) any provision of this Agreement that designated jurisdiction or venue in a forum outside the State of Illinois is void, provided that this Agreement may provide for mediation or arbitration in a forum outside Illinois; (2) Sections 19 and 20 of the Illinois Franchise Disclosure Act provide rights to the Franchisee relating to the termination and nonrenewal of the Franchise which will supersede any inconsistent provisions of this Agreement; (3) this Agreement is amended to provide that the periods of limitation contained in Section 27 of the Illinois Franchise Disclosure Act are applicable to any action maintained by the Franchisee to enforce any liability created by the Act; and (4) Section 41 of the Illinois Franchise Disclosure Act states that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Act is void; therefore, any acknowledgments or other language contained in Article 28 of this Agreement which purport to waive compliance with the Act will be unenforceable against the Franchisee;
- (c) Minnesota. If this Agreement is governed by the laws of the State of Minnesota, then: (1) except in certain circumstances specified by law, the Franchisor must give the Franchisee at least 180 days prior written notice of nonrenewal of this Agreement; (2) in the event the Franchisor gives the Franchisee written notice that the Franchisee has breached this Agreement, such written notice will be given to the Franchisee at least 90 days prior to the date this Agreement is terminated by the Franchisor, and the Franchisee will have 60 days after such written notice within which to correct the breach specified in the written notice; (3) notwithstanding any provisions of this Agreement to the contrary, a Court of competent jurisdiction will determine whether the Franchisor will be required to post a bond or other security, and the amount of such bond or other security, in any injunctive proceeding commenced by the Franchisor against the Franchisee, the Franchisee's Owners or the Personal Guarantors; (4) Article 17.5(d) of this Agreement will be inapplicable to rights provided to the Franchisee or to any liability imposed by Minn. Stat. Sections 80C.01 to 80C.22; (5) in accordance with Minn. Stat. Sec. 80C.17, Subd. 5, the Franchisee will have no more than three years after the cause of action accrues to commence an action pursuant to Minn. Stat. Sec. 80C.17; and (6) any provision of this Agreement which requires the Franchisee to waive its rights to jurisdiction or venue in the State of Minnesota will not be applicable to the Franchisee.
- (d) North Dakota. If this Agreement is governed by the laws of the State of North Dakota, then: (1) in the event the Franchisor gives the Franchisee written notice that the Franchisee is delinquent in the payment of any fees or other payments payable to the Franchisor, the Franchisee will have 30 days after such written notice within which to correct the breach by making full payment (including interest as provided for herein) to the Franchisor; (2) the covenant not to compete upon termination or expiration of this Agreement contained in Article 23.3 may be unenforceable, except in certain circumstances provided by law; (3) Article 25.2 is amended to provide that the prevailing party will pay all attorneys' fees, costs and expenses incurred by the other party in enforcing any term, condition or provision of this Agreement or in enjoining any violation of this Agreement by the other party; (4) the consent by the Franchisee to

jurisdiction and venue in Macomb County, Michigan contained in Article 27.12 may be inapplicable; provided, however, that such inapplicability in the State of North Dakota will not be construed to mean that venue in Macomb County, Michigan is improper, or that the Franchisee, its officers, directors, Owners and Personal Guarantors are not subject to jurisdiction in Macomb County, Michigan, or in any other state; and (5) the provisions of Article 26.4 requiring arbitration hearings to take place in Warren, Michigan will be inapplicable and in the event of arbitration between the Franchisor and the Franchisee, such arbitration will be conducted in North Dakota or at a mutually agreed upon location.

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

### **31.3 Severability.**

It is the desire and intent of the parties to this Agreement, including the Franchisee's Owners and the Personal Guarantors, that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policy applied in each jurisdiction in which enforcement is sought. All provisions of this Agreement are severable and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein and partially valid and enforceable provisions will be enforced to the extent valid and enforceable. If any applicable law or rule of any jurisdiction requires a greater prior notice of the termination or nonrenewal of this Agreement than is required hereunder or the taking of some other action not required hereunder, or if under any applicable law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by the Franchisor is invalid or unenforceable, the prior notice or other action required by such law or rule will be substituted for the notice requirements hereof, or such invalid or unenforceable provision, specification, standard or operating procedure will be modified to the extent required to be valid and enforceable. If any provision of this Agreement is adjudicated to be invalid or unenforceable, then such provision will be deemed amended to modify or delete that portion thus adjudicated to be invalid or unenforceable. Such modification or deletion will apply only with respect to the operation of such provision in the particular jurisdiction in which the adjudication is made. Further, to the extent any provision of this Agreement is deemed unenforceable by virtue of its scope or limitation, the parties to this Agreement, including the Franchisee's Owners and the Personal Guarantors, agree that the scope and limitation provisions will, nevertheless, be enforceable to the fullest extent permissible under the applicable laws and public policies applied in such jurisdiction where enforcement is sought.



IN WITNESS WHEREOF, the Franchisor, the Franchisee and the Owners have respectively signed this Agreement effective as of the day and year first above written.

In the Presence of:

**Big Boy Franchise Management LLC**

\_\_\_\_\_

By \_\_\_\_\_  
Anthony T. Michaels  
Its: Chief Executive Officer

In the Presence of:

**"Franchisee"**

\_\_\_\_\_

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

The undersigned Owners hereby agree to be bound by the provisions of this Agreement applicable to Owners, including, but not limited to, the provisions contained in Articles 1.4, 1.21, 1.28, 1.29, 13.6, 17.2, 17.4, 17.5, 17.8, 17.9, 18.3 through 18.5, 20.2, 23.1 through 23.5, 26.5, 27.11, 27.12, 28.3, and 29 of this Agreement.

In the Presence of:

Owners

Percentage  
of Ownership

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ %

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ %

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ %

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ %

## PERSONAL GUARANTY

**THIS PERSONAL GUARANTY** (this "Guaranty") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between Big Boy Franchise Management LLC, a Michigan limited liability Franchisor, ("Big Boy"), and the undersigned personal guarantors (the "Personal Guarantors").

**WHEREAS**, Big Boy and \_\_\_\_\_ (the "Franchisee") have entered into a Franchise Agreement, dated the same date as set forth above, for the operation of a franchised "Big Boy Restaurant" at \_\_\_\_\_ (the "Franchise Agreement").

**WHEREAS**, it is the desire of the undersigned Personal Guarantors to personally guaranty the obligations of the Franchisee under the Franchise Agreement, which is incorporated herein by reference, and to be individually, jointly and severally bound by the terms and conditions of the Franchise Agreement.

**NOW, THEREFORE**, in consideration of the execution of the Franchise Agreement by Big Boy, and for other good and valuable consideration, the undersigned, for themselves, their heirs, successors, and assigns, do individually, jointly and severally hereby become surety and guaranty for the payment of all amounts and the performance of the covenants, terms and conditions of the Franchise Agreement, including the covenants not to compete, to be paid, kept and performed by the Franchisee.

**Obligations under Agreement.** The undersigned, individually and jointly, hereby agree to be personally bound by each and every condition and term contained in the Franchise Agreement, including the covenants not to compete, and restrictions on transfer of the Business Assets, and agree that this Personal Guaranty should be construed as though the undersigned and each of them executed an agreement containing the identical terms and conditions of the Franchise Agreement. The undersigned acknowledge receiving a copy of the Franchise Agreement.

**Default of Franchisee.** If any default should at any time be made therein by the Franchisee, then the undersigned, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to pay to Big Boy the Initial Fee, the Opening Assistance Fee, the Royalty Fees, the Advertising Fees and all other monies due and payable to Big Boy under the terms and conditions of the Franchise Agreement.

**Non-Compliance by Franchisee.** If the Franchisee fails to comply with any other terms and conditions of the Franchise Agreement, then the undersigned, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to comply with the terms and conditions of the Franchise Agreement for and on behalf of the Franchisee.

**Obligations of Big Boy.** If the Franchisee is at any time in default on any obligation to pay monies due to Big Boy or any subsidiary or affiliate of Big Boy, whether for the Initial Fee, the Royalty Fees, the Advertising Fees, merchandise, products, supplies, FF&E, or other products purchased by the Franchisee or for any other indebtedness of the Franchisee to Big Boy or any subsidiary or affiliate of Big Boy, then the undersigned, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to pay all such monies due and payable from the Franchisee to Big Boy or any subsidiary or affiliate of Big Boy upon default by the Franchisee.

**Maximum Liability.** The maximum individual liability that a Personal Guarantor will incur under this Personal Guaranty is \$250,000.

**Binding Agreement.** The provisions, covenants and conditions of this Personal Guaranty will inure to the benefit of the successors and assigns of Big Boy.

**Jurisdiction and Venue.** Except as precluded by applicable law, all arbitration hearings, litigation, actions or proceedings pertaining to this Personal Guaranty will be brought and venued in accordance with Articles 26.4 and 27.12 of the Franchise Agreement.

### PERSONAL GUARANTORS

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State and Zip

\_\_\_\_\_  
Area code and Telephone

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State and Zip

\_\_\_\_\_  
Area code and Telephone

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Individually

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Address

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City, State and Zip

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Area code and Telephone

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Area code and Telephone

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City, State and Zip

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Area code and Telephone

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State and Zip

\_\_\_\_\_  
Area code and Telephone

**LANDLORD'S CONSENT  
TO ASSIGNMENT OF LEASE**

The undersigned landlord (the "Landlord") hereby consents to the Assignment by \_\_\_\_\_ (the "Franchisee") of its right, title and interest in the premises lease dated \_\_\_\_\_ by and between the Landlord and the Franchisee (the "Premises Lease") to Big Boy Franchise Management LLC ("Big Boy") pursuant to a Franchise Agreement between Big Boy and the Franchisee dated \_\_\_\_\_, 200\_\_ (the "Agreement"), and agrees as follows:

1. If the Franchisee defaults under the Agreement, then Big Boy or its designee may assume, enforce and perform the obligations of the Premises Lease with the same force and effect as if assumed, enforced and performed by the Franchisee. The Landlord will accept performance by Big Boy or its designee in lieu of performance by the Franchisee in satisfaction of the Franchisee's future obligations under the Premises Lease.
  
2. The Landlord will not terminate the Premises Lease on account of any default of the Franchisee hereunder without written notice to Big Boy and without first providing to Big Boy a reasonable opportunity, but not less than 30 days, to: (a) cause the Franchisee to cure the default; or (b) declare the Franchisee in default under the Agreement and exercise its rights under the Assignment of Lease provisions of the Agreement. If Big Boy elects to exercise its rights under the Assignment, then the Landlord agrees not to terminate the Premises Lease so long as Big Boy or its designee agrees, within 30 days after the date Big Boy gives written notice to the Landlord of its election to exercise its rights under this Assignment, to perform the future obligations of the Franchisee under the Premises Lease. However, nothing herein will require Big Boy to cure any default of the Franchisee under the Premises Lease, but only gives Big Boy the option to assume the Franchisee's future rights and obligations under the Premises Lease.
  
3. The Landlord hereby represents and warrants to Big Boy that: (a) the Premises Lease is a valid enforceable agreement; (b) there has been no prior assignment of the Premises Lease of which the Landlord has notice or is aware; (c) neither the Landlord nor the Franchisee is in default under the Premises Lease; and (d) all covenants, conditions and agreements have been performed as required therein except those not due to be performed until after the date hereof.

LANDLORD

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

\_\_\_\_\_

By:

Its:

**AUTHORIZATION TO HONOR BIG BOY FRANCHISE MANAGEMENT LLC  
ELECTRONIC FUNDS TRANSFER**

PAYEE BANK NAME ACCOUNT NO. ABA NO.

Big Boy Franchise Management LLC \_\_\_\_\_

The undersigned Depositor hereby authorizes and requests the Depository designated below to honor and to charge to the following designated account, checks, drafts, orders and electronic debits (collectively "debits") drawn on such account which are payable to the above named Payee. It is agreed that the Depository's rights with respect to each such debit shall be the same as if it were a check drawn and signed by the Depositor. It is further agreed that if any such debit is not honored, whether with or without cause and whether intentionally or inadvertently, the Depository shall be under no liability whatsoever. This authorization shall continue in force until the Depository and the Payee have received at least 30 days written notification from the Depositor of its termination.

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

(1) To indemnify the Depository and hold it harmless from any loss it may suffer resulting from or in connection with any debit including, without limitation, execution and issuance of any check, draft or order, whether or not genuine, purporting to be authorized or executed by the Payee and received by the Depository in the regular course of business for the purpose of payment, including any costs or expenses reasonably incurred in connection therewith.

(2) To indemnify the Payee and the Depository for any loss arising in the event that any such debit shall be dishonored, whether with or without cause and whether intentionally or inadvertently.

(3) To defend, at the Depositor's own cost and expense, any action which might be brought by any persons or entities because of any actions taken by the Depository or the Payee pursuant to the foregoing request and authorization, or in any manner arising by reason of the Depository's or the Payee's participation therein.

Name of Depository Bank (Franchisee's Bank): \_\_\_\_\_

Name of Franchisee/Depositor (as listed on account): \_\_\_\_\_

Designated Bank Account (Franchisor's Bank): \_\_\_\_\_

(Please attach one voided check for the above account of the Franchisee.)

Franchised Location: \_\_\_\_\_  
Address City State Zip Code

For information call: \_\_\_\_\_  
Print Name of Franchisee's Contact Person

Restaurant Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Name of Franchisee/Depositor as Listed on Account (please print)

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

Signature of Franchisee's Authorized Representative Title

Date: \_\_\_\_\_, 200\_\_

