

## FRANCHISE DISCLOSURE DOCUMENT



FRANCHISEHERBIES LLC  
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You will operate a HERBIE'S BURGERS Restaurant featuring Grass-Fed Smash Burgers, Chicken Sandwiches, Milkshakes & Fries ("Franchised Restaurant").

The total investment necessary to begin operation of a HERBIE'S BURGERS franchise ranges from \$226,800 – \$363,000. This includes the \$30,000 that must be paid to the franchisor or affiliate.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Nicholas Warchol, President, at [franchising@herbiesburgers.com](mailto:franchising@herbiesburgers.com)

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “*A Consumer’s Guide to Buying a Franchise*,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC’s home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance date: August 18, 2025

## **How to Use This Franchise Disclosure Document**

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

| <b>QUESTION</b>                                                                          | <b>WHERE TO FIND INFORMATION</b>                                                                                                                                                                                                                                 |
|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>How much can I earn?</b>                                                              | Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibits C and D. |
| <b>How much will I need to invest?</b>                                                   | Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.                                                                         |
| <b>Does the franchisor have the financial ability to provide support to my business?</b> | Item 21 or Exhibit E includes financial statements. Review these statements carefully.                                                                                                                                                                           |
| <b>Is the franchise system stable, growing, or shrinking?</b>                            | Item 20 summarizes the recent history of the number of company-owned and franchised outlets.                                                                                                                                                                     |
| <b>Will my business be the only Herbie's Burgers business in my area?</b>                | Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.                                                                                                                    |
| <b>Does the franchisor have a troubled legal history?</b>                                | Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.                                                                                                                             |
| <b>What's it like to be a Herbie's Burgers franchisee?</b>                               | Item 20 or Exhibits C and D list current and former franchisees. You can contact them to ask about their experiences.                                                                                                                                            |
| <b>What else should I know?</b>                                                          | These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.                                                          |

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit A.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This Franchise*

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in New York. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in New York than in your own state.
2. **General Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support to you.
3. **Short Operating History.** The Franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.
4. **Supplier Control.** You must purchase all or nearly all of the inventory or supplies that are necessary to operate your business from the franchisor, its affiliates, or suppliers that the franchisor designates, at prices the franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchise business.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

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**ITEM 1**  
**THE FRANCHISOR AND ANY PARENTS, PREDECESSORS, AND AFFILIATES**

To simplify the language in this disclosure document, the terms “we”, “our”, “us”, “Franchisor” means FRANCHISEHERBIES LLC, the franchisor. The term “you”, “your”, and “Franchisee” means the person buying the franchise, the franchisee. If the franchisee is a partnership, the term “you” includes each general partner. If the franchisee is a corporation, limited liability company, or other business entity, the term “you” does not include the entity’s owners, unless otherwise stated.

**The Franchisor and Any Parents, Predecessors, and Affiliates**

We are a New York State Limited Liability Company, formed on April 7, 2025, and do not have any parent or predecessors. Our principal business address is 636 Providence St. Albany, NY 12208. We do business under our corporate name and the trademark “HERBIE’S BURGERS.” Our agents for service of process are listed in Exhibit B to this disclosure document.

We first began offering franchises for HERBIE’S BURGERS Restaurants in the United States in August of 2025. We have never offered franchises in any other line of business, nor have we operated a business of the type being franchised.

Our affiliate, Herbiesburgerscorporation, LLC (“HBC”), owns the Marks (as defined below) and licenses them to us for use in our franchise program. HBC also owns and operates six affiliated “HERBIE’S BURGERS” restaurants in New York as set forth in Item 20. HBC’s first restaurant opened in 2021. HBC shares our principal business address and has never offered franchises in any line of business. Other than as set forth above, we have no parents, predecessors or affiliates that offer franchises in any line of business or provide products or services to you on our behalf. We have no business other than offering franchises and assisting franchisees, and we have never offered franchises for any other type of business other than those described herein. We do not conduct business under any other name.

**The Franchise Offered**

We grant franchises for the establishment, development and operation of our restaurant featuring smash burgers, chicken sandwiches, fries, and shakes prepared according to specified proprietary recipes and procedures (“Franchised Restaurant”).

Each Franchised Restaurant operates according to our proprietary business format and system (“System”), which includes a distinctive exterior and interior layout, design and color scheme; distinctive signage, decorations, furnishings and materials; special recipes, formula, menus and food and beverage designations; the HERBIE’S BURGERS confidential operations manual (“Confidential Operations Manual”); our proprietary food items; food and beverage storage, preparation and service procedures and techniques; operating procedures for sanitation and maintenance; and methods and techniques for inventory and cost controls, record keeping and reporting, purchasing, and sales promotion and advertising. We may change the System periodically.

The Franchised Restaurant will operate under the “HERBIE’S BURGERS” service marks, and associated logos, commercial symbols, indicia of origin, and other trade names, service marks and trademarks that we have designated and may in the future designate as part of the System (“Marks”) which we license to you according to the terms of our franchise agreement (see Exhibit C, “Franchise Agreement”).

**Market and Competition**

The Franchised Restaurant will offer its services to the general public and will compete with other local businesses as well as local, regional, and national restaurant chains. The Franchised Restaurant will also

face competition from other foodservice businesses offering burgers, sandwiches, fries, and shakes for take-out and dine-in service. This market is well-developed in some areas and developing in other areas.

### Industry-Specific Regulation

The restaurant industry is heavily regulated. Many of the federal, state, and local laws, rules, and regulations that apply to business generally, such as the federal and state anti-discrimination laws, federal wage and hour laws, National Labor Relations Act, ADA Amendments Act of 2008, and the Occupational Safety and Health Act, also apply to restaurants. However, other federal, state, and local laws, rules, and regulations have particular applicability to restaurants.

In addition, the Menu Labeling Provisions of the Patient Protection and Affordable Health Care Act require certain restaurants and retail food establishments to post caloric information on menus and menu boards and to make available additional written nutrition information to consumers upon request. State and local governments also may have their own regulations.

The Federal Clean Air Act and various implementing state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide, and particulate matters, including caps on omissions from commercial food preparation. Some areas have also adopted or are considering proposals that would regulate indoor air quality.

The payment card industry (“PCI”) Data Security Standard is the current standard of security requirements for all merchants or service providers that store, process, or transmit cardholder data. You are responsible for PCI Data Security Standard compliance as well as any federal, state, and local laws, regulations, and ordinances related to privacy matters, including data and personally identifiable information.

A number of states and local jurisdictions have enacted laws, rules, regulations, and ordinances which may apply to the operation of your Franchised Restaurant, including those which (1) establish general standards, specifications and requirements for the construction, design and maintenance of the Franchised Restaurant premises; (2) regulate matters affecting (i) the health, safety, and welfare of your customers, such as general health and sanitation requirements for Restaurants, (ii) employee practices concerning the storage, handling, cooking, and preparation of food, (iii) restrictions on smoking, and (iv) availability of and requirements for public accommodations, including restrooms; (3) set standards pertaining to employee health and safety; (4) set standards and requirements for fire safety and general emergency preparedness; (5) govern the use of vending machines; and (6) regulate the proper use, storage, and disposal of waste, insecticides, and other hazardous materials.

You must comply with all laws and regulations applicable to the establishment and operation of the Franchised Restaurant. You should examine these laws before purchasing a franchise from us.

## **ITEM 2**

### **BUSINESS EXPERIENCE**

#### Chief Executive Officer: Nicholas Warchol

Mr. Warchol has served as our Chief Executive Officer since our inception in 2025. Mr. Warchol was co-founder of Herbie’s Burgers in September, 2021 and worked at Herbie’s Burgers restaurants in New York as a store manager from 2021-2023. Mr. Warchol was the owner of the Albany, NY location of the late-night calzone

franchise, D.P. Dough, from 2014-2023. Mr. Warchol was also the owner/creator of Pōst Natural Wine Bar and Kitchen in New York from 2018-2021.

**Chief Financial Officer: Aaron Wilson**

Mr. Wilson is our Chief Financial Officer. Mr. Wilson co-founded Herbie’s Burgers and has worked at Herbie’s Burgers restaurants in New York as a recipe developer for all products from 2021-2023. Mr. Wilson has also co-founded and owned The Larkin Hi-Fi, a listening lounge bar located in Albany, New York, since 2024. Co-Founder of Herbie's Burgers, 2021.

**Chief Operating Officer: Noah Bondy**

Mr. Bondy is the Chief Operating Officer of HERBIESBURGERS CORPORATION, LLC. Mr. Bondy has served as General Manager of Herbie’s Burgers restaurants since its inception in September, 2021. Mr. Bondy was Kitchen Manager of the Albany, NY location of D.P. Dough from 2020-2021. Mr. Bondy served as the Manager of City Feed and Supply in Boston, MA from 2017-2020.

**ITEM 3**  
**LITIGATION**

No litigation is required to be disclosed in this Item.

**ITEM 4**  
**BANKRUPTCY**

No bankruptcy information is required to be disclosed in this Item.

**ITEM 5**  
**INITIAL FEES**

When you sign the Franchise Agreement, you must pay us an initial franchise fee.

Our standard initial franchise fee is \$30,000.

The initial franchise fee is nonrefundable and is uniform for all franchisees.

**ITEM 6**  
**OTHER FEES**

| Type of Fee <sup>1</sup>                    | Amount                                   | Due Date | Remarks                                        |
|---------------------------------------------|------------------------------------------|----------|------------------------------------------------|
| Royalty Fee <sup>13</sup>                   | 5% of Gross Revenues                     | Monthly  | See definition of Gross Revenues. <sup>2</sup> |
| Advertising Fund Contribution <sup>13</sup> | Up to 3% of Gross Revenues, currently 1% | Monthly  | Currently 1% of Gross Revenues.                |

| Type of Fee <sup>1</sup>         | Amount                                                                                                                      | Due Date    | Remarks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Local Advertising Requirement    | At least 3% of Gross Revenues                                                                                               | Monthly     | Franchisee must spend a minimum of 3% on local advertising; Franchisor may require Franchisee to pay some or all of this amount to Franchisor to be used by Franchisor for local marketing purposes on Franchisee's behalf. Franchisee shall be required to spend any balance of its Local Advertising Requirement not collected by Franchisor on its own.                                                                                                                                                                                                                                                                                                                                                                                           |
| Local Advertising Deficiency Fee | The difference between the amount you spent on local advertising each month and your required local advertising expenditure | Upon demand | This fee is only payable to us if you did not expend the local advertising requirement as required under your franchise agreement. We have the right to, in addition to all other remedies available to us in the franchise agreement and/or at law, require you (a) to immediately pay all sums you were required to, but failed to expend ("Local Advertising Deficiency"), to the Advertising Fund, (b) to spend the Local Advertising Deficiency in the manner designated or approved by us for local marketing purposes, or (c) to immediately pay the Local Advertising Deficiency to us to be expended by us in our sole discretion for any purpose, including purposes that may not directly or indirectly benefit your Franchised Business. |

| Type of Fee <sup>1</sup>                                          | Amount                                                                                                                                                                                                                             | Due Date                                                               | Remarks                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Advertising Cooperative                                           | Your proportionate share will be determined by participating locations in the advertising cooperative                                                                                                                              | Monthly                                                                | If you are required to participate in an Advertising Cooperative, the amount of your contribution to cooperative advertising and promotional programs in the Advertising Coverage Area will be credited toward your Local Advertising Requirement. Currently, there are no advertising cooperatives.                                                             |
| Operational expenditures, upgrades and modifications <sup>3</sup> | Actual cost                                                                                                                                                                                                                        | At time of upgrade or modification                                     | You must update your Franchised Restaurant within the reasonable time period we request to meet our updated standards, specifications, and operating procedures. There are no required capital expenditures during first two years of operations.                                                                                                                |
| Management Fee <sup>4</sup>                                       | A reasonable daily management fee, currently, \$500 per day for up to 60 days, plus expenses                                                                                                                                       | Monthly after time of service and at the same time as the Royalty Fees | We may assume management of your Franchised Restaurant if you abandon or fail to actively operate the Franchised Restaurant, fail to comply with any provision of the Franchise Agreement and do not timely cure, or if the Franchise Agreement expires or terminates and we are deciding whether to exercise our purchase option for the Franchised Restaurant. |
| Late fees                                                         | \$100 for past due payments and payments not honored by your financial institution (plus related bank charges), plus interest at the lower of 1.5% per month or the highest commercial contract interest rate under applicable law | As incurred                                                            | Applies to all amounts due to us, including Royalty Fees, Advertising Fund Contributions, and amounts due for purchases from us or our affiliates.                                                                                                                                                                                                               |
| Supplier/supplies approval <sup>5</sup>                           | Reasonable cost of inspection and actual cost of test                                                                                                                                                                              | Time of inspection                                                     | Applies to new suppliers or supplies you wish to purchase that we have not approved.                                                                                                                                                                                                                                                                             |

| Type of Fee <sup>1</sup>                                                            | Amount                                             | Due Date                                                                               | Remarks                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------|----------------------------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Advisory Council <sup>6</sup>                                                       | Council assessments (currently, \$0)               | When levied                                                                            | We have the right to enforce payments, and amounts may vary. Currently, there is no Advisory Council.                                                                                                                                                                         |
| Operation of the Franchised Restaurant in case of your absence, incapacity or death | \$400 per day, plus expenses                       | Weekly after time of service and at the same time as the Royalty Fees                  | Prevents harmful interruption or depreciation of Franchised Restaurant in case of your absence, incapacitation, or death                                                                                                                                                      |
| Insurance                                                                           | You must reimburse our costs                       | 30 days after billing                                                                  | If you fail to maintain required insurance, we may obtain insurance for you.                                                                                                                                                                                                  |
| Renewal Fee                                                                         | \$5,000                                            | Upon notice of intent to renew                                                         | You may, subject to the conditions outlined in this Disclosure Document and your Franchise Agreement, renew the term for up to two (2) additional successive terms of five (5) years each. You must pay us a Renewal Fee at the time you notify us of your election to renew. |
| Transfer Fee – for convenience                                                      | Our actual expenses                                | Reimbursement of our expenses is due upon demand                                       | You must reimburse us for our actual expenses for a transfer of convenience.                                                                                                                                                                                                  |
| Transfer Fee – of minority interest                                                 | \$2,500, plus reimbursement of our actual expenses | 1/2 of fee is due upon your request of our approval; remainder due at time of transfer |                                                                                                                                                                                                                                                                               |
| Transfer Fee – assignment of interest                                               | \$10,000                                           | 1/2 of fee is due upon your request of our approval; remainder due at time of transfer | You must pay us a transfer fee if you are assigning your interest in the Franchise Agreement, transferring all or substantially all of the assets of the Franchised Restaurant, or your owners are transferring a controlling interest in the franchisee entity.              |

| Type of Fee <sup>1</sup>                     | Amount                                                                     | Due Date                                         | Remarks                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------|----------------------------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Audit                                        | Cost of audit plus interest on underpayment                                | 30 days after billing                            | Payable only if audit shows that you understated Gross Revenues by at least 2%.                                                                                                                                                                                                                                 |
| Additional manager training <sup>7</sup>     | \$300 per day plus expenses                                                | Time of service                                  | You pay for training if you request it or if you hire a new designated manager.                                                                                                                                                                                                                                 |
| Additional assistance <sup>8</sup>           | \$300 per day plus expenses                                                | Time of assistance                               | If this is your first Franchised Restaurant, we provide 10 days of assistance at the beginning of operations at our cost. Additional training is at your cost.                                                                                                                                                  |
| Continuing education <sup>9</sup>            | You must pay your and your employees' expenses in attending these programs | Time of program                                  | Attendance will not be required more than once a year and will not last more than four (4) business days.                                                                                                                                                                                                       |
| Special meetings <sup>10</sup>               | You must pay your and your employees' expenses in attending these programs | Time of program                                  | Attendance will not be required more than once a year and will not last more than four (4) business days.                                                                                                                                                                                                       |
| Re-Inspection Fee                            | Our then-current Re-Inspection Fee; Currently, \$2,000                     | As incurred                                      | Due if we must re-inspect Franchised Restaurant to make sure you cured operating or other deficiency.                                                                                                                                                                                                           |
| Administrative Fee                           | Currently, \$100 per occurrence                                            | On demand                                        | Due if you are required but fail to submit any report, information, certificate, document, or any other type of submission required by the due date. We may increase this fee on notice to you to reflect an amount we reasonably believe estimates our administrative costs to pursue any required submission. |
| Cost of Enforcement or Defense <sup>11</sup> | All costs, including attorneys' fees                                       | As incurred                                      | You must reimburse us for all costs we incur to enforce your obligations under the Franchise Agreement if we prevail.                                                                                                                                                                                           |
| Indemnification                              | All costs, including attorneys' fees                                       | Upon settlement or conclusion of claim or action | You must defend suits at your own cost and hold us harmless against suits involving damages resulting from your operation of Franchised Restaurant.                                                                                                                                                             |

| Type of Fee <sup>1</sup>                        | Amount                                                                                                                                                | Due Date      | Remarks                                                                                                                                                                                  |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Enforcement Administrative Fee                  | \$250 per enforcement effort (i.e., written or verbal notification and follow up), and \$250 per week for each week that the issue remains unresolved | Upon demand   | We may assess an administrative fee to compensate us for our time.                                                                                                                       |
| Holdover Period <sup>12</sup>                   | 150% of the Royalty Fee and Advertising Fund contributions due in the Franchise Agreement                                                             | Weekly        | See Note 12.                                                                                                                                                                             |
| Liquidated Damages                              | Average Royalty Fees calculated through the end of the term                                                                                           | On demand     | Payable only if you prematurely close the Franchised Restaurant or if we terminate the Franchise Agreement on account of your material breach.                                           |
| Third-Party Delivery Service Fees <sup>14</sup> | All costs and fees.                                                                                                                                   | Upon invoice. | Payable only if we require your Franchised Restaurant to utilize the services of one or more of our third-party food ordering/delivery services and we pay the third-party fees for you. |

**Notes:**

**Note 1:** Except as otherwise noted in this Item 6, all fees are imposed and collected by, and payable to, us. Unless otherwise noted, fees are not refundable and currently are uniformly imposed.

**Note 2:** “Gross Revenues” means all revenue derived from the operation of the Franchised Restaurant, including sales revenue derived from off-premises sales, whether received in cash, in services in kind, from barter and/or exchange, on credit (whether or not payment is received) or otherwise, less any sales tax or other taxes collected from your customers if paid to the appropriate taxing authority. Gross Revenues also does not include the amount of any documented refunds and credits given in accordance with our policies and in good faith to customers (but only if the original amounts were included in Gross Revenues). Gross Revenue is not reduced by the amount of any discounts on products or services sold to employees, family members, or other businesses you own or control or by the amount paid to, collected by, or shared with third-party food ordering and delivery systems with which we allow the Franchised Restaurant to do business. All of those transactions must be entered into the POS System at the full, standard retail price for purposes of calculating Gross Revenue. All barter and/or exchange transactions for which you furnish services and/or products in exchange for goods or services to be provided to you by a vendor, supplier or customer will, for the purpose of determining Gross Revenues, be valued at the full retail value of the goods and/or services provided to you.

**Note 3:** We may periodically modify standards, specifications, and operating procedures for the operation of the Franchised Restaurant, which may require you to invest additional capital in the Franchised Restaurant and/or incur higher operating costs.

**Note 4:** If you have not cured a default under the Franchise Agreement within the applicable cure period, we may operate the Franchised Restaurant until we cure the default, using reasonable commercial efforts.

We or our designee may retain, and need not pay or account to you for, any Gross Revenues generated while we (or our designee) operate the Restaurant.

Note 5: If you wish to sell or use any product which is not on our Approved Supplies List or purchase any product from a supplier that is not on our Approved Suppliers List, you must notify us and, if requested, submit samples and other information for inspection and testing. You or the proposed supplier must pay the reasonable cost of the inspection and evaluation and the actual cost of the test. Our costs will vary from supplier to supplier due to such factors as to who we assign to conduct the inspection, the time needed to conclude the evaluation, and our costs (including all travel related costs).

Note 6: When there is more than one HERBIE'S BURGERS Franchised Restaurant in any given area, we may form a HERBIE'S BURGERS Regional Advisory Council ("Advisory Council"). You must participate in all franchisor-approved Advisory Council programs for your particular area and pay all assessments levied by the Advisory Council.

Note 7: If you designate new or additional managers after the initial training program, we will provide training to these managers at the then-current published rates. All designated managers must successfully complete the training program provided at our headquarters or other location we designate. You are responsible for all costs incurred by your employees in attending this training program.

Note 8: Should you request additional opening or pre-opening assistance, or if we deem additional assistance necessary, you must reimburse us our expenses, including travel and lodging expenses for our representatives, plus our then-current service fee published in the Confidential Operations Manual.

Note 9: You are responsible for all costs you and your employees incur in attending these programs, including travel, lodging, meals and employees' salaries, in attending continuing education and training programs or seminars at a location we designate.

Note 10: You will periodically attend special meetings of all HERBIE'S BURGERS franchisees to be conducted at a location we designate. You are responsible for all costs you and your employees incur in attending these meetings, including travel costs, room and board expenses, and employees' salaries. Attendance at any conference held by franchisor each calendar year will be mandatory but will not last more than four business days. If we call more than one meeting in a calendar year and you are unable to attend, we will conference you into the meeting via telephone or other available means. However, costs of this conferencing will be split among all franchisees that were unable to attend this meeting.

Note 11: The prevailing party in any legal proceedings is entitled to reimbursement of its costs, including reasonable accounting, attorneys, expert, and related fees. In addition, if we incur costs or expenses due to your failure to timely pay any amounts that you owe to us or to otherwise comply with the Franchise Agreement, you must reimburse us the amount of all costs and expenses we incur, regardless of whether formal legal proceedings are initiated.

Note 12: The Franchise Agreement contains a holdover provision which states if the Franchise Agreement expires and you continue to operate the Franchised Restaurant after expiration, we may, at our option, declare you to be holding over. At that time the terms of the Franchise Agreement will govern the relationship between you and us and (a) either party may terminate the relationship at any time, for any reason, or no reason by providing written notice, and (b) the Royalty Fee and Advertising Fund contribution during any hold over period will be 150% of the applicable amounts due under the Franchise Agreement.

Note 13: Royalty Fees, Advertising Fund contributions, amounts due for purchases by you from us and other amounts which you owe to us will be paid through an Electronic Depository Transfer Account ("Electronic Depository Transfer Account") described in the Confidential Operations Manual. Immediately following the signing of the Franchise Agreement, you must set up an Electronic Depository Transfer Account, and we will have access to this account to receive payments. Every Wednesday, you must make

deposits to the account sufficient to cover amounts owed to us as of the preceding Sunday for Royalty Fees, Advertising Fund contributions, and other funds owed to us for the preceding week. Deposits for all other owed amounts must be according to the procedures included in the Confidential Operations Manual.

**Note 14:** We reserve the right to require you to participate in one or more third-party food ordering and delivery services with one or more suppliers who we have approved on behalf of the System (each, a “System Designated Third-Party Delivery Service”). In the event that we contract with any System Designated Third-Party Delivery Service directly, you shall be required to reimburse us for your pro-rata share of any costs or fees we pay to the System Designated Third-Party Delivery; alternatively, in our sole discretion, we reserve the right to require you to make payment to the System Designated Third-Party Delivery Service directly on your own behalf. Upon request, we may also allow you to utilize other non-system designated third-party food ordering or delivery services at your Franchised Restaurant. You may not utilize any such non-system designated third-party services without first obtaining our written approval. Your engagement and utilization of any such non-system designated third-party must be in strict compliance with the standards set forth in the Confidential Operations Manual. In the event that you engage the services of any such non-system designated third-party services, any associated costs or fees charged in connection therewith shall be at your sole cost and expense.

## ITEM 7 ESTIMATED INITIAL INVESTMENT

### YOUR ESTIMATED INITIAL INVESTMENT

| Type of Expenditure                                | Amount              | Method of Payment | When Due                          | To Whom Payment is to be Made |
|----------------------------------------------------|---------------------|-------------------|-----------------------------------|-------------------------------|
| Initial Franchise Fee <sup>1</sup>                 | \$30,000            | Lump Sum          | Upon Signing Franchise Agreement  | Us                            |
| Real Estate/Rent and Security Deposit <sup>2</sup> | \$0-\$30,000        | As Arranged       | Upon Signing the Lease            | Landlord                      |
| Utility Security Deposits <sup>3</sup>             | \$0-\$5,000         | As Arranged       | One Month Before Opening          | Utility Companies             |
| Leasehold Improvements <sup>4</sup>                | \$150,000-\$200,000 | As Arranged       | Following Opening; May Be Earlier | Landlord, Approved Suppliers  |
| Furniture, Fixtures & Equipment <sup>5</sup>       | \$15,000-\$25,000   | As Arranged       | As Arranged                       | Approved Suppliers            |
| Initial Inventory <sup>6</sup>                     | \$3,000-\$5,000     | As Arranged       | Before Opening                    | Approved Suppliers            |
| Insurance <sup>7</sup>                             | \$9,000             | As Arranged       | As Arranged                       | Insurance Carrier             |

| Type of Expenditure                                          | Amount                | Method of Payment | When Due                             | To Whom Payment is to be Made                 |
|--------------------------------------------------------------|-----------------------|-------------------|--------------------------------------|-----------------------------------------------|
| Training <sup>8</sup>                                        | \$1,500-\$3,000       | As Incurred       | As Incurred                          | Transportation Lines, Hotels and Restaurants  |
| Grand Opening Marketing Campaign <sup>9</sup>                | \$2,000-\$5,000       | As Arranged       | First four to six Weeks of Operation | Approved Suppliers                            |
| Signage <sup>10</sup>                                        | \$5,000-\$10,000      | Lump Sum          | Before Opening                       | Approved Suppliers                            |
| Point-of-Sale System (“POS System”) and Back Office Software | \$2,500-\$3,500       | As Arranged       | As Incurred                          | Approved Suppliers                            |
| Office Equipment/Supplies <sup>11</sup>                      | \$600-\$2,000         | As Arranged       | Before Opening                       | Approved Suppliers or, if none, You Determine |
| Licenses and Permits <sup>12</sup>                           | \$200-\$500           | As Arranged       | Before Opening                       | Local Authorities                             |
| Professional Fees <sup>13</sup>                              | \$3,000-\$20,000      | As Arranged       | As Incurred                          | You Determine                                 |
| Additional Funds (3 months) <sup>14</sup>                    | \$5,000-\$15,000      | As Arranged       | As Incurred                          | You Determine                                 |
| TOTAL                                                        | \$226,800 – \$363,000 |                   |                                      |                                               |

Notes:

Unless specified otherwise, you will incur the expenses described in the chart above in establishing the Franchised Restaurant. Except for the real estate lease and utility deposits, which are imposed and collected by third parties, which may be refundable if permitted by the third party, no expenditure in the table above is refundable. The figures shown above are for existing building only, whereas the costs may vary substantially if you choose to construct a building for your Franchised Restaurant. However, you are not required to construct a building.

Note 1: See Item 5 for more information about the initial franchise fee.

Note 2: Franchised Restaurants typically occupy 1,500 to 2,500 square feet and are typically in populous areas. You are responsible for renting or acquiring premises suitable for the Franchised Restaurant. The figures in the chart assume that you will occupy the premises according to a commercial lease, and that the rent commences on the date the Franchised Restaurant opens for business. The low figure assumes no security deposit, and the high figure assumes a security deposit equal to two months’ rent, however, you

may incur higher security deposit expenses depending on your financial circumstances. Rent, taxes, and insurance vary greatly by market and other circumstances.

Note 3: You may be required to pay deposits before the installation or start of service of telephone, gas, electric and other utilities, as required by any utility company.

Note 4: Your build-out costs will depend upon the size and condition of the premises, the nature and extent of leasehold improvements required, the local cost of contract work, the location of the Franchised Restaurant. The estimates assume a standard build-out of the premises performed by the lessor, including landlord-provided HVAC, supplemented by any amounts provided by you for additional leasehold improvements made to the premises according to System specifications. Leasehold improvements include plumbing, electrical wiring, carpentry and installation of furniture, fixtures, flooring and equipment, but do not include building shell costs, exterior work to the building that may be required, or any costs associated with exterior grease-trap, impact or hook-up fees. The figures in the chart represent your estimated costs, net of tenant improvement allowance, which typically ranges from \$0 to \$30 per square foot.

Note 5: You must purchase various equipment and fixtures to operate the Franchised Restaurant, as specified in the Confidential Operations Manual. You may purchase or lease approved brands and models of fixtures from approved suppliers. The cost of furniture, fixtures and equipment will depend on financing terms available, the size of the facility, brands purchased and other factors. If you are purchasing an operating restaurant from our affiliate, you may not incur any extra expense for these items. This estimate does not include vehicles for catering services. If you elect to offer self-delivered catering services, you must purchase or lease a vehicle.

Note 6: Your requirements for initial inventory are designated in the Confidential Operations Manual. You must maintain an inventory of ingredients, food and beverage products and other products, materials, and supplies that will permit you to operate the Franchised Restaurant at maximum capacity.

Note 7: You will obtain insurance coverage with the limits we require.

Note 8: You are responsible for transportation and expenses of any persons attending the training program. This amount depends on the distance you must travel and the type of accommodation you choose. The estimate contemplates attendance by three people for up to two weeks for the Initial Training Program described in Item 11; if your required trainees take longer to progress through the Initial Training Program, you may incur additional expenses..

Note 9: You must spend at least \$2,000 to \$5,000 for a grand opening marketing campaign, which will be paid to our approved suppliers. You must obtain a white pages listing for the Franchised Restaurant, and register the business with online directories, such as Google, at our direction. (See Item 11.)

Note 10: Signage includes exterior signs that bear the Marks. Signage costs may vary depending on the type, size and location of the signs and local restrictions.

Note 11: You must lease or purchase various office equipment and supplies.

Note 12: This estimate includes food licenses but excludes any building permits you need to obtain. The high figure is the maximum suggested expenditure.

Note 13: This estimate includes architect and attorneys' fees. Your fees will vary by market and your decisions regarding the advisory services you obtain.

Note 14: This estimates the funds needed to cover your initial expenses for the first three months of operation (other than the items identified separately in the table). It includes payroll costs for a manager but not any draw or salary for you. However, this is only an estimate, and it is possible that you will need additional working capital during your first three months of operation. In compiling these estimates, we relied on our experience in operating HERBIE'S BURGERS restaurants.

**ITEM 8**  
**RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

Approved Supplies and Suppliers You must purchase certain proprietary ingredients and food products from designated or approved suppliers, which may include us, our affiliate, and/or third-party suppliers. These items include our house-made vegan patties and other various proprietary items. We have the right to introduce additional, substitute, new, or discontinue any proprietary products in our sole discretion.

For all other products and services, we have the right to designate the specific brand and/or manufacturer of those supplies, products and services, and to designate an exclusive source, or sources, from whom you must purchase those supplies, which may be us, our affiliate, or a designated third-party supplier. We reserve the right, to the extent permitted by applicable law, to require you to use only an accountant, insurance broker, or real estate broker that we have approved.

We may, at any time in our sole discretion, designate additional Approved Suppliers (which may be us or our affiliates) or remove any Approved Supplier from our approved list and we also have the right to designate new, modified or additional Approved Supplies or discontinued or disapprove any previously required Approved Supplies.

Before you open your Restaurant, we will give you a list of approved manufacturers, suppliers and distributors authorized for the Franchised Restaurant (“Approved Suppliers List”) and a list of approved inventory, products, fixtures, furniture, equipment, signs, stationery, supplies, uniform designs, retail merchandise and other items or services necessary to establish and operate the Franchised Restaurant (“Approved Supplies List”).

The Franchised Restaurant must at all times maintain an inventory of ingredients, food and beverage products and other products, materials and supplies that will permit operation of the Franchised Restaurant at maximum capacity.

Virtually all goods, services, supplies, fixtures, equipment, and inventory must be purchased according to our specifications or from approved suppliers. We will provide this list during the initial phase of the training program. Therefore, these purchases and leases are up to 100% of your overall purchases and leases in establishing your Franchised Restaurant, and will represent up to 95% of your ongoing expenses.

Any item used in the Franchised Restaurant that is not specifically required to be purchased according to the Approved Suppliers List or the Approved Supplies List must conform to our established standards and specifications. We will communicate these to you in our Confidential Operations Manual or otherwise in writing.

We do not guarantee the availability of independent sources of supply for any particular item, product or service required to established or operate your Franchised Restaurant. We do not provide material benefits to you (including renewal rights or the right to additional franchises) based on whether you purchase through the sources we designate or approve. We do not currently negotiate price arrangements with suppliers for the benefit of franchisees, although we reserve the right to do so in the future.

Approval of Alternate Suppliers

If you would like to sell or use any product, material or supply or purchase any products from a supplier not on either of these lists, you must notify us and may need to submit samples and other information to us so that we can make an informed decision as to whether this product or supplier meets our standards. You may be charged for the costs of our testing a product or supplier. (See Item 6.) We will notify you of our

approval or disapproval within a reasonable time (no more than 60 days) after we receive all requested information and materials related to the product or supplier.

In approving a proposed supplier, we generally consider the supplier's ability to purchase product in bulk, quality of service, including sanitation, production and delivery capability, proximity to Franchised Restaurants in order to make timely deliveries of product, and dependability. If you request a supplier, we will make our criteria available to you.

We may limit the number of approved suppliers with whom you may deal, designate sources that you must use, and/or refuse any of your requests for any reason, including that we have already designated an exclusive source (which might be us or our affiliate) for the particular item or service if we believe that doing so is in the best interests of the HERBIE'S BURGERS network. None of our officers hold an interest in any of our suppliers.

We have the right to require you to use only an accountant that we have approved. However, if you fail to comply with our accounting, record-keeping and reporting obligation, we may require you to use our designated accountant (which also may be our accountant) to ensure preparation of required reports and financial statements accurately and in our desired form. We also have the right to require you to use only a real estate broker that we have designated or approved to assist you in locating a suitable site for the Franchised Restaurant.

Except as stated in this Item 8 (or in Items 6 and 7), there are no other items, products, services or real estate which you must purchase or lease from us, or our affiliate, or from Approved Suppliers approved by us.

None of our officers currently own a direct interest in any approved supplier of products or services to our franchisees. We may amend the Approved Suppliers or required purchases in the future at any time. We will notify you of any changes in writing. We reserve the right to require you to purchase additional items from us and/or our affiliates in the future.

As of the Issuance Date hereof, we have not negotiated volume discounts on behalf of our franchisees and no purchasing or distribution cooperatives have been formed, but we reserve the right to do so in the future. We do not provide material benefits to franchise owners (for example, renewal or granting of additional franchises) based on their purchase of particular products or services or use of particular suppliers.

As of the Issuance Date hereof, neither we nor our affiliates derived any revenue from required purchases or leases by franchisees; although we reserve the right to do so in the future.

### Insurance

You must obtain and maintain, at your own expense, the insurance coverage that we periodically require. You must obtain your insurance from our designated provider, unless the laws of your state restrict us from designating an insurance provider. All coverages apply per Franchised Restaurant that you operate.

Currently, you must have at least the following:

- Property Insurance with special form coverage on all improvements, betterments, and all business property used in the Franchised Restaurant at 100% of replacement cost value, but no less than \$500,000. Flood and Earthquake coverage will be required in geographically prone areas.
- General Liability coverage for \$1,000,000 per occurrence and \$2,000,000 aggregate, including the additional insured endorsement naming FRANCHISEHERBIES LLC. This policy must include Products Liability coverage with an aggregate of \$2,000,000, Damage to Rented Premises of \$300,000, and Personal Injury and Advertising Liability of \$1,000,000.

- Business interruption coverage for actual loss sustained for 12 months or 50% of gross annual sales.
- Auto Liability for all owned, non-owned, and hired vehicles used in the Franchised Restaurant for \$1,000,000 combined single limit liability.
- Employment Practices Liability including third party claims for \$1,000,000 and naming FRANCHISEHERBIES LLC as Co-Defendant coverage. Limit applies per policy.
- Workers' Compensation with statutory limits, including Employer's Liability of \$500,000/\$500,000/\$500,000, Alternate Employer's endorsement in our favor, and any other insurance that may be required in the state in which the Franchised Restaurant operates. If the Franchised Restaurant operates in a monopolistic state (*i.e.*, Wyoming, North Dakota, West Virginia, Washington, and Ohio), you must also obtain Stop Gap coverage on the Workers' Compensation policy or General Liability policy. Minimum limits are as follows: no less than \$500,000 per accident for bodily injury by accident; \$500,000 policy limit by disease; and \$500,000 per employee for bodily injury by disease or higher coverage as required by law in your state.
- Umbrella Liability for \$1,000,000 in excess of the General Liability, Auto Liability, Liquor Liability, and Employer's Liability.

These are our minimum requirements only, and we have the right to modify these requirements at any time. You should consult with your own insurance advisor to determine whether they are appropriate and sufficient for your business and to protect your assets. Your landlord and/or state may require more coverage or different types of coverage.

All insurance policies must be written by a carrier who is licensed in the state in which the Franchised Restaurant operates and with an A.M. Best rating of not less than A-VII. All insurance policies must be primary and non-contributory to any insurance we might carry. All policies must also include a waiver of subrogation in favor of us and our affiliates, and each company's officers, directors, shareholders, partners, members, agents, representatives, independent contractors, servants, and employees, and must include a statutory notice of cancellation directed to both you and to us or the person we designate. Deductibles for all policies must not be greater than \$10,000.

You must provide us with a certificate of insurance complying with the stated requirements within 90 days after signing the Franchise Agreement, upon signing a lease agreement for the Franchised Restaurant, or on the date which you acquire an interest in the real property from which you will operate the Franchised Restaurant, whichever event occurs first. You must also provide us with a certificate of insurance annually and 10 days prior to any renewal with the endorsements as noted below. If you do not comply with the insurance requirements, we reserve the right, but not the duty, to force place insurance on your behalf and charge you the premium due along with any administration fee that might apply and which will be due immediately to us.

**ITEM 9**  
**FRANCHISEE'S OBLIGATIONS**

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.**

| <b>Obligation</b>                                          | <b>Section in Agreement</b>                                                    | <b>Disclosure Document Item</b> |
|------------------------------------------------------------|--------------------------------------------------------------------------------|---------------------------------|
| a. Site selection and acquisition/lease                    | 3.B.-D. of Franchise Agreement                                                 | 7, 11, and 12                   |
| b. Pre-opening purchase/leases                             | 3. D. and 3.F. of Franchise Agreement                                          | 5, 7, and 8                     |
| c. Site development and other pre-opening requirements     | 3.F.-G. of Franchise Agreement                                                 | 7, 8, and 11                    |
| d. Initial and ongoing training                            | 5.A.-F. of Franchise Agreement                                                 | 6, 7, and 11                    |
| e. Opening                                                 | 3.G. of Franchise Agreement                                                    | 11                              |
| f. Fees                                                    | 4.A.-B., 4.H., 5., 9.B.-D., 10.G., 11.O., 11.Q. and 16. of Franchise Agreement | 5, 6, and 7                     |
| g. Compliance with standards and policies/operating manual | 7.A. of Franchise Agreement                                                    | 8 and 11                        |
| h. Trademarks and proprietary information                  | 6. and 8. of Franchise Agreement                                               | 13 and 14                       |
| i. Restrictions on products/services offered               | 11. of Franchise Agreement                                                     | 8 and 16                        |
| j. Warranty and customer service requirements              | 11. of Franchise Agreement                                                     | Not Applicable                  |
| k. Territorial development and sales quotas                | Not Applicable                                                                 | 12                              |
| l. Ongoing product/service purchases                       | 11. of Franchise Agreement                                                     | 8 and 11                        |
| m. Maintenance, appearance, and remodeling requirements    | 3.F. and 11.D. of Franchise Agreement                                          | 6 and 17                        |
| n. Insurance                                               | 12. of Franchise Agreement                                                     | 6, 7, and 8                     |
| o. Advertising                                             | 9. of Franchise Agreement                                                      | 6, 7, and 11                    |
| p. Indemnification                                         | 19. of Franchise Agreement                                                     | 6                               |
| q. Owner's participation/management/staffing               | 11.E.-F. and 14.D. of Franchise Agreement                                      | 11 and 15                       |
| r. Records and reports                                     | 10. of Franchise Agreement                                                     | 9 and 11                        |

| Obligation                      | Section in Agreement                   | Disclosure Document Item |
|---------------------------------|----------------------------------------|--------------------------|
| s. Inspections and audits       | 10.G. and 11.O. of Franchise Agreement | 6 and 11                 |
| t. Transfer                     | 16. of Franchise Agreement             | 17                       |
| u. Renewal                      | 2. of Franchise Agreement              | 17                       |
| v. Post-termination obligations | 15. of Franchise Agreement             | 17                       |
| w. Non-competition covenants    | 13. of Franchise Agreement             | 17                       |
| x. Dispute resolution           | 26. of Franchise Agreement             | 17                       |
| y. Licenses                     | 11.I. of Franchise Agreement           | Not Applicable           |

## **ITEM 10** **FINANCING**

We do not offer direct or indirect financing. We do not guarantee your note, lease, or obligation.

## **ITEM 11** **FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

**Except as listed below, FRANCHISEHERBIES LLC is not required to provide you with any assistance.**

Before you open the Franchised Restaurant, we will:

1. Approve the lease for the Franchised Restaurant premises that meets our requirements. The lease must contain the provisions we periodically specify, and you must execute a lease rider, a sample of which is attached as Exhibit E to the Franchise Agreement. We anticipate your signing a lease with a third-party lessor unless you acquire ownership of the real property that will house restaurant operations. (Section 3.D of Franchise Agreement.)
2. If this is your first Franchised Restaurant, train you and up to (2) additional key employees you designate, no later than six (6) weeks before your Franchised Restaurant opens for business for approximately two business weeks, as described below. If you are acquiring an additional Franchised Restaurant, we may, at our option, reduce the time and extent of the initial training program required. We do not charge for this training or service; however, all expenses incurred by you, your employees' costs in attending this program, including travel and room and board expenses, and employees' salaries will be your sole responsibility. All training occurs at our headquarters or at a location that we designate in our sole discretion. (Section 5.B of Franchise Agreement.)
3. Provide you with an Approved Supplies List and Approved Suppliers List, and the minimum standards and specifications you must satisfy in developing and operating the Franchised Restaurant. The Approved Supplies List and Approved Suppliers List shall identify all supplies, including, but not limited to, the equipment, fixtures, furniture, signage, and inventory that you

must use when developing and operating your Franchised Business. Except as otherwise set forth in Item 8, we do not provide these supplies to you. We will provide you with this information during the initial phase of our training program. (Section 11.C. of Franchise Agreement.)

4. If we do not require you to offer, but you wish to offer, catering services, review your request to do so. If we require you to offer mandatory catering, or grant approval of your catering service request, we will provide applicable guidelines and provide you with specifications for acceptable brands and types of vehicles you will use for catering services. You must strictly comply with all such specifications. (Section 11.H of Franchise Agreement.)

During your operation of the Franchised Restaurant, we will:

1. If this is your first Franchised Restaurant, for approximately ten (10) days around the time the Restaurant opens for business, furnish to you at your Premises and at our expense one of our representatives to facilitate the opening of your Franchised Restaurant. This is part of our initial training program which you must successfully complete. We may provide additional training if requested by you at our then-current fee. (Section 5.C of Franchise Agreement.)
2. Loan you a copy of the Confidential Operations Manual, which may be, in our discretion, in a physical or electronic format. The physical format currently contains [ ] pages. The Table of Contents of the Confidential Operations Manual is attached to this disclosure document as Exhibit E. (Section 7.A of Franchise Agreement.)
3. Review your advertising materials. You will submit to us for prior approval all promotional materials and advertising that you intend to use, which may include radio and television advertising, digital media, social media, specialty and novelty items, signs, containers, and boxes. We will use good faith efforts to approve or disapprove your materials within 30 days from receiving them. You may not use the materials until they are approved in writing, and we have the right to disapprove materials that we have previously approved. (Section 9.A. of Franchise Agreement)
4. Establish guidelines for Grand Opening Marketing Campaign and publish these guidelines in the Confidential Operations Manual. (Section 9.B of Franchise Agreement.)
5. Administer the Advertising Fund. (Section 9.C of Franchise Agreement.)
6. Update the Approved Supplies List and Approved Suppliers List, as we periodically deem necessary. (Section 11.C. of Franchise Agreement.)
7. Modify the System, including adopting and using new or modified trade names, trademarks, service marks or copyrighted materials, new menu items, new products, new equipment, new techniques, new recipes or new presentations. (Section 7.B of Franchise Agreement.)
8. Periodically advise or offer guidance to you on prices for the food and other products offered for sale by the Franchised Restaurant that, in our judgment, constitute good business practice. Alternatively, we may, to the extent the law allows, regulate your minimum, maximum, or other prices for products and require you to participate in system-wide discount programs. (Sections 9.G and 11.J of Franchise Agreement.)
9. Provide such ongoing consultation and advice as we deem appropriate, which may include information about new service and product development, instruction concerning the operation and management, advertising and marketing advice, and financial and accounting advice. (Section 5.G Franchise Agreement)
10. Provide specifications to you for the POS System you must use. We may also specify other computer hardware or software components in the future that you must purchase and use. We will

have full access to all of your data, systems and related information by direct access, whether in person or by telephone/modem. (Sections 10.C-F Franchise Agreement)

#### Site Selection and Opening.

If we sign the Franchise Agreement even though you have not yet located the Franchised Restaurant's site (which often is the case), you must find and lease a suitable site within 180 days after signing the Franchise Agreement. In that situation, we will identify a Site Selection Area in which you must look for the site. You are entitled to a 90-day extension at no cost, which we will grant you upon request. However, we may terminate the Franchise Agreement if you fail to find a site within this 180-day or 270-day (if an extension is applicable) timeframe.

Franchisees typically open their Franchised Restaurants within six to eight months after signing the Franchise Agreement (assuming they had already selected a site when the Franchise Agreement was signed, or found one shortly after signing the Franchise Agreement). We may, however, terminate the Franchise Agreement if you fail to open your Franchised Restaurant by the agreed on "Target Opening Date," which will be no later than 150 days, or 270 days if an extension is requested and granted, from the date you take possession of the site of the Franchised Restaurant. Our prior approval of the site, which will be granted at our sole discretion, is required. The factors we use to approve the location may include area competition; area demographics; types of other retail and commercial businesses in the area that generate a high volume of traffic; and daytime population.

#### Advertising

Our advertising program for the products and services offered by HERBIE'S BURGERS restaurants currently consists of advertising in certain local and/or regional markets and dissemination of promotional materials at the restaurant level. Our advertising materials currently are created in-house and with the help of an outside advertising agency. You may develop your own advertising and marketing materials, at your own expense, subject to the requirements described below. We may elect to utilize various local, regional and/or national media campaigns in the future which may, include radio, television, magazine, social media, digital media and Internet advertising campaigns.

We must approve all of your promotional and marketing materials, as well as the proposed medium for such promotional or marketing materials, before you may use them. To obtain approval, you must submit to us samples of the proposed materials and notify us of the intended media. We will use good faith efforts to approve or disapprove your materials within 30 days from the date we receive them. You may not use the materials until they are approved in writing, and we have the right to disapprove materials that we have previously approved.

#### Grand Opening Marketing Campaign

You must comply with our initial grand opening marketing campaign requirements, which may include engaging our designated advertising agency or other service providers, and making a required expenditure ranging from \$2,000 to \$5,000. The initial grand opening marketing campaign will be conducted according to our guidelines and must be completed within six (6) months of opening.

#### Advertising Fund

In addition to your grand opening marketing campaign, you must contribute up to 3% of your Gross Revenues to an Advertising Fund ("Advertising Fund"). Although we currently collect 1% of Gross Revenues as your contribution to the Fund, we reserve the right to increase this amount to 3% of Gross Revenues in the future. Fund contributions are paid in the same manner as the Royalty Fee.

We may use Fund monies to pay for creative development services (including creation and modification of store design and trade dress, logos, menu design, graphics and vehicle wraps (if any), and advertising and

promotional items, including the cost of photography services and design software); preparing and procuring market studies, providing or obtaining marketing services (including, conducting customer surveys, focus groups, and marketing and compliance-related mystery shops and customer interviews); employing advertising and/or public relations agencies; developing, producing, distributing and placing advertising (including, preparing and conducting media advertising campaigns in various media, local store advertising and promotion in a particular area or market, or for the benefit of a particular restaurant or restaurants concerning restaurant opening promotion or otherwise, conducting and administering in-store promotions; preparing and executing direct mail advertising, and developing, producing and purchasing point-of-sale advertising, menus and menu boards, and other sales aids and promotional items and materials); new product development and development of product packaging; developing, updating and hosting our web site (including development of locator programs) and/or an intranet or extranet system; obtaining sponsorships and endorsements; preparing and conducting sweepstakes and other promotions; developing, administering, and distributing coupons, gift certificates, stored value card and loyalty card programs, and customized promotions, and the cost of product associated with the redemption of free coupons, gift certificates, stored value cards, loyalty cards and/or other customized promotions; developing and administering other customer loyalty programs; providing and procuring public relations services; conducting public relations activities; charitable donations; membership fees in international, national, regional, and/or local trade or other associations or organizations. We also may use monies to reimburse ourselves for our costs of personnel and other administrative and overhead costs associated with providing the services described in this paragraph.

We will administer the Fund. We will not use Fund monies for creating or placing any advertisement that is principally a solicitation for new franchisees, but may include in all advertising prepared using Fund monies (including Internet advertising) information concerning franchise opportunities, and a portion of Fund monies may be used to create and maintain one or more pages on our web site devoted to advertising franchise opportunities and identifying and screening inquiries and applications submitted by franchise candidates. We are not obligated to spend any amount on advertising in the area where your Franchised Restaurant is located or to ensure that your Franchised Restaurant will benefit directly from the Fund monies. Any amounts contributed to the Fund that are not spent in the year they are collected will remain in the Fund for use during the next year.

Although not contractually required to do so, we anticipate that each HERBIE'S BURGERS Restaurant owned by us or an affiliate of ours will contribute to the Fund on the same basis as our franchisees. Upon your reasonable request, we will provide you an annual unaudited statement of Fund contributions and expenditures. We did not collect any Advertising Fund contributions nor make any expenditures during our 2024 fiscal year.

#### Local Advertising Requirement

In each calendar year during the term of the Franchise Agreement, we require you to spend at least three percent (3%) of Gross Revenues to promote the Franchised Restaurant in your market area ("Local Advertising Requirement"). We may require you to spend the Local Advertising Requirement directly or may require you to pay some or all of it to us to spend on your behalf. If we only require you to pay some of your Local Advertising Requirement to us, you will be required to spend the balance of it directly. For any portion of the Local Advertising Requirement that you are required to spend on your own, you will be required to provide us with proof of your expenditures.

If you fail to meet your Local Advertising Requirement, or if you fail to otherwise comply with your local advertising obligations, we have the right, in addition to any and all other rights and remedies available to us under the Franchise Agreement and/or at law, to require you to: (1) immediately pay all sums you were required to, but failed to, expend ("Local Advertising Deficiency"), to the Advertising Fund or other fund we create, (b) require you to spend the Local Advertising Deficiency in the manner designated or approved

by us for local advertising purposes, or (c) require you to immediately pay the Local Advertising Deficiency to us to be expended by us in our sole discretion for any advertising or marketing related purpose we deem appropriate, including purposes that may not directly or indirectly benefit your Franchised Restaurant.

#### Advertising Council

No advertising council has been established for the franchise system.

#### Advertising Cooperative

From time to time, we may designate a local, regional or national Advertising Coverage Area (defined below) in which there are at least two HERBIE’S BURGERS Restaurant. Advertising Coverage Areas will be established for the purpose of developing a cooperative local, regional or national advertising or promotional program. You must participate in and contribute your share to cooperative advertising and promotional programs in the Advertising Coverage Area, however, this amount will be credited toward your local advertising expenditure amount. The cost of the program will be allocated among locations in the Advertising Coverage Area and each location’s share will be in proportion to its sales during the preceding 12-month period. All restaurants in the Advertising Coverage Area will have one vote per location in any established cooperative program. “Advertising Coverage Area” means the area covered by the particular advertising medium (television, radio or other medium) as recognized in the industry. As of the date of this disclosure document, there are no advertising cooperatives in existence.

#### Training

If this is your first Franchised Restaurant, we will provide initial training to you and up to two other key employees (“Initial Trainees”), which must be successfully completed by no later than 8 weeks before your Franchised Restaurant begins operations at a location we designate. Initial Training lasts for approximately two weeks. We do not charge for initial training program as detailed below; however, you are responsible for all expenses incurred by the Initial Trainees to attend (including but not limited to all travel and wage related expenses).

If you previously were the manager of a HERBIE’S BURGERS Restaurant, we may, at our option, reduce the duration and extent of this on-the-job training. All training attendees must successfully complete training to our satisfaction.

### **INITIAL TRAINING PROGRAM**

| <b>Subject</b>                                                                                              | <b>Hours of Classroom</b> | <b>Hours of On-The Job Training</b> | <b>Location</b>                                                                          |
|-------------------------------------------------------------------------------------------------------------|---------------------------|-------------------------------------|------------------------------------------------------------------------------------------|
| Overview & Introduction                                                                                     | 5                         |                                     | Albany, NY, or any affiliate-owned Herbies restaurant, or virtually via video conference |
| How Herbie’s Works (Food Preparation and Kitchen Operations, Food Safety, Purchasing, Inventory Management) | 0                         | 20                                  | Albany, NY, or any affiliate-owned Herbies restaurant, or virtually via video conference |

| <b>Subject</b>                                                                         | <b>Hours of Classroom</b> | <b>Hours of On-The Job Training</b> | <b>Location</b>                                                                          |
|----------------------------------------------------------------------------------------|---------------------------|-------------------------------------|------------------------------------------------------------------------------------------|
| Daily Operations and Guest Services (Positions, Opening, Closing, Customer Service)    | 5                         | 10                                  | Albany, NY, or any affiliate-owned Herbies restaurant, or virtually via video conference |
| Management (Labor Scheduling, Human Resources, Reporting, Hiring, Training, Marketing) | 0                         | 16                                  | Albany, NY, or any affiliate-owned Herbies restaurant, or virtually via video conference |
| Total Hours:                                                                           | 10                        | 46                                  |                                                                                          |

The Initial Trainees will be trained according to the full training program described above. More or less time may be allocated to individual subjects provided in the above table based on our assessments of the Initial Trainees. We use manuals, charts, menus, and other training aids during our prescribed training programs. We reserve the right to conduct any or all of the initial training set forth above virtually via webinars or via virtual meeting technologies (e.g. Google Meet, Zoom, GoToMeeting, Microsoft Teams).

The training staff includes Noah Bondy our Chief Operations Officer since 2021, Nicholas Warchol, our Chief Executive Officer since 2021, and Aaron Wilson, our Chef/Recipes of Herbie's Burgers since 2021, who each have over 4 years of experience working at our affiliate-owned Restaurants. Please refer to Item 2 for ancillary experience for each individual. If circumstances require, a substitute trainer may provide training to you. We may periodically name additional trainers if the training schedule requires it. There are no limits to our right to assign a substitute trainer to provide training. Any other individuals involved in the initial training program will have at least one year of experience in the subject that they teach.

If you designate new or additional managers after the initial training program, we will provide training to these managers at the then-current published rates. All designated managers must successfully complete to our satisfaction the training program provided at our headquarters or other location we designate. You will bear all costs incurred by your employees attending this training program.

We may require that previously-trained and experienced franchisees and their managers and/or employees attend and successfully complete to our satisfaction any such continuing education and refresher training programs or seminars to be conducted at a location we designate. Attendance at these continuing education and refresher training programs or seminars will be at your sole expense (including any and all travel, lodging, meals and wages/salary costs). Your attendance at any such continuing education and refresher training programs or seminars will not be required at more than one program in any calendar year and will not collectively exceed four business days in duration during any calendar year.

In addition to the continuing education and refresher training programs or seminars referenced above that you may be required to participate in, you may also be required to periodically attend one or more special meetings of all HERBIE'S BURGERS franchisees as designated by the Franchisor. If we designate any

such special meeting as mandatory for you and/or certain other key employees (as we will determine in our sole discretion), you and such key employees must attend. Attendance at a national franchisee conference (or other such conference as may designated by franchisor) each calendar year will be mandatory in our discretion but will not last more than 4 business days. If we call more than one special mandatory meeting in a calendar year and you are unable to attend in person, we will conference you into the meeting via telephone or other available means. All special meetings will be conducted at a time and location that we designate in our sole discretion. You are responsible for all costs you and your employees incur in attending these special meetings, including travel costs, room and board expenses, and employees' salaries.

#### Computer System.

You must obtain and use the computer-based point-of-sale cash register system and designated back-office solution software that we designate ("POS System"), together with other specified computer hardware and software, in operating your Franchised Restaurant. You must use our designated third-party POS System. This POS System tracks sales and labor data, product mix, inventory, average ticket, and other information. The POS System and all hardware and software components you use must conform to all specifications and standards we prescribe, including any then current Payment Card Industry (PCI) or other security standards we specify for non-cash transactions. Any updates or upgrades to the POS System during the franchise term is your responsibility. There are no limits on the upgrades we may require. We have independent access to all information and data contained in the POS System and there are no limitations on our right to access or use any or all information we collect from your POS System. We estimate the Computer and POS System's approximate cost to be \$4,500 to \$6,000.

## **ITEM 12** **TERRITORY**

You will operate your Franchised Restaurant only at a site that you select and that we approved as meeting our minimum site selection criteria. You may not relocate without our prior written approval. Whether or not we will allow relocation depends on the circumstances at the time and what is in the Franchised Restaurant's and the System's best interests (any relocation will be at your sole cost, plus reasonable costs and fees incurred by us in approving the new location). If we permit you to relocate the Franchised Restaurant, you must comply with our then-current standards and specifications for the Franchised Restaurant.

If we have not agreed on a site for the Franchised Restaurant before you sign the Franchise Agreement, you must locate an acceptable site within the Site Selection Area identified in Exhibit A of the Franchise Agreement. After we approve your site (whether the site identified before or after you sign your Franchise Agreement), we may grant you a protected territory surrounding the Franchised Restaurant, which we call your "Designated Area." If we grant a Designated Area, it will be defined by zip code boundaries, county boundaries, highways, physical landforms, or other boundaries we deem appropriate. There are no minimum criteria for a Designated Area. The size and configuration of your Designated Area, if granted, will depend upon population density, the character of the surrounding area, and other factors.

Your Designated Area is protected only to the extent that we will not operate or grant our affiliate or a third party the right to operate a HERBIE'S BURGERS Restaurant, the physical premises of which are located within your Designated Area, but another HERBIE'S BURGERS Restaurant's Designated Area may overlap with your Designated Area. We and our affiliates have the right, both within and outside of the Designated Area, to offer and sell at wholesale, retail or through any other distribution system (which includes the Internet, catalog sales, telemarketing or other direct marketing, supermarkets and other retail facilities) products and services which comprise, or may in the future comprise, a part of the System. You

have no rights of any kind concerning these sales, and we need not compensate you for engaging in these activities. We and our affiliates also have the right, both within and outside the Designated Area, to sell at both wholesale and retail all products and services that do not comprise a part of the System and to establish food service units operating under a format and trademarks and service marks distinct from the HERBIE'S BURGERS System.

Carved out from protection in the Designated Area will be any venues that we consider "Closed Markets." A Closed Market is any facility that serves a captive market, including department stores, supermarkets, shopping malls, amusement parks, airports, train stations, travel plazas, casinos, nightclubs, restaurants, public facilities, college and school campuses, arenas, stadiums, ballparks, hospitals, office buildings, convention centers, airlines (in-flight service), military bases, and any other mass gathering events or locations, and facilities of any kind for which food and/or beverage service rights are contracted to a third party or parties (including, but not limited to, designated road ways and facilities adjacent thereto), whether inside or outside of the Designated Area. The term "shopping malls" includes any retail center (enclosed or open), including "outlet malls," with an aggregate gross leasable area in excess of 500,000 square feet.

Except for the territorial protection granted within the Designated Area you will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we or our affiliates own or operate, and from other channels of distribution or competitive brands that we control.

You may engage only in the retail sale of menu items. You may not engage in the wholesale and/or distribution of any product offered for sale through the Franchised Restaurant, except as we authorize. Because you are selling prepared food products, it is not anticipated that you will sell these products other than at the Restaurant or, with our approval, through delivery or catering services. There would be no basis upon which you would use other channels of distribution like the Internet, catalog sales, telemarketing, or other direct marketing. We would have to approve any proposed activities like these. Nevertheless, you are not prohibited from advertising and marketing the Franchised Restaurant outside of the Designated Area.

Continuation of your limited territorial rights does not depend on your achieving a certain sales volume, market penetration or other contingency. We may not alter the definition of your Designated Area during the franchise term (although we may do so upon renewal).

### **ITEM 13** **TRADEMARKS**

We grant you the right to operate a business using our System, which is identified by means of certain trade names, service marks, trademarks, logos, emblems and indicia of origin (the "**Marks**") as are designated by us in writing for use in connection with the System.

Our right to use and license others to use the Marks is exercised pursuant to a Trademark and System License Agreement dated August 18, 2025 ("License Agreement"), whereby our affiliate, Herbiesburgerscorporation, LLC ("HBC"), granted us the right to use, and license to you to use for the term of your Franchise Agreement (including any extensions or renewals), the Marks. The License Agreement will expire on December 31, 2125, but will renew automatically for additional successive terms of ten (10) years unless earlier terminated. In the event of termination or non-renewal of the License Agreement, all rights granted to you under a Franchise Agreement will be unaffected as HBC will assume our rights and obligations under existing franchise agreements.

The following trade names, trademarks, service marks, logotypes and other commercial symbols are registered and maintained with the United States Patent and Trademark Office principal register:

| Mark                                                                              | Serial Number/<br>Registration Number | Registration Date                |
|-----------------------------------------------------------------------------------|---------------------------------------|----------------------------------|
|  | Serial<br>99290527                    | Pending – Filed July 18,<br>2025 |

We do not have a federal registration for our principal trademark. Therefore, this trademark does not have many legal benefits and rights as a federally registered trademark. If our rights to use this trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.

All required affidavits and renewals for the registered Marks have been filed. There are no presently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court, and no pending infringement, opposition or cancellation proceedings or material litigation, involving the trademarks, service marks, trade names, logotypes or other commercial symbols in any state in which the Franchised Restaurant is to be located.

We are not aware of any superior prior rights or infringing uses that could materially affect the use of these trademarks, service marks, trade names, logotypes or other commercial symbols in any state in which the Franchised Restaurant is to be located.

There are no other agreements currently in effect which significantly limit our rights to use or license the use of these trademarks, service marks, trade names, logo types or other commercial symbols in any manner material to the franchise.

Your use of the Marks, and all goodwill established from their use, will inure to our benefit and/or to our affiliate's benefit. You will not receive any interest in the Marks. You may not at any time contest the validity or ownership of the Marks. You must notify us within five days after you learn about an infringement or challenge to your use of a Mark. We will take whatever action we think appropriate. We are not required to defend you against a claim resulting from your use of the Marks. You must modify, discontinue using and/or replace any Mark within a reasonable time upon receiving direction to do so from us. We are not required to reimburse your direct expenses for changing any of the Franchised Restaurant's signs, your lost revenue due to any modified or discontinued Mark, or your expenses in promoting a modified or substituted trademark or service mark.

You may not use the Marks or any part or derivative of the Mark on the Internet, except as expressly permitted in writing. This prohibition includes use of the Marks or any derivative of the Marks as part of

any URL or domain name, as well as their registration as part of any user name on any gaming website, social networking website or mobile platform, or video streaming website or mobile platform (such as META (FACEBOOK & INSTAGRAM), SNAPCHAT(SNAP), , LINKEDIN, X(TWITTER),TIKTOK or YOUTUBE), whether or not such social media platform is used for commercial gain, or as part of any unauthorized email address. You must give notices of trademark and service mark registration we specify and obtain fictitious or assumed name registrations required under applicable law.

You may not use any merchandising, advertising or promotional practice which is unethical or may injure our business, or the business of other HERBIE'S BURGERS Franchised Restaurants, or to the goodwill associated with the Marks. You must cease and desist using these practices immediately upon notification by us.

You must use the designation ®, ™, SM or other trademark registration notice where applicable or otherwise indicate in your advertising that the marks are our trade names, trademarks, and service marks.

#### **ITEM 14**

#### **PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION**

There are no patents or patent applications that are material to the franchise.

We and HBC claim copyright protection in the Confidential Operations Manual (which contains trade secrets), advertising and marketing materials, menus, and similar items used in operating HERBIE'S BURGERS Restaurants. We and HBC have not registered these copyrights with the United States Copyright Office but need not do so at this time to protect them. You may use these items only as we specify while operating your Restaurant (and must stop using them if we so direct you).

There currently are no effective adverse determinations of the United States Copyright Office, or any court regarding the copyrighted materials. No agreement limits our right to use or allow others to use the copyrighted materials. We do not actually know of any infringing uses of our copyrights that could materially affect your use of copyrighted materials in any state. We are not obligated by the Franchise Agreement, or otherwise, to protect any rights you have to use the copyrights. We have no actual knowledge of any infringements that could materially affect the ownership, use, or licensing of the copyrights. You may not use any of our copyrighted works on the Internet without our written permission. This includes display of the copyrighted works on commercial websites, gaming websites, and social networking web sites or mobile platforms (such as META (FACEBOOK & INSTAGRAM), SNAPCHAT (SNAP), LINKEDIN, X (TWITTER), TIKTOK or YOUTUBE).

We and HBC need not protect or defend copyrights, although they intend to do so if in the system's best interests. We and HBC may control any action they choose to bring, even if you voluntarily bring the matter to their attention. We and HBC need not participate in your defense and/or indemnify you for damages or expenses in a proceeding involving a copyright.

You will receive proprietary, confidential and trade secret information of our operations. You must maintain the confidentiality of this information unless authorized in writing by us. You may divulge confidential information only to employees who must know it to operate the Franchised Restaurant. All information, knowledge and know-how which we designate as confidential will be deemed confidential, except information which you can demonstrate lawfully came to your attention before our disclosure; or which, at the time of disclosure by us to you, had lawfully become a part of the public domain through publication or communication by others (without violating your obligations to us); or which, after disclosure to you by us, lawfully becomes a part of the public domain through publication or communication by others (without violating your obligations to us).

Any employees having access to confidential information must sign confidentiality contracts. We will be entitled to equitable remedies, including injunctive relief, in order to protect our confidential information, Confidential Operations Manual and proprietary marks.

You must promptly notify us when you learn of an unauthorized use of the confidential information or Confidential Operations Manual. We are not obligated to take any action against any unauthorized user of the confidential information or Confidential Operations Manual but will respond to this information as we deem appropriate. We are not obligated to indemnify you for losses brought by a third party concerning your use of this information.

You must not use, in advertising or any other form of promotion, the copyrighted materials, trademarks, service marks or commercial symbols of HERBIE'S BURGERS without the appropriate notices which may be required by law or us, including © or other copyright registration notice.

#### **ITEM 15**

#### **OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION**

#### **OF THE FRANCHISE BUSINESS**

You (or a managing owner) or a trained employee certified by us and acting as a full-time manager must at all times directly supervise the Franchised Restaurant. Even if you employ a full-time manager, however, you will remain obligated to supervise the operations of the Franchised Restaurant. You must keep us informed of the identity(ies) of your manager(s). If you select a substitute or additional manager, you must make sure this manager receives training from us.

One of the following people must devote full-time energy and best efforts to the management and operation of the Franchised Restaurant: (1) you (if you are an individual); (2) any owners (if you are a legal entity); (3) any general partner (if you are a partnership); or (4) your full-time manager (who need not have an equity interest in you). Whoever manages the Franchised Restaurant must successfully complete our training program.

Anyone with access to our confidential information or training program must agree to preserve confidentiality and not to compete. Also, if you are an entity, we require that all of your owners, officers, directors and managers (of a limited liability company) sign a personal guaranty in the form included in the Franchise Agreement as Exhibit B. If any owner is itself an entity, each of their respective owners, officers, directors, and managers must also sign the personal guaranty. If there are several levels of entity ownership, each of your owners' owners, officers, directors, and managers must sign a personal guaranty.

#### **ITEM 16**

#### **RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must offer and sell all items and services that we have approved or periodically require for Franchised Restaurants. You may not offer or sell any products or services that we have not authorized.

Menu items and other food and beverage products may be prepared only by properly trained personnel strictly according to our recipes, cooking techniques and processes. We always have the right to approve or disapprove in advance all products and services that your Franchised Restaurant sells. We have the right to add or modify authorized items and services that you must offer and may withdraw our approval of previously authorized items and services. There are no limits on our rights to make these changes. We may regulate your minimum, maximum, or other prices for the resale of products as permitted by law.

You must use only displays, trays, napkins, boxes, bags, wrapping paper, labels, forms and other paper and plastic products imprinted with the Marks and colors. You may not install or maintain on the Premises any

digital boards, newspaper racks, video games, juke boxes, gaming machines, gum machines, games, rides, vending machines or other similar devices without our written approval.

We may require you to cater prepared food products from the Franchised Restaurant in strict compliance with any catering standards we establish. If the provision of catering services is optional and not required, you must obtain written approval from us before undertaking this catering service.

We may require you to participate in one or more third-party food ordering and delivery services with one or more suppliers who we have approved on behalf of the System (each, a “System Designated Third-Party Delivery Service”). We may also allow you to utilize other non-system designated third-party food ordering or delivery services at your Franchised Restaurant. You may not utilize any such non-system designated third-party services without first obtaining our written approval. Your engagement and utilization of any third-party delivery service must be in strict compliance with the standards set forth in the Confidential Operations Manual.

## ITEM 17

### **RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**

**This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.**

#### **THE FRANCHISE RELATIONSHIP**

##### Franchise Agreement

| <b>Provision</b>                                  | <b>Section in franchise or other agreement</b> | <b>Summary</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. Length of the franchise term                   | Section 2.A.                                   | 10 years from date on which the Franchised Restaurant opens to the public for business.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| b. Renewal or extension of the term               | Sections 2.B.-D.                               | Two additional successive terms of five years each.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| c. Requirements for franchisee to renew or extend | Sections 2.B.-D.                               | You are not in default under any terms of any agreements with us; you have substantially complied with all of the Franchise Agreement’s (or first renewal franchise agreement, if applicable), provisions during that entire agreement’s term; you have brought the Franchised Restaurant into compliance with our current standards; you remain in possession or you secure substitute premises; you meet our then-current qualifications; you have given timely notice of renewal to us; you have satisfied all monetary obligations owed to us, our affiliates, and your suppliers (including existing monetary obligations as well as the payment of the renewal fee); you have signed our then-current form of franchise agreement (which may be materially different than the form attached to this disclosure document); you have met current training requirements; and you and your guarantors have signed an agreement containing general release language. You must give us notice of your intent to |

| Provision                                  | Section in franchise or other agreement | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                            |                                         | renew between nine and 15 months before the Franchise Agreement, or the first renewal franchise agreement (if applicable), expires. The Franchise Agreement also contains a hold over provision which states if the Franchise Agreement expires and you continue to operate the Franchised Restaurant after expiration, we may, at our option, declare you to be holding over, and the Royalty Fee and Advertising Fund contribution during any hold over period will be 150% of the applicable fee due under the Franchise Agreement. |
| d. Termination by franchisee               | Section 14.A.                           | You may terminate the Franchise Agreement if you are in compliance, and we materially breach the Franchise Agreement and fail to cure within 30 days after receiving your written notice.                                                                                                                                                                                                                                                                                                                                              |
| e. Termination by franchisor without cause | No provision                            | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| f. Termination by franchisor with cause    | Sections 14.B.-C.                       | Upon delivery of notice to you if you default under the terms of the Franchise Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| g. "Cause" defined – curable defaults      | Section 14.C.                           | You fail or refuse to make payments due us or to comply with your grand opening campaign obligations and do not cure such defaults within 10 business days, or you otherwise fail to comply with mandatory specifications in the Franchise Agreement and do not cure within 30 days.                                                                                                                                                                                                                                                   |

| Provision                                              | Section in franchise or other agreement | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| h. “Cause” defined – non-curable defaults              | Sections 14.B.-C.                       | Non-curable defaults: failure to find suitable Premises or failure to open Restaurant; failure to complete training; making a material misrepresentation or omission in application for the franchise; conviction or plea of no contest to a felony or other crime or offense that can adversely affect the reputation of you or the Franchised Restaurant; misuse of the Confidential Operations Manual; abandonment of business for two business days in any 12-month period; failure to relocate; surrender of control of business; submission of reports understating Royalty Fees by more than 3% for periods totaling three or more weeks more than twice during the franchise term; submission of reports late on two occasions in any 12-month period; continued violation of any health, safety or sanitation law or operation in a manner that presents a health or safety hazard; failure to pass two or more quality assurance inspections during any 12-month period; your receipt of three or more notices of default, regardless of whether cured, during any 12-month period; your offer of any unauthorized products or services from the Franchised Restaurant; your bankruptcy; and your misuse of Marks. |
| i. Franchisee’s obligations on termination/non-renewal | Article 15.                             | Obligations include: cease operating the Franchised Restaurant; sell the Franchised Restaurant’s assets and/or interest in premises to us if we exercise our purchase option; assign or sublease premises to us (or on our behalf) if we elect not to purchase the Premises; stop using the Marks; stop identifying yourself as a current or former franchisee of ours (except if you continue to own and operate another Franchised Restaurant); assign any assumed names to us; de-identify the Premises from any confusingly similar decoration, design or other imitation of a HERBIE’S BURGERS Restaurant (including removing decorations, fixtures and equipment that we specify); pay all amounts owed to us and all damages and costs incurred by us in enforcing the termination provisions; pay lost future royalties to us for remaining term if you terminate without cause or we terminate for valid cause; return all manuals and other confidential information to us; return all signs to us; sell to us, at our option, all assets of the Franchised Restaurant; notify telephone directories (web-based and print) of your lost rights to listings;                                                        |

| Provision                                                               | Section in franchise or other agreement | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                         |                                         | transfer listing as we direct; and comply with the covenants not to compete (see (r) below).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| j. Assignment of contract by franchisor                                 | Section 16.A.                           | No restriction on our right to assign except that assignee expressly assumes and agrees to perform our obligations under the Franchise Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| k. “Transfer” by franchisee – defined                                   | Sections 16.B.-D.                       | Includes transfer of assets, contract and all rights under the contract, or change of ownership.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| l. Franchisor approval of transfer by franchisee                        | Section 16.D.                           | We have the right to approve all transfers by you but will not unreasonably withhold approval.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| m. Conditions for franchisor approval of transfer                       | Section 16.D.                           | For a transfer to a third party, you must request our consent in writing; deliver copy of the proposed transfer agreement; transferee must meet our qualifications, successfully complete the training program and sign the then-current form of Franchise Agreement; refurbish the Premises at our request; your landlord must allow you to assign or sublease to transferee; we determine that purchase price and payment terms will not adversely affect transferee’s operation of Franchised Restaurant; you or your owners subordinate all of transferee’s obligations to you; you pay the transfer fee and all sums owed to us or our affiliate; you and your owners and guarantors sign a release. |
| n. Franchisor’s right of first refusal to acquire franchisee’s business | Section 16.G.                           | We have the right of first refusal to purchase your Franchised Restaurant if you or your owners receive and consider a formal, valid, written offer to purchase.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| o. Franchisor’s option to purchase franchisee’s business                | Section 15.I.                           | Upon termination or expiration of Franchise Agreement, we have the right to purchase the premises at fair market value and the Franchised Restaurant assets at forced liquidation value (excluding any value for leasehold improvements or fixtures belonging to landlord under your lease, franchise rights, goodwill associated with Marks or franchise network, and assets not reasonably necessary to the operation of the Restaurant) by providing you notice within 30 days after expiration or termination of the Franchise Agreement.                                                                                                                                                             |
| p. Death or disability of franchisee                                    | Sections 17.A.-B.                       | Your heirs, beneficiaries, devisees or legal representative can apply to us to continue operation of the Franchised Restaurant, or sell or otherwise transfer interest in the Franchised Restaurant, within 90 days after death or incapacity. If they fail to do so, the Franchise Agreement will terminate and we will have the option to buy the Franchised Restaurant.                                                                                                                                                                                                                                                                                                                                |

| Provision                                                                 | Section in franchise or other agreement | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| q. Non-competition covenants during the term of the franchise             | Section 13.C.                           | You must not divert or attempt to divert any business or customer to a competitor or perform any act which may harm the goodwill associated with the Marks and the System; employ or seek to employ without our consent any person then employed, or who was employed within the preceding one-year period, by us or another franchisee of ours or otherwise cause that person to leave his or her employ; or own, perform services for, or otherwise have any interest in any restaurant or other foodservice business (including a business you currently operate) that serves (or franchises or licenses businesses that serve) primarily burgers, sandwiches and other food items. |
| r. Non-competition covenants after the franchise is terminated or expires | Section 13.D.                           | You may not hire our or our affiliate's employees; own, maintain, advise, operate, engage in, be employed by, make loans to, or have any interest in or relationship or association with a business which sells prepared food products or services the same as or similar to any other product or service provided through the System for two years after the Franchise Agreement is terminated within the Designated Area, or within a 10-mile radius of the Franchised - Restaurant, or within a 10-mile radius of any other business using the System.                                                                                                                              |
| s. Modification of the agreement                                          | Articles 7. and 24.                     | The Franchise Agreement can be modified only by written agreement between the parties. We can modify or change the System through changes in the Confidential Operations Manual.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| t. Integration/merger clause                                              | Article 24(c).                          | Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises made outside the disclosure document and Franchise Agreement may not be enforceable. Nothing in the Franchise Agreement or any other related written agreement is intended to disclaim representations made in the disclosure document.                                                                                                                                                                                                                                                                                                                                  |
| u. Dispute resolution by arbitration or mediation                         | No provision                            | Except for certain disputes, all disputes must be first mediated, and if not settled by mediation, are then subject to arbitration.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| v. Choice of forum                                                        | Section 26.B.                           | Any action will be brought in the appropriate state or federal court in the county in which we maintain our principal place of business (subject to state law).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| w. Choice of law                                                          | Section 26.A.                           | New York law applies (subject to state law), except that disputes regarding the Marks will be governed by the United States Trademark Act of 1946.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

**ITEM 18**  
**PUBLIC FIGURES**

We do not use any public figures to promote our franchise.

**ITEM 19**  
**FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the Disclosure Document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting FRANCHISEHERBIES LLC, Attn: Aaron Wilson 636 Providence St. Albany, NY, Tel: 518.917.3367 the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20**  
**OUTLETS AND FRANCHISEE INFORMATION**

**Table No. 1**

**Systemwide Outlet Summary  
For Years 2022 to 2024**

| <b>Outlet Type</b> | <b>Year</b> | <b>Outlets at the<br/>Start of the Year</b> | <b>Outlets at the<br/>End of the Year</b> | <b>Net Change</b> |
|--------------------|-------------|---------------------------------------------|-------------------------------------------|-------------------|
| Franchised         | 2022        | 0                                           | 0                                         | 0                 |
|                    | 2023        | 0                                           | 0                                         | 0                 |
|                    | 2024        | 0                                           | 0                                         | 0                 |
| Company- Owned     | 2022        | 1                                           | 4                                         | +3                |
|                    | 2023        | 4                                           | 5                                         | +1                |
|                    | 2024        | 5                                           | 6                                         | +1                |
| Total Outlets      | 2022        | 1                                           | 4                                         | +3                |
|                    | 2023        | 4                                           | 5                                         | +1                |
|                    | 2024        | 5                                           | 6                                         | +1                |

**Table No. 2**

**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
For Years 2022 to 2024**

| State | Year | Number of Transfers |
|-------|------|---------------------|
| Total | 2022 | 0                   |
|       | 2023 | 0                   |
|       | 2024 | 0                   |

**Table No. 3**

**Status of Franchised Outlets  
For Years 2022 to 2024**

| State | Year | Outlets at Start of Year | Outlets Opened | Terminations | Non-Renewals | Reacquired by Franchisor | Ceased Operations - Other Reasons | Outlets at End of the Year |
|-------|------|--------------------------|----------------|--------------|--------------|--------------------------|-----------------------------------|----------------------------|
| Total | 2022 | 0                        | 0              | 0            | 0            | 0                        | 0                                 | 0                          |
|       | 2023 | 0                        | 0              | 0            | 0            | 0                        | 0                                 | 0                          |
|       | 2024 | 0                        | 0              | 0            | 0            | 0                        | 0                                 | 0                          |

**Table No. 4**

**Status of Company-Owned Outlets  
For Years 2022 to 2024**

| State    | Year | Outlets at Start of the Year | Outlets Opened | Outlets Reacquired From Franchisee | Outlets Closed | Outlets Sold to Franchisee | Outlets at End of the Year |
|----------|------|------------------------------|----------------|------------------------------------|----------------|----------------------------|----------------------------|
| New York | 2022 | 1                            | 3              | 0                                  | 0              | 0                          | 4                          |
|          | 2023 | 4                            | 1              | 0                                  | 0              | 0                          | 5                          |
|          | 2024 | 5                            | 1              | 0                                  | 0              | 0                          | 6                          |
| Total    | 2022 | 1                            | 3              | 0                                  | 0              | 0                          | 4                          |
|          | 2023 | 4                            | 1              | 0                                  | 0              | 0                          | 5                          |
|          | 2024 | 5                            | 1              | 0                                  | 0              | 0                          | 6                          |

**Table No. 5**

**Projected Openings as of December 31, 2024**

| State    | Franchise Agreements Signed But Outlet Not Opened | Projected New Franchised Outlets In The Next Fiscal Year | Projected New Company-Owned Outlets In the Next Fiscal Year |
|----------|---------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------------|
| New York | 0                                                 |                                                          |                                                             |
| Total    | 0                                                 |                                                          |                                                             |

Exhibit G is a list of the name of all HERBIE'S BURGERS franchisees as of December 31, 2024, and the addresses and telephone numbers of each of their franchised restaurants. Exhibit G also contains a list of the names, city and state, and current business telephone numbers (or, if unknown, the last known home telephone numbers) of each franchisee who has had an outlet terminated, cancelled, not renewed, or who otherwise voluntarily or involuntarily ceased to do business under our Franchise Agreement as of December 31, 2024, or who has not communicated with us within 10 weeks of this disclosure document's issuance date. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

We are a new franchisor and do not have any franchisees so, during the last three years, we do not have any current or former franchisees that have signed provisions restricting their ability to speak openly about their experience with HERBIE'S BURGERS. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you. There is no trademark-specific franchisee organization associated with the HERBIE'S BURGERS franchise system.

## **ITEM 21** **FINANCIAL STATEMENTS**

Exhibit E contains our opening Balance Sheet dated as May 31, 2025.

**We are a start-up franchisor and have not been in business for three years or more. Therefore, we cannot include audited financial statements for the previous three fiscal years.**

Our fiscal year end is December 31.

## **ITEM 22** **CONTRACTS**

The following agreements are exhibits:

Exhibit C – Franchise Agreement (with exhibits)

Exhibit G – General Release Language

Exhibit H – State Addenda and Agreement Riders

Exhibit I – Pre-Closing Questionnaire (*not applicable in California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin*)

## **ITEM 23** **RECEIPTS**

Attached as Exhibit K of this disclosure document is a list of the State Effective Dates for each registration state. Attached as Exhibit L are duplicate Receipts to be signed by you. You should sign both copies of the Receipt. Keep one for your records and return the other one to us.

**EXHIBIT A**  
**TO THE DISCLOSURE DOCUMENT**  
**LIST OF STATE AGENCIES**

## LIST OF STATE AGENCIES

### California

Department of Financial Protection & Innovation  
320 West 4th Street, Suite 750  
Los Angeles, California 90013  
(866) 275-2677

### Hawaii

Commissioner of Securities of the State of Hawaii  
Department of Commerce and Consumer Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
(808) 586-2722

### Illinois

Office of Attorney General  
500 S. Second Street  
Springfield, Illinois 62706  
(217) 782-4465

### Indiana

Franchise Section  
Securities Division  
302 W. Washington St., Room E-111  
Indianapolis, Indiana 46204  
(317) 232-6681

### Maryland

Office of Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202  
(410) 576-6360

### Michigan

Department of Attorney General  
Consumer Protection Division  
Attn: Franchise Section  
525 W. Ottawa St.  
G. Mennen Williams Building, First Floor  
Lansing, Michigan 48909  
(517) 373-7117

### Minnesota

Department of Commerce  
85 7<sup>th</sup> Place East, Suite 280  
St. Paul, Minnesota 55101-3165  
(651) 539-1600

### New York

NYS Department of Law  
Investor Protection Bureau  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, New York 10005  
(212) 416-8222

### North Dakota

Franchise Examiner  
North Dakota Securities Department  
600 East Boulevard Avenue  
State Capitol – 5<sup>th</sup> Floor Dept. 414  
Bismarck, North Dakota 58505-0510  
(701) 328-4712

### Rhode Island

Securities Division  
Department of Business Regulation  
1511 Pontiac Avenue, Building 69-1  
Cranston, Rhode Island 02920

### South Dakota

Division of Insurance  
Securities Regulation  
124 S. Euclid, Suite 104  
Pierre, South Dakota 57501  
(605) 773-3563

### Virginia

State Corporation Commission  
Division of Securities and Retail Franchising  
1300 Main Street, 9<sup>th</sup> Floor  
Richmond, Virginia 23219  
(804) 371-9051

### Washington

Administrator  
Department of Financial Institutions  
Securities Division  
150 Israel Road S.W.  
Tumwater, Washington 98501

### Wisconsin

Franchise Administrator  
Division of Securities  
Department of Financial Institutions  
345 West Washington Avenue  
Madison, Wisconsin 53703

**EXHIBIT B**  
**TO THE DISCLOSURE DOCUMENT**  
**LIST OF AGENTS FOR SERVICE OF PROCESS**

## LIST OF AGENTS FOR SERVICE OF PROCESS

### **California**

Department of Financial Protection & Innovation  
320 West 4th Street, Suite 750  
Los Angeles, California 90013

### **Hawaii**

Commissioner of Securities of the State of Hawaii  
Department of Commerce and Consumer Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

### **Illinois**

Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62706

### **Indiana**

Indiana Secretary of State  
302 W. Washington St., Room E-111  
Indianapolis, Indiana 46204

### **Maryland**

Maryland Securities Commissioner  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202-2020

### **Michigan**

Michigan Department of Commerce  
Corporations and Securities Bureau  
670 Law Building  
Lansing, Michigan 48913

### **Minnesota**

Commissioner of Commerce  
85 7<sup>th</sup> Place East, Suite 280  
St. Paul, Minnesota 55101-3165

### **New York**

Secretary of State  
99 Washington Avenue  
Albany, NY 12231

### **North Dakota**

Securities Commissioner  
State of North Dakota  
600 East Boulevard Avenue, Fifth Floor  
Bismarck, North Dakota 58505

### **Oregon**

Division of Finance and  
Corporate Securities  
Labor and Industries Building  
Salem, Oregon 97310

### **Rhode Island**

Director of Department of Business Regulation  
Securities Division  
1511 Pontiac Avenue, Building 69-1  
Cranston, Rhode Island 02920

### **South Dakota**

Director  
Division of Insurance  
Securities Regulation  
124 S. Euclid, Suite 104  
Pierre, South Dakota 57501

### **Virginia**

Clerk of the State Corporation Commission  
1300 East Main Street, First Floor  
Richmond, Virginia 23219

### **Washington**

Director of the Department of Financial Institutions  
Securities Division  
150 Israel Road SW  
Tumwater, Washington 98501

### **Wisconsin**

Commissioner of Securities  
Fourth Floor  
345 West Washington Avenue  
Madison, Wisconsin 53703

**EXHIBIT C**  
**TO THE DISCLOSURE DOCUMENT**  
**FRANCHISE AGREEMENT**



**FRANCHISEHERBIES LLC  
FRANCHISE AGREEMENT**

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**FRANCHISEHERBIES LLC**  
**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** (this “**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”) by and between **FRANCHISEHERBIES LLC**, a New York limited liability company having its principal place of business at 636 Providence Street, Albany, NY 12208 (“**Franchisor**”, “we”, “our” or “us”), and \_\_\_\_\_, a(n) \_\_\_\_\_ (“**Franchisee**”, “you”, or “your”).

**WHEREAS**, Franchisor and its Affiliate (“**Affiliate**”) have developed and own a distinctive System (“**System**”), identified by the Mark “**HERBIE’S BURGERS**”, relating to the establishment, development and operation of restaurants (“**Franchised Restaurants**”) providing carry-out and on-premises dining services, featuring Grass-Fed Smash Burgers, Chicken Sandwiches, Milkshakes & Fries, and other food and beverage products, all prepared in accordance with specified recipes and procedures (“**Menu Items**”). Franchisor and its Affiliate may continuously develop recipes, related presentation, packaging and marketing standards and techniques for all Menu Items; and

**WHEREAS**, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior layout, design and color scheme; exclusively designed signage, decorations, furnishings and materials; display cooking; special recipes, formulae, menus and food and beverage designations; the HERBIE’S BURGERS Confidential Operations Manual (“**Confidential Operations Manual**”); food and beverage storage, preparation and service procedures and techniques; operating procedures for sanitation and maintenance; and methods and techniques for inventory and cost controls, record keeping and reporting, purchasing, sales promotion and advertising; all of which may be changed, improved and further developed by Franchisor from time to time; and

**WHEREAS**, Franchisor’s Affiliate, Herbiesburgerscorporation, LLC (“**HBC**”), has certain rights together with all the goodwill connected thereto in and to the “**HERBIE’S BURGERS**” trade names, trademarks, service marks and associated logos, commercial symbols, and such other trade names, trademarks, and service marks now designated (and may hereinafter be designated by Franchisor in writing) as part of the System (“**Marks**”) and has licensed the rights in the Marks to Franchisor with the right to sublicense to Franchisor’s franchisees; and

**WHEREAS**, Franchisor grants to qualified persons franchises to own and operate HERBIE’S BURGERS Franchised Restaurants and Franchisee desires to operate a HERBIE’S BURGERS Franchised Restaurant using the System and Marks and has applied for a franchise, which application has been approved by Franchisor in reliance upon all of the representations made therein; and

**WHEREAS**, Franchisee understands and acknowledges the importance of Franchisor’s high and uniform standards of quality, operations and customer service and the necessity of operating the HERBIE’S BURGERS Franchised Restaurant in conformity with Franchisor’s standards and specifications.

**NOW, THEREFORE**, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, hereby agree as follows:

**1. GRANT**

A. Grant. Subject to the provisions of this Agreement, Franchisor grants to Franchisee the right to continuously operate a HERBIE’S BURGERS Franchised Restaurant at the premises identified (or to be identified) in Exhibit A (“**Premises**”), and to use the Marks in the operation and promotion of the Franchised Restaurant. Franchisee undertakes the obligation and agrees to continuously operate the HERBIE’S BURGERS Franchised Restaurant at the Premises during the term hereof strictly in accordance with Franchisor’s System and the terms and conditions of this Agreement.

This Agreement specifically grants Franchisee no right, among others, to **(1)** sublicense the System or Marks; **(2)** to co-brand with another concept; **(3)** to provide delivery services, or to deliver or ship products offered for sale by or through the Franchised Restaurant, regardless of the destination, without Franchisor's prior written consent; **(4)** to prepare or sell any product or item related to the Marks or the Franchised Restaurant at any location other than the Premises (excluding approved catering services as expressly provided for in this Agreement); or **(5)** to distribute products offered for sale by or through the Franchised Restaurant through wholesale channels, that is, to third parties for resale, retail sale, or further distribution by such third party, including such wholesale channels as supermarkets, convenience stores, or other retailers.

B. Designated Area. This Agreement grants Franchisee a “**Designated Area**” identified in Exhibit A. Except for sales in “Closed Markets” (which are carved out from territorial protection as described in Exhibit A), during the term of this Agreement and as long as Franchisee is not in default under this Agreement, Franchisor will not own or operate, or grant anyone else the right to own or operate a HERBIE'S BURGERS restaurant at a location in the Designated Area. Franchisor reserves to itself all other rights. In consideration of Franchisor's grant of a Designated Area to Franchisee, Franchisee agrees to, at all times, use its best efforts to promote and increase the sales and service of Menu Items and to effect the widest and best possible distribution throughout the Designated Area, soliciting and servicing all potential customers for HERBIE'S BURGERS food products and services. Failure of Franchisee to devote its best efforts to adequately represent its HERBIE'S BURGERS Franchised Restaurant in its Designated Area through its sales and service efforts shall be deemed just cause for termination.

C. Reservation of Rights. Except for the restrictions described in Section 1.B., there is no restriction Franchisor's right to use and to license the use of the Marks. Franchisor may own and operate and grant others the right to own and operate HERBIE'S BURGERS restaurants, and may sell and license others the right to sell products offered at the Franchised Restaurant and other products identified by the Marks anywhere outside the Designated Area, regardless of proximity to or economic effect on the Franchised Restaurant. Franchisor may also own and operate, and grant others the right to own and operate, HERBIE'S BURGERS restaurants, and may sell and license others the right to sell items and products identified by the Marks in “**Closed Markets**” (as defined in Exhibit A) within the Designated Area. Franchisor may also distribute products and services identified by the Marks, such as pre-packaged Menu Items, through alternative channels of distribution including grocery stores, supermarkets, convenience stores, and via mail order, catalog sales and/or the Internet.

D. Right to Operate Businesses Under Different Marks. Nothing in this Agreement prohibits or restricts Franchisor from **(1)** owning, acquiring, establishing, operating, or granting franchise rights for one or more other businesses under a different trademark or service mark (i.e. a mark other than HERBIE'S BURGERS), whether or not the business is the same as or competitive with HERBIE'S BURGERS restaurants; or **(2)** owning, operating, or franchising one or more businesses offering products or services other than the Menu Items under the HERBIE'S BURGERS Marks or some derivative of the Marks.

E. Discretionary Exception to System Uniformity. Franchisee acknowledges that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor specifically reserves the right and privilege, at its sole discretion and as it may deem in the best interests of all concerned in any specific instance, to vary standards for any System franchisee based upon the peculiarities of the particular site or circumstance, density of population, business potential, population of

trade area, existing business practices or any other condition which Franchisor deems to be of importance to the successful operation of such franchisee's business. Franchisee shall not be entitled to require Franchisor to grant to Franchisee a like or similar variation hereunder.

## 2. TERM AND RENEWAL

A. Initial Term. Unless sooner terminated as provided in this Agreement, the term of this Agreement begins on the Effective Date and expires ten (10) years from the date the Franchised Restaurant actually opens to the public for business, which may not be the Target Opening Date (the "**Expiration Date**").

B. Renewal Terms. Franchisee has the right to renew its franchise rights for two (2) additional successive terms of five (5) years each if, at the end of each term, each of the following conditions has been satisfied:

1. Franchisee has notified Franchisor, in writing, of its intent to renew at least nine (9) months, but not more than fifteen (15) months, prior to the expiration of the then-current term;
2. Franchisee is not in default under the terms of this Agreement or any other agreement with Franchisor;
3. Franchisee has complied and continues to comply with the materials terms and conditions of this Agreement or any successor franchise agreement (as applicable) throughout the term;
4. Franchisee has the right to remain in possession of the Franchised Restaurant Premises, or has secured a substitute premises that Franchisor has approved, in writing;
5. Franchisee has satisfied all obligations owed to Franchisor, its Affiliates and third party suppliers;
6. Franchisee has timely met all payment obligations to Franchisor and its Affiliates and third party suppliers throughout the term of this Agreement or, if applicable, the term of the first renewal agreement;
7. The Franchised Restaurant has been renovated and refurbished so that it meets Franchisor's then-current image and trade dress standards, and all furniture, fixtures, equipment, signage, and software has been replaced, updated and/or upgraded so that they meet Franchisor's then-current standards and specifications for those items;
8. Franchisee meets Franchisor's then-current qualifications for new franchisees;
9. Franchisee has complied with Franchisor's then-current training requirements;
10. Franchisee and each person who has guaranteed Franchisee's obligations under this Agreement signs a general release in the form Franchisor prescribes; and
11. Franchisee has executed upon renewal Franchisor's then-current form of franchise agreement.

C. Renewal Process. Within sixty (60) days after Franchisor receives Franchisee's timely notice of Franchisee's intent to renew, Franchisor will provide written notice to Franchisee advising whether or not the conditions for renewal have been satisfied. If corrective action can be taken to meet one or more of the conditions, Franchisor will identify and provide a schedule for completing such action(s). Franchisor also will provide to Franchisee the information necessary to complete renovations, replacements, updates, and upgrades required to meet Franchisor's then-current image and trade dress

standards and Franchisor's then-current standards for furniture, fixtures, equipment, signage, and software, and a schedule for completion.

D. Execution of Renewal Franchise Agreement. No later than sixty (60) days prior to expiration of the current term, Franchisor will deliver to Franchisee its franchise disclosure document containing a copy of its then-current franchise agreement. This is the form of franchise agreement that will govern the successor term. It may be materially different than this Agreement, and may include, among other things, different or higher fees. This form of agreement will be modified to reflect a five-year term. Franchisor also will deliver to Franchisee a general release to be signed by Franchisee and each person who has personally guaranteed Franchisee's obligations under this Agreement.

No later than thirty (30) days prior to the expiration of the current term, Franchisee must sign and return to Franchisor **(1)** the executed franchise agreement and all personal guaranties required under the franchise agreement, **(2)** the executed general release, **(3)** proof that Franchisee has the right to remain in possession of the Franchised Restaurant premises for the successor term, and **(4)** proof of payment of any amounts Franchisee owes to Franchisor, its Affiliates, and Franchisee's trade creditors. No later than thirty (30) days prior to the expiration of the current term, Franchisee also must comply with Franchisor's then-current training requirements, and shall have completed all renovations, replacements, updates, and upgrades required to meet Franchisor's then-current image and trade dress standards and Franchisor's then-current standards for furniture, fixtures, equipment, signage, and software.

The foregoing conditions and procedures apply to each five-year renewal term. Franchisor may extend any of the foregoing deadlines in its sole discretion.

E. Holdover. If Franchisee continues to accept the benefits of this Agreement after the expiration of the term but does not complete the requirements in Sections 2.B. through 2.D., then at Franchisor's sole option, this Agreement may be treated as **(1)** expired as of the Expiration Date and Franchisee will be operating without a franchise or license to do so and in violation of Franchisor's rights to the Marks and System; or **(2)** continued on a month-to-month basis (a "**Holdover Period**") and all Franchisee's obligations will remain in full force and effect during the Holdover Period as if the Agreement had not expired; provided, however, that during any Holdover Period Franchisee will pay a Royalty Fee and Advertising Fund contribution equal to 150% of the rates described in this Agreement. Each Holdover Period expires at the end of each calendar month unless this Agreement is continued as provided in this Section 2.E. The Holdover Period does not create any new franchise rights and upon expiration of the final Holdover Period, Franchisee will be bound by all post-term obligations as provided in this Agreement.

### 3. RESTAURANT LOCATION

A. General. Franchisee will operate the Franchised Restaurant at the Premises identified in Exhibit A, and will not relocate the Franchised Restaurant without the prior written approval of Franchisor which may be withheld by Franchisor in its sole discretion.

B. Site Selection. Franchisee must identify and acquire a site, by executing either a lease or purchase agreement, for the Franchised Restaurant within one hundred and eighty (180) days after executing this Agreement (the "**Control Date**"). The site must be located within the Site Selection Area (the "**Site Selection Area**") identified in Exhibit A, must meet Franchisor's then-current site selection criteria, and must otherwise be mutually acceptable to Franchisee and Franchisor, where Franchisor may withhold approval at its sole discretion. Franchisor may assist Franchisee in site selection, in its sole discretion, which assistance may include making available to Franchisee the services of the Franchisor's

designated marketing research firm. Franchisor may require that Franchisee use only a real estate broker that Franchisor has designated or approved to assist Franchisee in locating a suitable site for the Franchised Restaurant. Site selection is solely Franchisee's responsibility. Once Franchisee has acquired the Premises for the Franchised Restaurant, Franchisor and Franchisee will mutually agree upon a Designated Area and Exhibit A will be supplemented accordingly. **The parties acknowledge and agree that Franchisor's undertaking to provide site selection assistance does not constitute a promise or guaranty that any site is available for occupancy or that a Franchised Restaurant operating at a suggested site will be profitable. Franchisee is solely responsible for selecting a site and securing the Premises for the Franchised Restaurant.**

Franchisee understands and agrees that Franchisor's approval of Franchisee's proposed site, granted in accordance with this Section 3.B., may be conditioned upon Franchisee's agreement to perform, or to cause to be performed, certain modifications to the proposed site ("**Modifications**"). Before the Franchised Restaurant may begin operations, Franchisor must have approved the completed Modifications in writing. The required Modifications, if any, are outlined in Exhibit A to this Agreement and are incorporated herein by reference.

C. Franchise Site Application. For each proposed site that Franchisee identifies, Franchisee must deliver to Franchisor a completed franchise site application in a form Franchisor prescribes, including such information about the site as Franchisor may reasonably request to perform its evaluation. This information may include, among other things, a description of the proposed site, demographic and psychographic characteristics, traffic patterns, parking, character of the neighborhood, competition from other businesses in the area, the proximity to other businesses, the nature of other businesses in proximity to the site, and other commercial characteristics (including the purchase price, rental obligations, and other lease terms for the proposed site) and the size, appearance, other physical characteristics, a site plan of the premises, and a letter of intent or such other document that, to Franchisor's satisfaction, evidences your favorable prospects in obtaining the proposed site location. Franchisor will approve or refuse to approve a proposed site at its sole discretion, in writing, after Franchisor's receipt of these documents and any additional information as Franchisor may reasonably require. **The parties acknowledge and agree that Franchisor's site approval is not an assurance that the Franchised Restaurant will achieve a certain sales volume or level of profitability; it means only that the proposed site meets Franchisor's minimum criteria for HERBIE'S BURGERS Franchised Restaurants.**

D. Lease. If Franchisee will occupy the Premises under a lease, Franchisor will have the right to approve the lease terms, and the lease will not be signed until it has been reviewed and approved by Franchisor. Franchisor's approval of a lease will be conditioned on the inclusion of terms set forth in the sample Lease Rider attached as Exhibit E (which are incorporated herein by reference). **The parties acknowledge and agree that Franchisor's approval of a lease does not mean that the economic terms of the lease are favorable, it means only that the lease contains the lease terms that Franchisor requires.**

E. Extension of Time to Secure Premises; Failure to Secure Premises. If an acceptable site for the Franchised Restaurant is not identified and acquired by the original Control Date, at Franchisee's written request, the Control Date shall be extended for an additional ninety (90) days. However, if no acceptable site for the Franchised Restaurant is identified and secured by the extended Control Date, Franchisor may terminate this Agreement. The initial franchise fee is not refundable under such circumstances.

F. Franchised Restaurant Design and Build Out. Franchisee shall promptly after obtaining possession of the site for the Franchised Restaurant: **(1)** cause to be prepared and submit for approval by Franchisor a site survey and any modifications to Franchisor's basic architectural plans and specifications (not for construction) for the development of a HERBIE'S BURGERS Franchised Restaurant (including requirements for dimensions, exterior design, materials, interior design and layout, equipment, fixtures, furniture, signs and decorating) at the site leased or purchased, provided that Franchisee may modify Franchisor's basic plans and specifications only to the extent required to comply with all applicable ordinances, building codes and permit requirements and with prior notification to and approval by Franchisor; **(2)** obtain all required zoning changes, building, utility, health, sanitation and sign permits and licenses and any other required permits and licenses; **(3)** purchase or lease equipment, fixtures, furniture and signs according to Franchisor's standards and specifications; **(4)** complete the construction and/or remodeling, equipment, fixtures, furniture and sign installation and decorating of the Franchised Restaurant in full and strict compliance with plans and specifications provided and approved by Franchisor and in compliance with all applicable ordinances, building codes and permit requirements; **(5)** obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services; and **(6)** otherwise complete development of the Franchised Restaurant and have it ready to open and begin operations on or by the Target Opening Date identified in Exhibit A.

During construction, Franchisee must maintain general liability and property damage insurance of the type and with the limits Franchisor requires, protecting Franchisee, Franchisor, and its Affiliates, and their respective partners, shareholders, directors, agents, and employees. Such policy or policies shall be written by a responsible insurer or insurers acceptable to Franchisor and shall contain a waiver of subrogation in favor of Franchisor and its Affiliates, and their respective partners, shareholders, directors, agents, and employees. Franchisee shall notify Franchisor in writing when construction begins, and thereafter shall provide a progress report as frequently as required by Franchisor and in the form designated by Franchisor. Franchisor and its designees have the right to inspect the site at all reasonable times.

G. Opening. When a site is identified, the parties will mutually agree on a target opening date ("**Target Opening Date**"), which will be no later than One Hundred and Fifty (150) days, or Two Hundred and Seventy (270) days if an extension is requested and granted, from the date Franchisee takes possession of the site, and will be reflected on Exhibit A.

1. Franchisee may open the Franchised Restaurant for business only with prior written permission of Franchisor.

2. Franchisor will grant permission to open only if **(a)** all amounts due Franchisor under this Agreement have been paid; **(b)** the Franchised Restaurant has been constructed and equipped according to Franchisor's standards and specifications; **(c)** all of Franchisee's pre-opening and training obligations have been satisfied; **(d)** Franchisor has received a fully executed copy of the lease for the Franchised Restaurant Premises containing the mandatory lease terms described in Section 3.D.; **(e)** Franchisor has received from Franchisee certificates of insurance as required by Article 12; and **(f)** Franchisee is otherwise in good standing under this Agreement.

H. Operational Expenditures and Capital Expenses. Franchisor periodically may modify standards, specifications, and operating procedures, and these modifications may obligate Franchisee to invest additional capital in the Franchised Restaurant and/or incur higher operating costs. Franchisee agrees to implement any changes in standards, specifications, and operating procedures within the reasonable time period Franchisor requests, whether they involve refurbishing or remodeling the

Franchised Restaurant, buying new operating assets, adding new products or services, or otherwise modifying the nature of the Franchised Restaurant’s operations, as if they were part of this Agreement as of the day it was signed, provided, however, that Franchisor will not obligate Franchisee to make upgrades or modifications in the Franchised Restaurant that would be considered capital expense items during the first two (2) years of the Franchised Restaurant’s operation.

I. Relocation of Franchised Restaurant. If the lease for the site of the Franchised Restaurant expires or terminates without fault of Franchisee, or if the site is destroyed, condemned or otherwise rendered unusable, or as otherwise may be agreed upon in writing by Franchisor and Franchisee, Franchisor shall grant permission for relocation of the Franchised Restaurant at a location and site acceptable to Franchisor, provided that the Franchised Restaurant must be open for business at the new location within Two Hundred and Seventy (270) days of closing the previous location. If Franchisee is allowed to relocate its Franchised Restaurant, Franchisee must comply with Franchisor’s then-current standards and specifications for Franchised Restaurants and site selection will be governed by the terms of this Article 3. Franchisor shall make no guarantee of Franchisee’s success at this new location. Franchisee is solely responsible for all relocation costs and expenses, and Franchisee agrees to reimburse Franchisor for its reasonable attorneys’ fees and other relocation-related costs and expenses.

4. **FEES**

A. Initial Franchise Fee. Upon execution of this Agreement, Franchisee will pay to Franchisor an Initial Franchise Fee in the amount specified below. The Initial Franchise Fee is fully earned by Franchisor when paid and is not refundable.

(1) \_\_\_\_\_ The Initial Franchise Fee is \$30,000.00

(2) \_\_\_\_\_ The Initial Franchise Fee is \$ \_\_\_\_\_

B. Royalty Fee. During the term of this Agreement, Franchisee will pay to Franchisor a nonrefundable Royalty Fee (“**Royalty Fee**”) equal to five percent (5%) of Gross Revenues for the right to use the System and Marks. If any taxes, fees, or assessments are imposed on Franchisee’s payment of the Royalty Fee (except taxes imposed on Franchisor’s net taxable income) Franchisee must also pay or reimburse Franchisor the amount of the taxes, fees, or assessments within fifteen (15) days after Franchisee’s receipt of Franchisor’s written notice.

C. Gross Revenues. The term “**Gross Revenues**” means all revenue derived from the operation of the Franchised Restaurant, including sales revenue derived from off-premises sales, whether received in cash, in services in kind, from barter and/or exchange, on credit (whether or not payment is received) or otherwise, less sales tax or other taxes collected from Franchisee’s customers if paid to the appropriate taxing authority. Gross Revenues does not include the amount of any documented refunds and credits given in accordance with our policies and in good faith to customers by Franchisee (but only if the original amounts were included in Gross Revenues). Gross Revenue is not reduced by the amount of any discounts on products or services sold to employees, family members, or other businesses you own or control or by the amount paid to, collected by, or shared with third-party food ordering and delivery

systems with which we allow the Franchised Restaurant to do business. All of those transactions must be entered into the POS System at the full, standard retail price for purposes of calculating Gross Revenue. All barter and/or exchange transactions pursuant to which Franchisee furnishes services and/or products in exchange for goods or services to be provided to Franchisee by a vendor, supplier or customer shall, for the purpose of determining Gross Revenues, be valued at the full retail value of the goods and/or services so provided to Franchisee.

D. Other Payments. In addition to all other payments provided in this Agreement, Franchisee will pay to Franchisor when due:

1. All amounts advanced by Franchisor or which Franchisor has paid, or for which it has become obligated to pay on your behalf for any reason whatsoever, and all amounts that Franchisee owes to trade creditors.

2. The amount of all sales taxes, use taxes, personal property taxes and similar taxes, which shall be imposed upon Franchisee and required to be collected or paid by Franchisor *(a)* on account of Franchisee's Gross Revenue, or *(b)* on account of fees or other amounts that Franchisee pays to Franchisor. Franchisor, in its discretion, may collect the taxes in the same manner as Royalty Fees are collected and promptly pay the tax collections to the appropriate governmental authority; provided, however, that unless Franchisor so elects, it shall be Franchisee's responsibility to pay all sales, use or other taxes now or hereinafter imposed by any governmental authorities on initial franchise fees, royalty fees and advertising fund contributions.

E. No Set-Off Rights. Franchisee may not set off, deduct, or otherwise withhold any fees or other amounts due Franchisor under this Agreement on grounds of alleged nonperformance by Franchisor of any of its obligations or for any other reason. Withholding royalties or any other amounts due to Franchisor is a material breach of this Agreement.

F. Payment Terms. All payments required under this Agreement will be paid within the time Franchisor specifies in writing or in its Confidential Operations Manual ("**Due Date**"). If the Due Date is not on a Business Day, then payment will be due on the next Business Day. "Business Day" means each day other than a Saturday, Sunday, U.S. holiday or any other day on which the Federal Reserve is not open for business in the United States.

G. Payment Procedures. Unless otherwise instructed by Franchisor, all Royalty Fees, Advertising Fund contributions, Local Advertising Required Spend (if any), amounts due for purchases by Franchisee from Franchisor and other amounts which Franchisee owes to Franchisor shall be paid through an Electronic Depository Transfer Account ("**Electronic Depository Transfer Account**") as further described in the Confidential Operations Manual. Immediately following execution of this Agreement, Franchisee shall set up an Electronic Depository Transfer Account and Franchisor shall have access to such account for the purpose of receiving payment for amounts due to it pursuant to the terms of this Agreement. Franchisee agrees to execute any required documentation in order to grant Franchisor such access. Every Wednesday, Franchisee shall make deposits to the Electronic Depository Transfer Account sufficient to cover amounts owed to Franchisor on the preceding Sunday for Royalty Fees, Advertising Fund contributions and other funds owed to Franchisor. Deposits for all other amounts owed

to Franchisor shall be in accordance with the procedures set forth in the Confidential Operations Manual. Also, the specified days in this Section 4.G. (i.e. with respect to deposits and withdrawal payments) may be modified by Franchisor in the Confidential Operations Manual.

H. Late Fee; Nonsufficient Funds Charge; Interest. Franchisee agrees to pay Franchisor a One Hundred Dollar (\$100) late fee for each required payment not made on or before its original due date (whether for Royalty Fees, Advertising Fund contributions, amounts due for purchases by Franchisee from Franchisor or its Affiliates, and other amounts which Franchisee owes to Franchisor) and for each payment not honored by Franchisee's financial institution. (Franchisee also must reimburse Franchisor's bank charges for Franchisee's dishonored payments.) This late fee is not interest or a penalty but compensates Franchisor for increased administrative and management costs due to Franchisee's late payment. In addition, all amounts Franchisee owes Franchisor or its affiliates that are more than seven (7) days late will bear interest, accruing as of their original due date, at one and one-half percent (1.5%) per month or the highest commercial contract interest rate the law allows, whichever is less. Franchisor may debit Franchisee's Electronic Depository Transfer Account automatically for late fees and interest.

I. Administrative Fee. If Franchisee fails to make any required submission to Franchisor by the date due, Franchisee agrees to pay an amount, per occurrence and as determined by us in our sole discretion, which represents our administrative costs in obtaining the required submission. Such required submission may include, but is in no way limited to, financial reports or statements, certificates or endorsements, corporate documents, and any other information, report, or documentation that Franchisor has the right to require be submitted to it pursuant to the terms of this Agreement. Payment will be due on demand by such method as Franchisor directs.

J. Partial Payments; Application of Payments. If Franchisee pays less than the amount due, Franchisee's payment will be considered a partial payment on account. Franchisor may accept such payment as a partial payment, irrespective of any endorsement or other statement that the payment constitutes full payment. Franchisor's acceptance of such partial payment will not be considered a waiver of any of its right to demand or receive full payment, and Franchisee hereby waives any estoppel defense in this regard. Franchisor may apply Franchisee's payments to any indebtedness, in its sole and reasonable discretion, regardless of any designation that accompanies the payment.

K. Collection Costs and Expenses. If Franchisee fails to comply with any of the terms or conditions of this Agreement, Franchisee agrees to promptly reimburse Franchisor for any and all costs and expenses that it incurs in enforcing the terms of this Agreement including, without limitation, fees paid to a collection agency, and reasonable attorneys' fees and accountants' fees. This obligation is in addition to and not in lieu of any other remedies available to Franchisor under this Agreement and applicable law.

## **5. TRAINING AND ASSISTANCE**

A. Initial Training: Orientation. If this Agreement is being signed in conjunction with Franchisee's first Franchised Restaurant, then Franchisee's managing owner must complete Franchisor's

two (2)-day orientation program within eight (8) weeks of the Effective Date of this Agreement. All expenses incurred in attending this orientation program are the sole responsibility of Franchisee.

B. Initial Training: On-The-Job Program. If this Agreement is being signed in conjunction with Franchisee's first Franchised Restaurant, then before Franchisee may open the Franchised Restaurant for business, Franchisee's managing owner, designated manager, and any other individuals Franchisor may require, will attend and successfully complete Franchisor's on-the-job training program. All expenses incurred by Franchisee and its employees in attending such program, including, without limitation, travel costs, room and board expenses, and employees' salaries, shall be the sole responsibility of Franchisee. The On-The-Job Training Program lasts approximately two (2) weeks and must be successfully completed at least six (6) weeks before the Franchised Restaurant opens for business. If Franchisee previously served as a HERBIE'S BURGERS Restaurant manager then, at Franchisor's option, Franchisor may elect to reduce the On The Job Training Program to a one (1)-week period. If this Agreement is not being signed in conjunction with Franchisee's first Franchised Restaurant, Franchisor, at its option, shall determine whether to provide the On-The-Job Training Program to Franchisee's personnel and/or whether to require that any of Franchisee's personnel complete all or any portion of The On-The-Job Training Program.

C. Initial Training: On-Site Opening Assistance. If this Agreement is being signed in conjunction with Franchisee's first Franchised Restaurant, then, for approximately ten (10) days around the commencement of operations of the Franchised Restaurant, Franchisor will furnish to Franchisee, at Franchisee's Premises and at Franchisor's expense, one (1) of Franchisor's representatives for the purpose of facilitating the opening and initial operation of the Franchised Restaurant.

During this period, such representative shall also assist Franchisee in establishing and standardizing procedures and techniques essential to the operation of a HERBIE'S BURGERS Franchised Restaurant. Should Franchisee request additional assistance from Franchisor in order to facilitate the opening of the Franchised Restaurant and should Franchisor, in its discretion, deem it necessary, feasible and appropriate to comply with the request, Franchisee shall reimburse Franchisor for the expense of Franchisor providing such additional assistance which may include Franchisor's then-current service fee, as set forth in the Confidential Operations Manual which may be amended from time to time. Franchisee is required to successfully complete this phase of the initial training program as well.

D. Failure to Successfully Complete Initial Training Program. If Franchisor determines, in its sole discretion, that Franchisee is unable to satisfactorily complete either phase of the training program as described in Sections 5.A. through 5.C. above, Franchisor shall have the right to: **(1)** require Franchisee to attend such additional training so as to demonstrate its ability to operate the Franchised Restaurant to Franchisor's satisfaction; or **(2)** terminate this Agreement in accordance with its terms.

E. Additional Training. Franchisor from time to time may provide and, if it does, may require that previously-trained and experienced franchisees, their managers, and/or their employees attend and successfully complete refresher training programs or seminars to be conducted at such location as may be designated by Franchisor. Attendance at such refresher training programs or seminars shall be at Franchisee's sole expense, provided, however, that attendance shall not be required at more than one (1)

such program in any calendar year and shall not collectively exceed four (4) business days in duration during any calendar year.

F. Mandatory Manager Training. If Franchisee designates new or additional managers after the initial training program, Franchisor shall provide training to such managers at the then-current published rates. Any and all designated managers shall be required to successfully complete the training program provided at Franchisor's headquarters or such other location designated by Franchisor. Franchisee shall bear all costs incurred by Franchisee's employees attending such training program.

G. Ongoing Consultation. Franchisor shall provide such ongoing consultation and advice as it deems appropriate, which may include information about new service and product development, instruction concerning the operation and management of HERBIE'S BURGERS restaurants, advertising and marketing advice, and financial and accounting advice. Such consultation and advice may be provided, in Franchisor's discretion, through Franchised Restaurant visits by Franchisor personnel, via meetings, seminars or conferences, and/or through dissemination of electronic or printed materials.

H. Special Meetings and Conferences. Franchisor may, in addition to the additional training and mandatory manager training referenced above, require you to attend one or more special meetings of all, or a group of, HERBIE'S BURGERS franchisees as designated by the Franchisor. If Franchisor designates any such special meeting as mandatory, Franchisee and certain other key employees (as Franchisor shall designate in its sole discretion) shall attend. Franchisee shall be required to attend in-person at least one special meeting each year (typically the HERBIE'S BURGERS National Franchise Conference); provided, however, that this special meeting will not last more than four business days. In the event that Franchisor requires Franchisee's attendance at more than one special mandatory meeting in a calendar year and Franchisee (or certain other of Franchisee's key employees) are unable to attend in person, Franchisor shall make arrangements to allow Franchisee to participate in such meeting (other than HERBIE'S BURGERS National Franchise Conference) via telephone or other available means; however, Franchisee shall be responsible for reimbursing Franchisor for its proportionate share of the cost of providing such virtual conferencing. Franchisor reserves the right to conduct any and all special meetings at a time and location to be determined by Franchisor in its sole discretion. Franchisee shall be responsible for all costs it or its employees incur in attending these special meetings, including travel costs, room and board expenses, and employees' salaries.

I. Performance by Delegate. Franchisee acknowledges and agrees that any rights or duties of Franchisor may be exercised and/or performed by any of Franchisor's designees, agents, or employees. Franchisor reserves the right to retain the services of an area director in the geographic area in which the Franchised Restaurant will be located. In such event, the area director may provide certain consultation, advice, services, and assistance, as Franchisor may direct. Franchisee acknowledges and agrees that Franchisee is not an intended third party beneficiary under any agreement between Franchisor and any area director.

## 6. PROPRIETARY MARKS

A. Acknowledgements. Franchisee acknowledges that Franchisor, its Affiliate, HBC, or its assignees owns all right, title, and interest in and to the Marks and the goodwill associated with the Marks, and that Franchisor has the right to use and sublicense the Marks. Franchisee further acknowledges and agrees that any and all goodwill associated with the Franchised Restaurant and identified by the Marks is Franchisor's, or its Affiliate's, property and shall inure directly and exclusively to the benefit of Franchisor or its Affiliate and that, upon the expiration or termination of this Agreement for any reason, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the Marks. Franchisee also acknowledges that Franchisee has no ownership interest in the Marks and agrees that Franchisee will not, at any time, contest the validity or ownership of any of the Marks or assist any other person in contesting the validity or ownership of the Marks, or engage in any conduct that adversely affects the ownership or registration of the Marks. Franchisee will execute all documents that Franchisor requests in order to protect the Marks or to maintain their validity and enforceability. Franchisee understands and agrees that any unauthorized use of the Marks by Franchisee is a breach of this Agreement and an infringement of the rights of Franchisor in and to the Marks and that the right to use the Marks granted in this Agreement does not extend beyond the termination or expiration of this Agreement.

B. Use of the Marks and Copyrighted Works. Franchisee will use Marks and any of Franchisor's Copyrighted Works only in connection with the operation and promotion of the Franchised Restaurant, and only in the manner prescribed by Franchisor. Franchisee will use the Marks only as designed by Franchisor, will use them only in the manner that Franchisor authorizes and permits, and will use them with the symbols "®", "™", or "SM", as appropriate. Franchisee shall not use, publish, or in any way incorporate any of the Marks, or the authorized translation of the Marks, in any domain name, user name, or handle. Without limiting the generality of the foregoing, Franchisee may not use the Marks, or the authorized translation of the Marks, or any part or derivative of the Marks as part of any URL or domain name or unauthorized email address, and may not register the Marks (or any part or derivative thereof) as part of any user name on any gaming website or social networking website (such as META(FACEBOOK & INSTAGRAM), SNAPCHAT (SNAP), , LINKEDIN, X(TWITTER), TIKTOK or YOUTUBE), whether or not such social media platform is used for commercial gain. Franchisee shall refrain from displaying on any website or mobile platform (including commercial websites, gaming websites, and social networking websites and mobile platform supported by operating systems such as iOS and Android) any of Franchisor's Copyrighted Works, except as explicitly permitted by Franchisor and in strict compliance with Franchisor's then-current policies. Specifically, but without limiting the foregoing, Franchisee shall refrain from offering merchandise identified by the Marks on any Internet website or mobile platform, and from uploading or streaming any video on sites such as YOUTUBE. Franchisee also may not display on any website (including commercial websites, gaming websites, and social networking websites) or mobile platform Franchisor's Copyrighted Works, which include the design portion of its Marks, or any menu items or collateral merchandise identified by the Marks.

C. Notice; Infringement. Franchisee shall promptly notify Franchisor and/or HBC of any claim, demand or cause of action based upon or arising from any attempt by any other person, firm or corporation to use the Marks or any colorable imitation thereof. Franchisee shall also notify Franchisor and/or HBC of any action, claim or demand against Franchisee relating to the Marks within five (5) days

after Franchisee receives notice of said action, claim or demand. Upon receipt of timely notice of an action, claim or demand against Franchisee relating to the Marks, Franchisor and/or HBC shall have the sole right, but not the duty, to defend any such action. Franchisor shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Marks and shall exercise such right in its sole discretion. In any defense or prosecution of any litigation relating to the Marks or components of the System undertaken by Franchisor and/or HBC, Franchisee shall cooperate with Franchisor and execute any and all documents and take all actions as may be desirable or necessary, in the opinion of their counsel, to carry out such defense or prosecution. Both parties shall make every effort consistent with the foregoing to protect, maintain and promote the Marks as identifying the System and only the System. **FRANCHISOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE USE, EXCLUSIVE OWNERSHIP, VALIDITY OR ENFORCEABILITY OF THE MARKS.**

D. Changes to the Marks. If it becomes advisable at any time, in Franchisor's opinion, for Franchisor and/or Franchisee to modify, discontinue using and/or replace any Mark, and/or to use one or more additional, substitute, or replacement trade names, trademarks, service marks or other commercial symbols together with or instead of any previously designated Mark, Franchisee shall comply with Franchisor's directions within a reasonable time after receiving Franchisor's notice. Franchisor need not reimburse Franchisee's direct expenses for changing the Franchised Restaurant's signs, Franchisee's lost revenue due to any modified or discontinued Mark, or Franchisee's expenses in promoting a modified or substitute trademark or service mark. Franchisor may exercise these rights at any time and for any reason, business or otherwise, it thinks best. Franchisee acknowledges both Franchisor's right to take this action and Franchisee's obligation to comply with Franchisor's directions.

## **7. CONFIDENTIAL OPERATIONS MANUAL; SYSTEM MODIFICATION**

A. Confidential Operations Manual. Franchisor shall loan to Franchisee during the term of the franchise one (1) copy of the Confidential Operations Manual, which may be, in our discretion, in a physical or electronic format. Franchisee will operate the Franchised Restaurant in accordance with the standards, methods, policies, and procedures specified in the Confidential Operations Manual. The Confidential Operations Manual shall at all times remain the sole property of Franchisor and be kept secure by Franchisee. Franchisee shall promptly return any physical copy of the Confidential Operations Manual it may have to Franchisor, and shall immediately cease accessing any electronic format, upon expiration or termination of this Agreement. At no time shall Franchisee or its employees make copies or reproductions of all or part of the physical format Confidential Operations Manual. At no time shall Franchisee or its employees download or print any or part of the electronic format Confidential Operations Manual without express permission to do so from Franchisor. Franchisee shall at all times ensure that the version of the Confidential Operations Manual it refers to for the daily operation of its Franchised Restaurant be the current and up-to-date Confidential Operations Manual. If a physical copy of the Confidential Operations Manual is being utilized, or if downloading and/or printing has been authorized by the Franchisor, Franchisee shall ensure that the most current version is available for reference at all times at the Premises. In the event of any dispute as to the contents of the Confidential Operations Manual, the terms of the master copy of the Confidential Operations Manual maintained by Franchisor at Franchisor's home office shall be controlling.

B. System Modification. Franchisor shall have the right to add to and otherwise modify the System, Confidential Operations Manual, the Menu Items, and other products and services offered by the Franchised Restaurant (such as, but not limited to, the addition, deletion, and modification of Menu Items, operating procedures, products and services) from time to time. Franchisee agrees to comply, at Franchisee's expense, with all such modifications, including, without limitation, all requirements to implement the modifications, such as replacement or renovation of equipment, remodeling, redecoration and modifications to existing improvements, including structural changes, subject to the restrictions outlined in Section 3.H. of this Agreement. Franchisor will notify Franchisee of any such System changes and Franchisee will implement any System changes upon receipt of notice thereof from Franchisor, and will complete their implementation within such time as Franchisor may reasonable specify.

C. Confidentiality. The Confidential Operations Manual contains proprietary information of Franchisor and shall be kept confidential by Franchisee both during the term of the franchise and subsequent to the expiration and/or termination of the franchise. Franchisee will use the Confidential Operations Manual only in connection with the operation of the Franchised Restaurant, and will make the Confidential Operations Manual available only to Franchisee's employees on a need to know basis.

## 8. CONFIDENTIAL INFORMATION

A. Confidential Information. Franchisee acknowledges that all Trade Secrets, as defined below, and other elements of the System; all customer information; all information contained in the Confidential Operations Manual; the method of preparation of Menu Items and other food products; ideas, designs, pricing, supplier information, and other specifications, product formulae, standards and operating procedures of a HERBIE'S BURGERS Franchised Restaurant; is derived from information disclosed to Franchisee by Franchisor and that such information is proprietary, confidential and the Trade Secrets of Franchisor ("**Confidential Information**"). "**Trade Secrets**" refers to the whole or any portion of know-how, knowledge, methods, recipes, formulae, specifications, processes, procedures and/or improvements regarding the HERBIE'S BURGERS Franchised Restaurant and the System that is valuable and secret in the sense that it is not generally known to competitors of Franchisor. Franchisee shall maintain the absolute confidentiality of all Confidential Information and not disclose them to any person or entity during and after the termination or expiration of this Agreement. Franchisee shall not use any Confidential Information in any other business or in any manner not specifically authorized or approved in writing by Franchisor. Franchisee shall return all Confidential Information to Franchisor upon the expiration or termination of this Agreement.

B. Maintaining Confidentiality. Franchisee shall divulge such Confidential Information only to the extent and only to such of its employees as must have access to it in order to operate the Franchised Restaurant. Any and all information, knowledge and know-how, including, without limitation, drawings, materials, equipment, techniques, restaurant systems, product formulae, recipes and other data, which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate lawfully came to its attention prior to disclosure thereof by Franchisor; or which, at the time of disclosure by Franchisor to Franchisee, had lawfully become a part of

the public domain through publication or communication by others (without violating an obligation to Franchisor); or which, after disclosure to Franchisee by Franchisor, lawfully becomes a part of the public domain through publication or communication by others (without violating an obligation to Franchisor). All employees or agents of Franchisee, and all owners, directors, shareholders, and partners of Franchisee, who must have access to such information or materials shall be required to execute nondisclosure agreements in the form acceptable to Franchisor.

## 9. ADVERTISING

A. General. Recognizing the value of advertising and the importance of the standardization of advertising and promotion to the furtherance of the goodwill and the public image of HERBIE'S BURGERS Franchised Restaurants, Franchisee agrees as follows:

1. All promotional and marketing materials shall be presented in a dignified manner and shall confirm to Franchisor's standards and specifications related to advertising, marketing, and trademark use.

2. Franchisee shall submit to Franchisor, for Franchisor's approval prior to first use or publication, all proposed promotional marketing and advertising materials, and notify Franchisor of its intended media. Franchisor shall use good faith efforts to approve or disapprove Franchisee's request within thirty (30) days from the date such material is received by Franchisor. Franchisee shall not, under any circumstances, use any proposed promotional, marketing or advertising materials until such time that Franchisor has provided its approval in writing to Franchisee. Failure by Franchisee to conform with the provisions herein and subsequent non-action by Franchisor to require Franchisee to cure or remedy this failure and default shall not be deemed a waiver of future or additional failures and defaults of any other provision of this Agreement. Notwithstanding the foregoing, Franchisor reserves the right, at any time and in its sole discretion, to disapprove any promotional, marketing or advertising materials that Franchisor had previously approved.

B. Grand Opening Marketing Campaign. Franchisee must comply with Franchisor's grand opening marketing campaign requirements, which may include engaging Franchisor's designated advertising agency or other service providers, and a required expenditure ranging from \$2,000 to \$5,000. The grand opening marketing campaign shall be conducted in accordance with Franchisor's guidelines and must be completed within the first six (6) months of operations.

C. Advertising and Development Fund. Franchisee shall contribute to the HERBIE'S BURGERS Advertising and Development Fund ("**Advertising Fund**") in an amount designed by Franchisor from time to time but not to exceed three percent (3%) of Gross Revenues. Such payment shall be made in addition to and exclusive of any sums that Franchisee may be required to spend on local advertising and promotion. The Advertising Fund shall be maintained and administered by Franchisor or its designee, as follows:

1. Franchisor has the right to use Advertising Fund monies, in its sole discretion, to pay for creative development services (including creation and modification of store design and trade dress, logos, menu design, graphics and vehicle wraps, and advertising and promotional items, including the cost of photography services and design software), preparing and procuring market studies, providing or obtaining marketing services (including, without limitation, new product development; conducting customer surveys, focus groups, and marketing-related mystery shops and customer interviews); employing advertising and/or public relations agencies; developing, producing, distributing and placing advertising (including, without limitation, preparing and conducting media advertising campaigns in various media, local store advertising and promotion in a particular area or market, or for the benefit of a particular restaurant or restaurants in

connection with restaurant opening promotions or otherwise), conducting and administering in-store promotions; preparing and executing direct mail advertising, and developing, producing and purchasing point-of-sale advertising, menus and menu boards, and other sales aids and promotional items and materials); new product development and development of product packaging; developing, updating and hosting Franchisor's web site (including development of locator programs) and/or an intranet or extranet system; obtaining sponsorships and endorsements; preparing and conducting sweepstakes and other promotions; developing, administering, and distributing coupons, gift certificates and stored value card program, and the cost of product associated with the redemption of free coupons, gift certificates and stored value cards; developing and administering other customer loyalty programs; providing and procuring public relations services; conducting public relations activities; charitable donations; and membership fees in international, national, regional, and/or local trade or other associations or organizations.

2. Franchisor also may use Advertising Fund monies to reimburse itself for its costs of personnel and other administrative and overhead costs associated with providing the services described in this Section 9.C.

3. The parties acknowledge that Franchisor owns all rights, and retains all copyrights, in all design and content developed using Advertising Fund monies, and that Franchisor will have sole control over the creative concepts, content, form, and media placement of all advertising and promotional materials developed with Advertising Fund monies, and the allocations of Advertising Fund monies to production, placement, and other costs. Franchisor will own all copyright in any works created using Fund monies. Franchisee acknowledges and agrees that Franchisor is not obligated to expend Fund monies for placement of advertising in your trading area, or to ensure that the Franchised Restaurant benefits directly or *pro rata* from the expenditure of Advertising Fund monies. Franchisor will not use Fund monies for creating or placing any advertisement that is principally a solicitation for new franchisees, but may include in all advertising prepared using Advertising Fund monies (including Internet advertising) information concerning franchise opportunities, and a portion of Advertising Fund monies may be used to create and maintain one or more pages on Franchisor's web site devoted to advertising franchise opportunities and identifying and screening inquiries and applications submitted by franchise candidates. Franchisor has no fiduciary duty to Franchisee or to any other person with respect to the collection or expenditure of Fund monies.

4. Although Franchisor intends the Advertising Fund to be of perpetual duration, Franchisor maintains the right to terminate the Advertising Fund. The Advertising Fund shall not be terminated, however, until all monies in the Advertising Fund have been expended for advertising and promotional purposes.

5. An unaudited accounting of the operation of the Advertising Fund shall be prepared annually and shall be made available to Franchisee upon request by contacting admin@HERBIE'S BURGERS.com.

D. Local Advertising. Franchisee is required to spend a minimum of three percent (3%) of Gross Revenues on local advertising (the "Local Advertising Spend Requirement"). At Franchisor's election, Franchisor may require that Franchisee (1) spend its entire Local Advertising Spend Requirement in its local market on its own or (2) pay some or all of its Local Advertising Spend Requirement to Franchisor to be spent by Franchisor on advertising and marketing campaigns in Franchisee's market area, with Franchisee being responsible to spend the balance (if any) of its Local Advertising Spend Requirement directly. Payments made to Franchisor in connection with this Section 9.D. shall be made in accordance with Section 4.F and 4.G. or as otherwise designated by Franchisor in writing or in its Confidential Operations Manual. For any portion of the Local Advertising Spend Requirement that Franchisee is required to spend on its own, Franchisee shall provide proof of such expenditure according to the procedures Franchisor requires.

If Franchisee fails to meet is Local Advertising Requirement, or if Franchisee fails to otherwise comply with its local advertising obligations, Franchisor shall have the right, in addition to any and all other rights and remedies available to it under this Agreement and/or at law, to require Franchisee to: (a) immediately pay all sums Franchisee was required to, but failed to, expend (“Local Advertising Deficiency”), to the Advertising Fund or other fund Franchisor creates, (b) require Franchisee to spend the Local Advertising Deficiency in the manner designated or approved by Franchisor for local advertising purposes, or (c) require Franchisee to immediately pay the Local Advertising Deficiency to Franchisor to be expended by Franchisor in its sole discretion for the purpose of advertising or marketing System, including purposes that may not directly or indirectly benefit Franchisee’s Franchised Restaurant. Notwithstanding the foregoing, as of this date of this Agreement, Franchisor does not intend (although it reserves the right) to spend Local Advertising Deficiency funds to advertise the sale of Herbies Restaurants.

E. Advertising Coverage Area. From time to time Franchisor may designate a local, regional or national Advertising Coverage Area (defined below) in which Franchisee’s business and at least one (1) other HERBIE’S BURGERS restaurant is located for purposes of developing a cooperative local, regional or national advertising or promotional program. “**Advertising Coverage Area**” means the area covered by the particular advertising medium (television, radio or other medium) as recognized in the industry. Franchisee agrees to participate in and contribute its share to such cooperative advertising and promotional programs in Franchisee’s Advertising Coverage Area in addition to such contributions and expenditures as required pursuant to Sections 9.C. and 9.D. The cost of the program shall be allocated among locations in such area and each location’s share shall be in proportion to its sales during the preceding twelve (12)-month period, or portion of said period. Said contributions to cooperative advertising promotional programs shall be credited toward the local advertising and promotional expenditure required by Section 9.D. All HERBIE’S BURGERS restaurants, whether Franchisor-owned, Affiliate-owned or franchised, shall have one (1) vote per location in any such cooperative program. Franchisor may establish Regional Franchisee Councils to administer the cooperative advertising program which shall be comprised of Franchisor, franchisees in the Advertising Coverage Area and Franchisor-owned or Affiliate-owned restaurants.

F. Participation in Marketing Programs. Franchisee shall at all times cooperate with Franchisor and other franchisees of Franchisor and shall actively participate in any and all sales, public relations, advertising, cooperative advertising, and purchasing programs or promotional programs (including, without limitation, product give-away promotions and system-wide discount programs) which may be developed and implement by Franchisor. Participation may include, without limitation, purchasing (at your expense) and using **(1)** point of sale materials, **(2)** counter cards, displays, and give away items promoting loyalty programs, prize promotions, and other marketing campaigns and programs, **(3)** product mix and ingredients for product giveaways, and **(4)** equipment necessary to administer loyalty programs, and to prepare and print customized purchase receipts, coupons, and similar items.

## **10. ACCOUNTING; RECORDS; AND SOFTWARE**

A. Maintenance of Records. Franchisee shall maintain during the term of this Agreement, and shall preserve for the time period specified in the Confidential Operations Manual, full, complete and accurate books, records and accounts in accordance with the standard accounting system prescribed by Franchisor in the Confidential Operations Manual or otherwise in writing and in accordance with generally

accepted accounting principles (“GAAP”), consistently applied. Franchisee shall retain for a period of three (3) years thereafter all books and records related to the Franchised Restaurant, including, without limitation, sales checks, purchase orders, invoices, payroll records, customer lists, check stubs, sales tax records and returns, cash receipts and disbursement journals and general ledgers. Franchisor has the right to require Franchisee to use only an accountant that Franchisor has approved. However, if Franchisee fails to comply with Franchisor’s accounting, record-keeping, and reporting obligations, Franchisor may require Franchisee to use Franchisor’s designated accountant (which also may be Franchisor’s accountant) to ensure preparation of required reports and financial statements accurately and in Franchisor’s desired format.

**B. Submission of Records.**

1. **Monthly Statements.** Franchisee shall supply to Franchisor monthly, in the form approved by Franchisor, a profit and loss statement and balance sheet for each calendar month within twenty-five (25) days after the end of that month. Franchisee agrees to pay Franchisor a One Hundred Dollar (\$100) late fee for each required profit and loss statement and balance sheet not submitted on or before its original due date. This late fee is not a penalty but compensates Franchisor for increased administrative and management costs due to Franchisee’s default.

2. **Yearly Statements.** Additionally, Franchisee shall, at its expense, submit to Franchisor within forty-five (45) days after the end of each fiscal year during the term of this Agreement a profit and loss statement for such fiscal year and a balance sheet as of the last day of such fiscal year, prepared on an accrual basis, including all adjustments necessary for fair presentation of the financial statements. Such financial statements shall be certified to be true and correct by Franchisee. Franchisor reserves the right to require annual financial statements, prepared in accordance with generally accepted accounting standards, audited by an independent certified public accountant. Franchisee shall provide to Franchisor copies of all federal and state income tax returns and sales tax returns. Franchisee agrees to pay Franchisor a One Hundred Dollar (\$100) late fee for each required annual profit and loss statement and balance sheet not submitted on or before its original due date. This late fee is not a penalty but compensates Franchisor for increased administrative and management costs due to Franchisee’s default.

3. **Additional Reports and Statements.** Franchisee shall submit to Franchisor such other periodic reports, forms and records as specified, in the manner and at the time as specified in the Confidential Operations Manual or as Franchisor shall otherwise require in writing from time to time.

**C. Point of Sale System.** Franchisee shall record all sales and related activities on computer-based, point-of-sale cash registers which are fully compatible with any program or system which Franchisor, in its discretion, may now or in the future employ. Franchisee must procure a computer system meeting the specifications and standards prescribed by Franchisor, including any related service and maintenance contracts for ongoing technology support that Franchisor requires. All Gross Revenues, sales, and information, shall be recorded by and on the computer systems Franchisee is required to use and Franchisee agrees and acknowledges that Franchisor shall have full access to all of Franchisee’s data, system and related information by means of direct access whether in person or by telephone/modem.

**D. Software.** Franchisee shall: **(1)** purchase, install, and use any proprietary or non-proprietary software programs, third party software programs, system documentation manuals, and other materials that Franchisor requires in connection with the operation of the Franchised Restaurant; **(2)** input and maintain in your computer such data and information as Franchisor prescribes in the Confidential Operations Manual, software programs, documentation, or otherwise; and **(3)** purchase, install, and use new or upgraded software programs, system documentation manuals, and other proprietary or non-proprietary

materials, or execute and renew licenses for existing software, at then-current prices whenever Franchisor adopts such new or upgraded programs, manuals, and materials system-wide. Franchisee shall enter into all software license agreements, “terms of use” agreements, and software maintenance agreements, in the form and manner Franchisor prescribes, and pay all fees imposed thereunder.

E. Non-Cash Systems. Franchisee shall accept debit cards, credit cards, stored value cards, and other non-cash systems (including, for example, APPLE PAY, GOOGLE WALLET, etc.) that Franchisor specifies periodically to enable customers to purchase authorized products, and to acquire and install all necessary hardware and/or software used in connection with these non-cash systems. The parties acknowledge and agree that protection of customer privacy and credit card information is necessary to protect the goodwill of businesses operating under the Marks and System. Accordingly, Franchisee shall cause the Franchised Restaurant to meet or exceed, at all times, all applicable security standards developed by the Payment Card Industry Standards Council or its successor and other regulations and industry standards applicable to the protection of customer privacy and credit card information. Franchisee is solely responsible for its own education concerning these regulations and standards and for achieving and maintaining applicable compliance certifications. Franchisee shall defend, indemnify, and hold Franchisor harmless from and against all claims arising out of or related to Franchisee’s violation of the provisions of this Section 10.E.

F. Independent Access. Franchisee agrees and acknowledges that Franchisor may independently and remotely access Gross Revenues, sales, and other information recorded by Franchisee’s computer and point-of-sale systems. There is no limitation on Franchisor’s right to access this information, whether remotely, in person, or upon request, nor is there any limitation on Franchisor’s right to use the information for any desired purpose.

G. Audit of Franchisee Records. Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at its expense, the books, records and tax returns of Franchisee. Franchisor shall also have the right, at any time, to have an independent audit made of the books and records of Franchisee at Franchisor’s expense. If an inspection should reveal that any payments due to Franchisor have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount understated upon demand, in addition to the late fee and interest from the date such amount was due at one and one-half percent (1.5%) per month or the highest commercial contract interest rate the law allows, whichever is less, until paid. If an inspection or audit discloses an understatement in any report of two percent (2%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection or audit (including, without limitation, reasonable accounting and attorneys’ fees). The foregoing remedies shall be in addition to any other remedies Franchisor may have.

H. Taxes. Franchisee agree to promptly pay all taxes due and owing based on Franchisee’s operation of the Franchised Restaurant including, without limitation, sales taxes, income taxes, and property taxes.

## **11. STANDARDS OF QUALITY AND PERFORMANCE**

A. General Operating Requirements. Franchisee understands and acknowledges that every detail of the System is essential to maintain and enhance the goodwill associated with the Marks and the integrity of the brand. Accordingly, Franchisee agrees as follows:

1. To operate the Franchised Restaurant according to the highest applicable health standards and ratings, to timely obtain any and all permits, certificates, or licenses necessary for the lawful operation of the Franchised Restaurant, to operate the Franchised Restaurant according to Franchisor’s operating

methods, standards, and specifications, and to maintain, at all times, a high moral and ethical standard in the operation of the Franchised Restaurant.

2. To secure and maintain in force all required licenses, permits and certificates relating to the operation of the Franchised Restaurant and operate the Franchised Restaurant in full compliance with all applicable laws, ordinances and regulations, including, without limitation, all government regulations relating to occupational hazards and health, dispensing of food products, consumer protection, trade regulation, workers' compensation, unemployment insurance and withholding and payment of federal and state income taxes and social security, sales, use and property taxes.

3. To use the location of the Franchised Restaurant, the Premises, only for the purpose of operating a HERBIE'S BURGERS Franchised Restaurant.

4. To notify Franchisor by telephone and confirm in writing within seventy-two (72) hours of any investigation or violation, actual or alleged, concerning any health, liquor or narcotics laws or regulations, and notify Franchisor in writing within five days of the commencement of any investigation, action, suit or proceeding, or the issuance of any order, writ, injunction, award, or decree of any court, agency or other government instrumentality, which may adversely affect the operation or financial condition of the Franchised Restaurant.

B. Authorized Menu Offerings. Franchisee shall offer for sale and sell at the Franchised Restaurant all types of Menu Items and other categories of food and beverage products that Franchisor from time to time authorizes, and only such items. In order to ensure that all Menu Items produced by Franchisee meet Franchisor's high standards of taste, texture, appearance and freshness and in order to protect Franchisor's goodwill and Marks, all Menu Items and other food products shall be prepared only by properly trained personnel strictly in accordance with Franchisor's recipes, cooking techniques and processes as designated by Franchisor in the Confidential Operations Manual and shall be sold only at retail to customers in conformity with Franchisor's marketing plan and concept. Franchisee acknowledges that such recipes, cooking techniques and processes are integral to the System and failure to adhere to such recipes, cooking techniques and processes (including the handling and storage of both ingredients and fully prepared Menu Items) shall be detrimental to the System and Marks. Franchisee shall participate in all market research programs that Franchisor requires, which includes test-marketing new products, purchasing a reasonable quantity of new products for test-marketing, promoting the sale of the new products. Franchisee shall provide Franchisor with timely reports and test results for all such programs.

C. Purchases from Designated Sources.

1. Franchisee agrees to purchase only from Franchisor or suppliers designated by Franchisor ("**Designated Suppliers**") all goods and services that Franchisor identifies from time to time including, without limitation: (1) fixtures, furniture, equipment, interior and exterior signage, graphics, décor, and Franchised Restaurant design consulting services; (2) Franchisee's requirements of all food products and ingredients; (3) all fountain and bottled beverages; (4) uniforms, shirts, memorabilia, and all merchandise and items intended for retail sale (whether or not bearing the Marks); (5) advertising, point-of-purchase materials, and other printed promotional materials; (6) gift certificates and stored value cards; (7) stationery, business cards, contracts, and form; and (8) displays, trays, napkins, cups, boxes, bags, wrapping paper, labels, forms and other paper and plastic products imprinted with the Marks.

2. From time to time, Franchisor shall provide to Franchisee a list of approved manufacturers, suppliers and distributors ("**Approved Suppliers List**") and approved inventory, products, fixtures, furniture, equipment, signs, stationery, supplies and other items or services necessary to operate the Franchised Restaurant ("**Approved Supplies List**"). Such lists shall specify the manufacturer, brand name, supplier and distributor and the inventory, products, fixtures, furniture, equipment, signs, stationery, supplies and services which Franchisor has approved to be carried or used in the System. Franchisor may

revise the Approved Suppliers List and Approved Supplies List from time to time in its sole discretion and such lists shall be submitted to Franchisee as Franchisor deems advisable. **Franchisor makes no representation concerning, and expressly disclaims any liability arising out of or in connection with, the services rendered or products furnished by any supplier approved or designated by Franchisor. Franchisor's approval or consent to any services, goods, suppliers, or any other individual, entity or any item shall not create any liability to Franchisor.**

3. All inventory, products, materials and other items and supplies used in the operation of the Franchised Restaurant which are not specifically required to be purchased in accordance with Franchisor's Approved Supplies List and Approved Suppliers List shall conform to the specifications and quality standards established by Franchisor from time to time.

4. If Franchisee proposes to offer for sale at the Franchised Restaurant any brand of product, or to use in the operation of the Franchised Restaurant any brand of food ingredient or other material or supply which is not then approved by Franchisor as meeting its minimum specifications and quality standards, or to purchase any product from a supplier that is not then designated by Franchisor as an approved supplier, Franchisee shall first notify Franchisor and shall, upon request by Franchisor, submit samples and such other information as Franchisor requires for examination and/or testing or to otherwise determine whether such product, material or supply, or such proposed supplier, meets its specifications and quality standards. A charge not to exceed the reasonable cost of the inspection and evaluation and the actual cost of the test shall be paid by Franchisee or the supplier. Franchisor reserves the right, at its option, to re-inspect the facilities and products of any supplier of an approved item and to revoke its approval of any item which fails to continue to meet any of Franchisor's criteria. Franchisor reserves the right, in its sole discretion, to approve any and all supplies, suppliers, brand name products and other products and services, whether currently approved by Franchisor or submitted to Franchisor by Franchisee for approval, authorized for use by or sale from Franchised Restaurant. Franchisor may limit the number of approved suppliers with whom Franchisee may deal, designate sources that Franchisee must use and/or refuse any of Franchisee's requests for any reason, including that Franchisor has already designated an exclusive source (which might be Franchisor or its Affiliate) for the particular item or service if Franchisor believes that doing so is in the best interests of the HERBIE'S BURGERS network. Franchisor and its affiliates have the right to receive payments from suppliers on account of their actual or prospective dealings with Franchisee and other franchisees and to use all amounts they receive without restriction for any purposes they deem appropriate (unless Franchisor and its affiliates agree otherwise with the suppliers).

**D. Franchised Restaurant Premises.**

1. Franchisee agrees to maintain the condition and appearance of the Premises consistent with Franchisor's quality controls and standards and cause such maintenance to the Franchised Restaurant as is from time to time required to maintain or improve the appearance and efficient operation of the Franchised Restaurant. If at any time in Franchisor's judgment the general state of repair or the appearance of the Premises or its equipment, fixtures, signs or decor does not meet Franchisor's quality control and standards therefore, Franchisor shall so notify Franchisee, specifying the action to be taken by Franchisee to correct such deficiency. If Franchisee fails or refuses to initiate within thirty (30) days after receipt of such notice, and thereafter continue, a bona fide program to complete any required maintenance, Franchisor shall have the right, in addition to all other remedies, to enter upon the Premises and effect such repairs, painting, maintenance or replacements of equipment, fixtures or signs on behalf of Franchisee and Franchisee shall pay the entire costs thereof on demand. Franchisee's obligation to initiate and continue any required maintenance shall be suspended during any period in which such maintenance is impractical due to force majeure.

2. Franchisee shall purchase and install, at your expense, all fixtures, furnishings, equipment, decor, signs, and other items as Franchisor may reasonably direct from time to time in the Confidential Operations Manual or otherwise in writing in accordance with Franchisor's standards and specifications; and shall refrain from installing or permitting to be installed on or about the Premises, any fixtures,

furnishings, equipment, decor, signs, vending or game machines or other items not previously approved in writing as meeting Franchisor's standards and specifications.

3. Franchisee shall not install or maintain on the Premises any newspaper racks, video games, juke boxes, digital boards, gaming machines, gum machines, games, rides, vending machines or other similar devices without the written approval of Franchisor.

E. Restaurant Management. The Franchised Restaurant shall at all times be under the direct, on-premises supervision of Franchisee or its managing owner (or a trained and competent employee acting as full-time manager). If Franchisee employs a full-time manager, however, Franchisee acknowledges that it will remain obligated to supervise the operations of the Franchised Restaurant as agreed upon by Franchisee and Franchisor. If Franchisee or any managing owner which is or should be supervising the operations of the Franchised Restaurant, for any reason, is or expects to be inaccessible, indisposed, or away from the Premises for such a period of time as to be unable to fully and consistently fulfill its duties hereunder, Franchisee must notify Franchisor of such occurrence in writing and include in such notice the manager or supervisor assuming Franchisee's roll in Franchisee's or the managing owner's absence. In the event Franchisee operates more than one (1) franchise, at least one (1) trained and competent employee referred to above shall act as a full-time manager. Franchisee shall keep Franchisor informed at all times of the identity of any employee(s) acting as manager(s) of the Franchised Restaurant. If Franchisee selects a substitute or additional manager, Franchisee shall be required to make sure such manager receives training from Franchisor. To the extent that Franchisor can reasonably accommodate Franchisee's manager in Franchisee's regularly scheduled training course, Franchisor shall make training available, as is reasonable and necessary, for all managers designated by Franchisee. Franchisor shall provide such training at the then-current published rates. In no event shall Franchisor be under any obligation to provide individual training to Franchisee's managers. Franchisee shall, at all times, faithfully, honestly and diligently perform its obligations hereunder and shall not engage in any business or other activities that shall conflict with its obligations hereunder.

F. Employee Policy; Uniforms and Employee Appearances. You must hire and supervise efficient, competent, and courteous persons as your employees for the operation of your Franchised Business. You must require all your employees to work in clean uniforms approved by us, but furnished at your cost or the employees' cost as you may determine. You understand and acknowledge it is your responsibility to hire and supervise a satisfactory number of employees in order to efficiently operate the Unit and meet your obligations under this Franchise Agreement. You alone are responsible for all employment decisions and functions of your Franchised Business, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, safety, work conditions, assignments, taxes, schedules, personnel policies, benefits, recordkeeping, supervision, discipline of employees and compliance with all workplace laws, regardless of whether you have received advice from us on these subjects or not. We will have no liability for any action or settlement related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, safety, work conditions, assignments, taxes, schedules, personnel policies, benefits, recordkeeping, supervision, discipline of employees and compliance with all workplace laws, and you agree to indemnify us for any such liabilities we incur. You agree to inform each of your employees that you alone are their employer, and that we are not. You agree to explain to your employees and contractors the respective roles of a franchisor and franchisee and our relationship with you, and you will request that your employees and contractors sign any acknowledgement or disclosure explaining the differences between us and you, their employer or contractor. At no time will you or your employees be deemed to be employees of us or our

affiliates and we are not a joint employer of those persons. We will have no obligation to direct your employees or to operate the business.

G. Inventory. Franchisee acknowledges that the Franchised Restaurant shall at all times maintain an inventory of ingredients, food and beverage products and other products, materials and supplies that shall permit operation of the Franchised Restaurant at maximum capacity.

H. Catering/Third-Party Delivery Services.

1. Catering: Franchisor may require Franchisee to conduct catering services from the Franchised Restaurant in strict compliance with any catering standards established by Franchisor. If Franchisor elects not to require Franchisee to provide catering services from the Franchised Restaurant, it may nonetheless allow Franchisee to provide such services upon request. Franchisee shall obtain written approval from Franchisor before undertaking such catering service and shall conduct such catering service in strict accordance with all guidelines established by Franchisor.

2. Third-Party Food Delivery Services:

(i) Franchisor may require you to participate in one or more third-party food ordering and delivery services with one or more suppliers who we have approved on behalf of the System (each, a “System Designated Third-Party Delivery Service”). In the event that we contract with any System Designated Third-Party Delivery Service directly, you shall be required to reimburse us for your pro-rata share of any costs or fees we pay to the System Designated Third-Party Delivery. Alternatively, in our sole discretion, we reserve the right to require you to make payment to the System Designated Third-Party Delivery Service directly on your own behalf.

(ii) We may also allow you to utilize other non-system designated third-party food ordering or delivery services at your Franchised Restaurant. You may not utilize any such non-system designated third-party services without first obtaining our written approval. In the event that you engage the services of any such non-system designated third-party service, any associated costs or fees charged in connection therewith shall be at your sole cost and expense.

(iii) Your engagement and utilization of all third-party food ordering and delivery services, whether a System Designated Third-Party Delivery Service or otherwise, must be in strict compliance with the with guidelines established by Franchisor.

I. Pricing. To the fullest extent permitted by applicable law, Franchisor reserves the right to establish maximum, minimum or other pricing requirements with respect to the prices Franchisee may charge for products or services.

J. Web Site. Franchisor may, but shall not be obligated to, establish and maintain from time to time Franchisor’s Web site to provide information about the System and the goods and services that HERBIE’S BURGERS restaurants provide. Franchisor has sole discretion and control over the design and content of Franchisor’s Web site.

K. Social Media and Internet Listings. Franchisee shall follow Franchisor’s mandatory specifications, standards, operating procedures, and rules for using Social Media in connection with its operation of the Franchised Restaurant and Franchisee agrees to comply with any Social Media policy Franchisor implements. Franchisor shall create and own all Social Media accounts used in operation of the Franchised Restaurant, and shall allow Franchisee access and use only in strict compliance with Franchisor’s rules. Franchisor reserves its right to remove Franchisee’s access to Social Media accounts at any time at its sole discretion. Upon termination of this Agreement for any reason, Franchisee’s access to all Social Media accounts will terminate. The term “Social Media” includes, without limitation, personal

blogs; common social networks such as META (FACEBOOK & INSTAGRAM), SNAPCHAT(SNAP), LINKEDIN, X(TWITTER), TIKTOK or YOUTUBE; internet listing sites such as WIKIPEDIA, GOOGLE, FOURSQUARE, and YELP; applications supported by mobile platforms such as iOS and Android; virtual worlds; file, audio, and video-sharing sites; and other similar internet, social networking, or media sites, mobile platforms, or tools.

L. Public Relations. Franchisee shall not make any public statements (including giving interviews or issuing press releases) regarding the Franchised Restaurant or any particular incident or occurrence related to the Franchised Restaurant, without the Franchisor's prior written approval.

M. Association with Causes. Franchisee shall not in the name of the Franchised Restaurant (1) donate money, products, or services to any charitable, political, religious, or other organization, or (2) act in support of any such organization, without the Franchisor's prior written approval.

N. Quality Assurance Inspections; Testing. Franchisor shall have the right to enter upon the Premises during regular business hours to inspect the Franchised Restaurant for quality assurance purposes. Franchisee shall allow Franchisor from time to time to obtain samples of ingredients, products and supplies, without charge, for testing for quality assurance purposes. If notified of a deficiency, Franchisee must promptly cure the deficiency. If Franchisee fails to promptly cure the deficiency, Franchisor may undertake to cure the deficiency on your behalf. In such case, Franchisor has the right to charge, and Franchisee agree to pay upon demand, a reasonable fee for Franchisor's services, and Franchisee must reimburse Franchisor for all out-of-pocket costs that it incurred in connection with taking such corrective measures.

Franchisee agrees to cooperate fully with Franchisor and its agents and representatives in connection with Franchisor's inspections. Franchisor may hire outside consultants and vendors to perform certain types of operational inspections and audits. If Franchisor exercises these rights, it will not interfere unreasonably with the Franchised Restaurant's operation. If Franchisor (or its agents or representatives) inspects the Franchised Restaurant and determines that it is not operating in compliance with this Agreement and Franchisor's standards and specifications, and Franchisor then must re-inspect the Franchised Restaurant to determine whether Franchisee has corrected the operating deficiencies, Franchisor may require Franchisee to pay Franchisor its then-current Re-Inspection Fee for each follow-up inspection of the Franchised Restaurant. Franchisee agrees to present to its customers the evaluation forms Franchisor periodically prescribes and to participate and/or request its customers to participate in any surveys performed by or for Franchisor. Franchisor agrees to provide Franchisee with the results of such surveys.

O. Vehicles. If Franchisee requests to use a vehicle in connection with or to promote the Franchised Restaurant, Franchisor shall provide Franchisee with specifications for brands and types of trucks, vans and other motor vehicle(s) required for the Franchised Restaurant. Franchisee at its expense shall, at all times during the term of this Agreement, maintain the interior and exterior of any motor vehicle(s) utilized in the Franchised Restaurant in good repair, attractive appearance, sound operating condition and equipped in accordance with Franchisor's standards and specifications. If Franchisee elects to wrap a vehicle for the promotion of the Franchised Restaurant, Franchisee agrees to abide by Franchisor's standards and specifications for such wrap and to obtain Franchisor approval of such wrap in advance of its application. Franchisor's standards and specifications may include, but are in no way limited to, requirements as to the type of vehicle wrapped, the design of the wrap, and graphic designer and installer supplier specifications.

P. Enforcement Administrative Fee. If at any time the Franchised Restaurant fails to conform to System requirements, Franchisor shall have the right to impose and collect from Franchisee an

administrative fee as described in this paragraph (“**Enforcement Administrative Fee**”). Specifically, **(1)** Franchisor may impose and collect from Franchisee a \$250 Enforcement Administrative Fee for each “enforcement effort” that Franchisor undertakes on account of Franchisee’s noncompliance with System (e.g., a letter, email, or telephone communication notifying Franchisee of noncompliance or continued noncompliance), and **(2)** if Franchisor has notified Franchisee of noncompliance and Franchisee has failed to correct the issue within seven days, Franchisor may impose and collect from Franchisee a \$250 Enforcement Administrative Fee per week until the issue has been corrected to Franchisor’s satisfaction. Franchisor also may impose and collect a \$250 Enforcement Administrative Fee if Franchisee fails to acknowledge receipt of Franchisor’s communications to Franchisee, or to respond to Franchisor’s communications within 24 hours of delivery. This fee is not a penalty, but is intended to compensate Franchisor for the additional costs that Franchisor incurs in enforcing Franchisee’s compliance with the System, and is in addition to and not in lieu of any other rights or remedies that Franchisor may have based on Franchisee’s noncompliance with the System. Franchisor may impose and collect the Enforcement Administrative Fee whether or not the noncompliance at issue is of the type or degree that constitutes a material default of Franchisee’s obligations under this Agreement and, if it is, whether or not a cure period applies. At Franchisor’s option, Franchisor may require Franchisee to demonstrate full compliance with Franchisee’s obligations by submitting to Franchisor a comprehensive walk-through video of the Franchised Restaurant premises in accordance with the Franchisor’s standards and specifications.

Q. **Technology Risk.** Franchisee acknowledges and agrees that technology is constantly changing. Technologic devices and computer systems are always being updated, improved, replaced, and discontinued. Consequently, computer systems are sometimes incompatible and are susceptible to Internet, computer system, and communication failures. By entering into this Agreement, Franchisee assumes all of the risk of all such issues and technology failures, which Franchisee acknowledges may affect its ability to order or receive products or to conduct business, and Franchisee acknowledges that Franchisor is not responsible for any damages caused by such issues or technology failures, including lost sales or profits.

## **12. INSURANCE**

A. Franchisee shall procure at its expense and maintain in full force and effect during the term of this Agreement an insurance policy or policies protecting Franchisee, Franchisor and their respective officers, directors and employees against any loss, liability, personal injury, death or property damage or expense whatsoever arising or occurring upon or in connection with the Franchised Restaurant, as Franchisor may reasonably require for its own and Franchisee’s protection. Franchisor shall be named an additional insured in such policy or policies for claims arising from the Franchised Restaurant’s operation. Franchisor may, from time to time, designate one or more approved insurance carriers or agencies, and Franchisee shall comply with such source requirements, to the extent permitted by applicable law. Franchisee’s policies must be primary and non-contributory to any insurance that Franchisor might carry.

B. All such policy or policies shall: **(1)** be written by an insurance company licensed in the state in which Franchisee operates and having at least an A.M. Best rating of not less than A-VII in accordance with standards and specifications set forth in the Confidential Operations Manual or otherwise in writing; **(2)** name Franchisor and its Affiliates, and their partners, officers, subsidiaries, affiliates, shareholders, directors, regional directors, agents, and employees as additional insureds, on such basis and on such policy coverages as specified by Franchisor, which cost will be borne by Franchisee; **(3)** include, at a minimum (except as different coverages and policy limits may reasonably be specified from time to time by Franchisor) the following; **(4)** not have a deductible that exceeds \$10,000 for any coverage:

1. Property Insurance with special form coverage on all improvements, betterments, and all business property used in the Franchised Restaurant at 100% of replacement cost value, but no less than \$500,000. Flood and Earthquake coverage will be required in geographically prone areas.

2. General Liability coverage for \$1,000,000 per occurrence and \$2,000,000 aggregate, including the additional insured endorsement naming FRANCHISEHERBIES LLC. This policy must include Products Liability coverage with an aggregate of \$2,000,000, Damage to Rented Premises of \$300,000, and Personal Injury and Advertising Liability of \$1,000,000.
3. Business interruption coverage for actual loss sustained for 12 months or 50% of gross annual sales.
4. Auto Liability for all owned, non-owned, and hired vehicles used in the Franchised Restaurant for \$1,000,000 combined single limit liability.
5. Employment Practices Liability including third party claims for \$1,000,000 and naming FRANCHISEHERBIES LLC as Co-Defendant coverage. Limit applies per policy.
6. Workers' Compensation with statutory limits, including Employer's Liability of \$500,000/\$500,000/\$500,000, Alternate Employer's endorsement in our favor, and any other insurance that may be required in the state in which the Franchised Restaurant operates. If the Franchised Restaurant operates in a monopolistic state (*i.e.*, Wyoming, North Dakota, West Virginia, Washington, and Ohio), you must also obtain Stop Gap coverage on the Workers' Compensation policy or General Liability policy. Minimum limits are as follows: no less than \$500,000 per accident for bodily injury by accident; \$500,000 policy limit by disease; and \$500,000 per employee for bodily injury by disease or higher coverage as required by law in your state.
7. Umbrella Liability for \$1,000,000 in excess of the General Liability, Auto Liability, Liquor Liability, and Employer's Liability.
8. Such insurance and types of coverage as may be required by the terms of any lease for the Franchised Restaurant, or as may be required from time to time by Franchisor.

The amounts and policy limits required in this Section 12.B. may be modified from time to time by Franchisor in its sole discretion, and Franchisee shall comply with all modifications.

C. The insurance afforded by the policy or policies respecting liability shall not be limited in any way by reason of any insurance which may be maintained by Franchisor. Within ninety (90) days after the signing of this Agreement, upon signing a lease agreement for the Franchised Restaurant, or on the date which Franchisee acquires an interest in the real property from which it shall operate the Franchised Restaurant, whichever event occurs first, a Certificate of Insurance showing compliance with the foregoing requirements shall be furnished by Franchisee to Franchisor for approval. Such certificate shall state that said policy or policies shall not be canceled or altered without at least thirty (30) days' prior written notice to Franchisor and shall reflect proof of payment of premiums. Maintenance of such insurance and the performance by Franchisee of the obligations under this Article 12 shall not relieve Franchisee of liability under the indemnity provision set forth in this Agreement. Minimum limits as required above may be modified from time to time, as conditions require, by written notice to Franchisee. Franchisee shall furnish proof of annual renewal of such insurance to Franchisor at least ten (10) days prior to such renewal date.

D. Should Franchisee, for any reason, not procure and maintain such insurance coverage as required by this Agreement, Franchisor shall have the right and authority (without, however, any obligation to do so) to immediately procure such insurance coverage and to charge same to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

E. Franchisee acknowledges that the foregoing minimum insurance requirements do not constitute advice or a representation that such coverages are necessary or adequate to protect Franchisee from losses in connection with the Franchised Restaurant. Nothing in this Agreement prevents or restricts Franchisee from acquiring and maintaining insurance with higher policy limits or lower deductibles than Franchisor requires.

### 13. COVENANTS

A. Franchisee Defined. Unless otherwise specified, the term “Franchisee” as used in this Article 13 shall include, collectively and individually, each of the persons included in the definition of “Franchisee” as defined in Article 28.

B. Full Time Best Efforts. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (if Franchisee is an individual), Franchisee’s Managing Owner (if Franchisee is a corporation), a general partner of Franchisee (if Franchisee is a partnership) or Franchisee’s full-time manager (as approved by Franchisor) shall devote full-time, energy and best efforts to the management and operation of the Franchised Restaurant.

C. Non-Competition During Term of Agreement. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for himself, or through, on behalf of or in conjunction with any person, persons, partnership or corporation:

1. Divert or attempt to divert any business or customer of the Franchised Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System.

2. Employ or seek to employ, without the consent of Franchisor or the franchisee, as applicable, any person who is at that time, or within the previous one (1) year was, employed by Franchisor or by any other franchisee of Franchisor, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment.

3. Own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with a Competitive Business, other than a HERBIE’S BURGERS restaurant operated pursuant to a then-currently effective franchise agreement with Franchisor at any location within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which Franchisor or its Affiliates have used, sought registration of or registered the Marks or similar marks or operate or license others to operate a business under the Marks or similar marks.

The term “**Competitive Business**” means (i) any restaurant or other foodservice business that serves primarily burgers, chicken sandwiches, milkshakes, fries and similar food items, or (ii) any business granting franchises or licenses to others to operate the type of business specified in clause (i).

D. Non-Competition After Expiration of Termination of Agreement. Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee shall receive valuable training and Confidential Information. Accordingly, commencing upon the later of: (1) a transfer permitted under Section 16.D. of this Agreement, expiration of this Agreement, or termination of this Agreement (regardless of the cause for termination) or (2) a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of this Section 13.D., and continuing for an uninterrupted period of two (2) years thereafter, Franchisee shall not either directly or indirectly, for Franchisee, or through, on behalf of, or in conjunction with any person, persons, or legal entity, own, maintain, advise, operate, engage in, be employed by, make loans to, or have any interest in or relationship or association with a Competitive Business other than a HERBIE’S BURGERS restaurant operated pursuant to a then-currently effective franchise agreement with Franchisor, and (i) is, or is intended to be, located at the Premises of the former Franchised Restaurant; (ii) within the former Designated Area of the Franchised Restaurant (or, if there was no protected area, within a ten (10) mile radius of the Franchised Restaurant); or (iii) within a ten (10) mile radius of any other restaurant operating under the System and Marks in existence or under development at the time of such expiration, termination or transfer.

If this Section 13.D. is found unenforceable, either in whole or in part, by a court of law, or other official proceeding, Franchisor shall still be entitled to equitable relief. If any owner of Franchisee ceases

to be an owner of the Franchisee for any reason during the franchise term, the foregoing covenant shall apply to the departing owner for a two (2) year period beginning on the date such person's interest in Franchisee is transferred, assigned, or sold.

The two (2) year time period described in this Section 13.D. will be tolled during any period of noncompliance.

E. Additional Provisions. Each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Article 13 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, such finding shall not impair the remainder of this Agreement and Franchisee shall be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Article 13.

Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 13.C. and 13.D., or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee shall comply forthwith with any covenant as so modified, which shall be fully enforceable.

F. Covenants from Individuals. Franchisee and each individual who attends Franchisor's training program shall be required to sign a confidentiality and non-compete agreement substantially in a form satisfactory to Franchisor. Franchisee shall be responsible for ensuring compliance with such agreement.

G. Breach of Covenants Causes Irreparable Injury. Franchisee acknowledges that Franchisee's violation of any covenant of this Article 13 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

H. Improvements. If Franchisee (again, as defined in Article 28) or Franchisee's employees develop any new concept, process or improvement in the operation or promotion of a HERBIE'S BURGERS restaurant (an "**Improvement**"), Franchisee agrees to promptly notify Franchisor and provide Franchisor with all necessary related information, without compensation. Any such Improvement shall become Franchisor's sole property and Franchisor shall be the sole owner of all related patents, patent applications, and other intellectual property rights. Franchisee hereby assigns to Franchisor any rights Franchisee may have or acquire in the Improvements, including the right to modify the Improvement, and waive and/or release all rights of restraint and moral rights therein and thereto. Franchisee agrees to assist Franchisor in obtaining and enforcing the intellectual property rights to any such Improvement in any and all countries and further agree to execute and provide Franchisor with all necessary documentation for obtaining and enforcing such rights. Franchisee hereby irrevocably designates and appoints Franchisor as agent and attorney-in-fact for Franchisee and Franchisee agrees to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property right related to any such Improvement. In the event that the foregoing provisions of this Section 13.H. are found to be invalid or otherwise unenforceable, Franchisee hereby grants to Franchisor a worldwide, perpetual, non-exclusive, fully-paid license to use and sublicense the use of the Improvement to the extent such use or sublicense would, absent this Agreement, directly or indirectly infringe on Franchisee's rights therein.

## **14. DEFAULT AND TERMINATION**

A. Franchisee's Right to Terminate. If Franchisee is in substantial compliance with this Agreement and Franchisor materially breaches this Agreement and fails to cure such breach within a reasonable time after written notice thereof is delivered to Franchisor, Franchisee may terminate this

Agreement. Such termination shall be effective thirty (30) days after delivery to Franchisor of written notice that such breach has not been cured and Franchisee elects to terminate this Agreement. A termination of this Agreement by Franchisee for any reason other than breach of this Agreement by Franchisor and Franchisor's failure to cure such breach within a reasonable time after receipt of written notice thereof shall be deemed a termination by Franchisee without cause and a breach of this Agreement.

B. Termination with Notice and Without Opportunity to Cure. This Agreement shall terminate automatically upon delivery of written notice of termination to Franchisee, if Franchisee or its owner(s), officer(s) or manager(s):

1. Fails to find a suitable site for the Franchised Restaurant by the Control Date (or extended Control Date, as applicable) or fails to open the restaurant for business by the Target Opening Date.

2. Fails to satisfactorily complete the training program as provided in Sections 5.A. through 5.C. of this Agreement;

3. Has made any material misrepresentation or omission in its application for the franchise;

4. Is convicted of or pleads no contest to a felony or other crime or offense that is likely to adversely affect the reputation of Franchisee or the Franchised Restaurant;

5. Makes any unauthorized use, disclosure or duplication of any portion of the Confidential Operations Manual or duplicates or discloses or makes any unauthorized use of any Confidential Information provided to Franchisee by Franchisor;

6. Abandons, fails or refuses to actively operate the Franchised Restaurant for two (2) business days in any twelve (12) month period, unless the Franchised Restaurant has been closed for a purpose approved by Franchisor or due to a *force majeure*;

7. Fails to relocate the Franchised Restaurant to another location, pursuant to the site selection provisions of this Agreement, within an approved period of time following expiration or termination of the lease for the Premises;

8. Surrenders or transfers control of the operation of the Franchised Restaurant; transfer or attempts to transfer any right to this Agreement or the Franchised Restaurant in violation of Article 16 of this Agreement; or fails or refuses to assign the franchise or the interest in Franchisee of a deceased or disabled controlling owner thereof as herein required;

9. Submits to Franchisor on two (2) or more separate occasions at any time during the term of the franchise any reports or other data, information or supporting records which understate by more than three percent (3%) the Royalty Fees for any period of, or periods aggregating, three (3) or more weeks, and Franchisee is unable to demonstrate that such understatements resulted from inadvertent error;

10. If Franchisee is adjudicated bankrupt, becomes insolvent, commits any affirmative act of insolvency or files any action or petition of insolvency, or if a receiver (permanent or temporary) of its property or any part thereof is appointed by a court of competent authority, or if it makes a general assignment for the benefit of its creditors, or if a final judgment remains unsatisfied of record for thirty (30) days or longer (unless supersedeas bond is filed), or if execution is levied against Franchisee's business or property, or if suit to foreclose any lien or mortgage against its Premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days, or is not in the process of being dismissed; provided, however, that Franchisor reserves the right to be named as trustee or receiver in any voluntary petition for bankruptcy or insolvency filed by Franchisee;

11. Materially misuses or makes an unauthorized use of any of the Marks or commits any other act which can reasonably be expected to materially impair the goodwill associated with any of the Marks or the System;

12. Fails on two (2) or more separate occasions within any period of twelve (12) consecutive months to submit when due reports or other information or supporting records, to pay when due the Royalty Fees, Advertising Fund contributions, amounts due for purchases from Franchisor or other payments due to Franchisor, or otherwise fails to comply with this Agreement, whether or not such failures to comply are corrected after notice thereof is delivered to Franchisee;

13. Continues to violate any health, safety or sanitation law, ordinance or regulation or operates the Franchised Restaurant in a manner that presents a health or safety hazard to its customers or the public;

14. Offers for sale unauthorized products or services from the Franchised Restaurant Premises or in conjunction with the Marks;

15. Failure to pass two (2) or more quality assurance inspections within any rolling twelve (12) month period; or

16. Franchisor delivers to Franchisee three (3) or more written notices of default pursuant to this Article 14 within any rolling twelve (12) month period, whether or not the defaults described in such notices ultimately are cured.

C. Termination with Designated Cure Period. This Agreement shall terminate upon delivery of written notice of termination from Franchisor to Franchisee, if Franchisee or Franchisee's owner:

1. Fails or refuses to make payments of any amounts due Franchisor for Royalty Fees, Advertising Fund contributions, purchases from Franchisor or any other amounts due to Franchisor, or fails to comply with its Grand Opening marketing obligations, and does not correct such failure or refusal within ten (10) business days after written notice of such failure is delivered to Franchisee;

2. Fails or refuses to comply with any other provision of this Agreement or any mandatory specification, standard or operating procedure prescribed in the Confidential Operations Manual or otherwise in writing and does not correct such failure within thirty (30) days (or provide proof acceptable to Franchisor that it has made all reasonable efforts to correct such failure and shall continue to make all reasonable efforts to cure until a cure is effected, if such failure cannot reasonably be corrected within thirty (30) days) after written notice of such failure to comply is delivered to Franchisee.

D. Termination Related to Death or Permanent Incapacity. Franchisor has the right to terminate this Agreement if an approved transfer as required by Article 17 is not effected within the designated time frame following a death or permanent incapacity (mental or physical).

E. Franchisor's Alternative Remedies to Termination. In lieu of exercising its right to terminate this Agreement, Franchisor may, without waiving such right to terminate: (1) withhold services to Franchisee; (2) limit Franchisee's access to any or all portions of certain software or computer systems; (3) revoke Franchisee's right to participate in promotions or programs and to attend franchise conventions and meetings; (4) after Franchisee's failure to cure such default, inspect or re-inspect the Franchised Restaurant and, regardless of whether it is an inspection or re-inspection, charge Franchisee its then-current Re-Inspection Fee; and/or (5) exercise the Step-In Rights described in Article 18, below.

## **15. RIGHTS AND DUTIES OF PARTIES UPON EXPIRATION OR TERMINATION**

A. Cease Use of Marks; Cancellation of Fictitious Name. Upon termination or expiration of this Agreement, Franchisee shall cease all use of the Marks and Confidential Information, shall cancel any assumed name registration containing the Marks; and shall assign to Franchisor or its designee, at Franchisor's request, all rights to all e-mail addresses, URLs, domain names, Internet listings, and Internet accounts related to the Franchised Restaurant. Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact with full power and authority for the sole purpose of assigning these rights to Franchisor.

This appointment is deemed to be coupled with an interest and shall continue in full force and effect for twelve (12) months following termination or expiration of this Agreement.

B. Assignment of Telephone Numbers. Within fifteen (15) days from the date of termination or expiration of this Agreement, Franchisee shall authorize and initiate the transfer (and shall refrain from interfering with the transfer) to Franchisor, or its designee, of all telephone numbers and directory listings used in connection with the Franchised Restaurant; and/or to instruct the telephone company to forward all calls made to Franchisee's numbers to numbers Franchisor specifies. If Franchisee fails to do so, Franchisor may take whatever action and sign whatever documents it deems appropriate on Franchisee's behalf to effect these events. Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact with full power and authority for the sole purpose of assigning these rights to Franchisor. This appointment is deemed to be coupled with an interest and shall continue in full force and effect for twelve (12) months following termination or expiration of this Agreement.

C. Return of Confidential Operations Manuals and Other Confidential Information. Upon termination or expiration of this Agreement, Franchisee shall immediately deliver to Franchisor the Confidential Operations Manual and all other manuals, records, correspondence, files, and any instructions containing Confidential Information relating to the operation of the Franchised Restaurant which are in your possession; and all copies thereof (all of which are acknowledged to be the property of Franchisor).

D. Return of Signage and Other Items to Franchisor. Within ten (10) days following termination or expiration of this Agreement, Franchisee shall, at its own cost and without any payment from Franchisor for such items, deliver to Franchisor, to make available to Franchisor for pick-up, or to destroy (at Franchisor's option) all signs, sign-faces, sign-cabinets, marketing materials, forms, and other materials Franchisor requests containing any Mark or otherwise identifying or relating to a HERBIE'S BURGERS Restaurant. Such obligation may be modified, by Franchisor, in its sole discretion, as necessary to accommodate exercise of Franchisor's Step-In Rights, pursuant to Article 18, or purchase option, pursuant to Section 15.I. If Franchisee fails to take required action, Franchisor and its representatives may enter the Franchised Restaurant at their convenience and remove these items without any criminal or civil liability to Franchisee, the landlord, or any other third party for trespass or any other claim. Franchisee shall reimburse Franchisor's costs of taking such action.

E. De-Identification. Within ten (10) days following termination or expiration of this Agreement, Franchisee shall take all necessary steps de-identify the Franchised Restaurant premises so that it no longer resembles a HERBIE'S BURGERS Franchised Restaurant. Such de-identification obligations shall be specified in the Confidential Operations Manual or other written communication and include, without limitation, removing the menu-board and related railings and the sneeze-guard railings and delivering to Franchisor the tortilla press. Such obligation may be modified, by Franchisor, in its sole discretion, as necessary to accommodate exercise of Franchisor's Step-In Rights, pursuant to Article 18, or purchase option, pursuant to Section 15.I. If Franchisee fails to take required action, Franchisor and its representatives may enter the Franchised Restaurant at their convenience and take this action without any criminal or civil liability to Franchisee, the landlord, or any other third party for trespass or any other claim. Franchisor need not compensate Franchisee or the landlord for any alterations. Franchisee must reimburse Franchisor's costs of de-identifying the Franchised Restaurant.

F. Payment of all Due Amounts; Liquidated Damages. Franchisee agrees to pay Franchisor within fifteen (15) days after this Agreement expires or its terminated the Royalty Fees, Advertising Fee contributions, amounts due for purchases by Franchisee from Franchisor or its affiliates, late fees, interest, and other amounts which then are unpaid. If Franchisor terminates this Agreement on any ground specified under Sections 14.B. or 14.C., or if Franchisee terminates this Agreement without cause, before this Agreement's scheduled expiration date, Franchisee shall pay to Franchisor, as liquidated damages and not as a penalty, damages in the amount equal to the average weekly Royalty Fee for the twenty-six (26) week period immediately preceding termination, multiplied by the number of weeks remaining in the current Term. If the Franchised Restaurant was closed during any part of the twenty-six (26) week period, then

the Royalty Fee for any week or partial week in which the Franchised Restaurant was closed will be presumed to be the highest weekly Royalty Fee payable during the twenty-six (26) week period.

G. Covenants. Franchisee will comply with the covenants contained in Section 13.D. and as otherwise provided for under this Agreement, which survive the expiration or termination of this Agreement.

H. Costs and Attorneys' Fees. Franchisee shall pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor subsequent to the termination or expiration of the franchise herein granted in obtaining injunctive or other relief for the enforcement of any provisions contained in Articles 13 and 15.

I. Franchisor's Option to Purchase.

1. Option to Purchase Assets. Franchisee hereby grants to Franchisor the right and option to purchase any or all of the assets of the Franchised Restaurant, upon the terms and conditions stated in this Section 15.I. This option may be exercised at any time before, or within sixty (60) days following, termination or expiration of this Agreement, by delivering to Franchisee written notice of its election (the "Exercise Notice"). The Exercise Notice shall identify the assets of the Franchised Restaurant that Franchisor desires to purchase. The purchase price for each asset will be an amount equal to the forced liquidation value (also known as auction value) of the asset. If the parties cannot agree on the forced liquidation value, such value will be determined after delivery of the Exercise Notice by a company selected by Franchisor whose principal business is to evaluate assets to be liquidated, and Franchisor's obligation to close on the purchase will be conditioned on Franchisor's acceptance of the valuation result. Closing on the purchase shall occur no later than sixty (60) days after delivery of the Exercise Notice or sixty (60) days after termination or expiration of this Agreement, whichever occurs later.

2. Option to Purchase Assets as Going Concern. If Franchisor exercises its right to purchase all assets used in connection with the operation of the Franchised Restaurant, (1) the purchase price will be an amount equal to the forced liquidation value of each item of equipment, fixtures, and furniture (if the parties cannot agree on the forced liquidation value, such value will be determined according to the appraisal process described above), plus Franchisee's cost of inventory and supplies, valued at Franchisee's cost, (2) the purchase price shall not include any amount for leasehold improvements, intellectual property, goodwill, going concern value, or items that Franchisee is required to return to Franchisor pursuant to Sections 15.C. or 15.D. of this Agreement, (3) Franchisor may exclude from purchase any operating assets or other items that are not reasonably necessary (in function or quality) to the operation of the Franchised Restaurant or that Franchisor has not approved as meeting system standards for HERBIE'S BURGERS Restaurants, and the purchase price will reflect these exclusions, (4) Franchisor's obligation to close will be conditioned on Franchisee's conveyance of good and marketable title to the assets, free and clear of all encumbrances, and Franchisor's acceptance of any valuation result (5) Franchisor will have the right to assume Franchisee's interest in the lease (if applicable); provided that Franchisee shall be responsible for payment of all transfer fees and Franchisor shall assume only post-closing obligations thereunder, (6) Franchisee shall provide all customary warranties and representations as to title, ownership, condition of the assets, validity of contracts and agreements, and liabilities affecting the Franchised Restaurant, contingent or otherwise, and (7) Franchisee shall indemnify and hold harmless Franchisor from and against all claims, liabilities, and losses related to the ownership or operation of the Franchised Restaurant accruing prior to closing. Closing on the purchase shall occur no later than sixty (60) days after delivery of the Exercise Notice or sixty (60) days after termination or expiration of this Agreement, whichever occurs later.

At closing, Franchisee shall deliver instruments transferring to the purchaser: (i) good and merchantable title to the assets, free and clear of all liens and encumbrances (other than liens and security interests acceptable to Franchisor), with all sales and other transfer taxes paid by Franchisee; (ii) all of the licenses and permits of the Franchised Restaurant that may be assigned or transferred; and (iii) the fee simple or leasehold interest in the premises and improvements or a lease assignment or lease or sublease, as applicable. If Franchisee cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, Franchisor (or its assignee) and Franchisee will close the sale through an escrow. Franchisee and its owners further agree to execute general releases, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its owners, affiliates, officers, directors, employees, agents, successors, and assigns. Franchisor has the right to assign this purchase option, in its sole discretion.

3. Option to Purchase Real Property. If Franchisee owns the real property on which the Franchised Restaurant is situated, Franchisor shall have the right and option to purchase such real property for fair market value. If Franchisor and Franchisee cannot agree on fair market value for the fee simple interest in the Premises, fair market value will be determined by one (1) independent accredited appraiser upon whom Franchisor and Franchisee agree who will conduct an appraisal and, in doing so, be bound by the criteria specified in subsection (3). Franchisee and Franchisor agree to select the appraiser within fifteen (15) days after Franchisor notifies Franchisee that it wishes to exercise its purchase option (if Franchisee and Franchisor have not agreed on fair market value before then). Franchisee and Franchisor will share equally the appraiser's fees and expenses. The appraiser must complete its appraisal within thirty (30) days after its appointment. The purchase price will be the appraised value. If the parties cannot agree on the appraiser, he or she will be chosen by the American Arbitration Association. Franchisor has the right to assign its purchase option, in its sole discretion.

4. Set-Off. Franchisor or its designee may set off against the purchase price, and reduce the purchase price by, any and all amounts Franchisee or its owners owe Franchisor or its affiliates. .

5. Lease. If Franchisee leases the Premises from an unaffiliated lessor, or if Franchisor chooses not to purchase Franchisee's (or its affiliate's) fee simple interest in the Premises, Franchisee agrees (as applicable) at Franchisor's election: (i) to assign its leasehold interest in the Premises to Franchisor or its Designee; (ii) to enter into a sublease for the remainder of the lease term on the same terms (including renewal options) as the lease; or (iii) to lease the Premises to Franchisor or its Designee for a term determined by Franchisor on commercially reasonable terms. "Designee" is an any entity controlling, controlled by, or under common control with Franchisor or any another entity operating a HERBIE'S BURGERS restaurant under a valid franchise agreement with Company.

## **16. TRANSFERABILITY OF INTEREST**

A. Transfer by Franchisor. Franchisor may transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity. With respect to any assignment which results in the subsequent performance by the assignee of all of Franchisor's obligations under this Agreement, the assignee shall expressly assume and agree to perform such obligations, and shall become solely responsible for all of Franchisor's obligations under this Agreement from the date of assignment. Franchisee acknowledges and agrees that Franchisor and/or its Affiliates may sell their assets, the Marks, or the System; may sell securities in a public offering or in a private placement; may merge, acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization,

leveraged buy-out, or other economic or financial restructuring. With regard to any of the above sales, assignments and dispositions, Franchisee expressly and specifically waives any claims, demands or damages arising from or related to the loss of Franchisor's name, the Marks (or any variation thereof), the System and/or the loss of association with or identification of FRANCHISEHERBIES LLC as the franchisor under this Agreement. Franchisee specifically waives any and all other claims, demands or damages arising from or related to the foregoing merger, acquisition and other business combination activities including, without limitation, any claim of divided loyalty, breach of fiduciary duty, fraud, breach of contract or breach of the implied covenant of good faith and fair dealing. Franchisee agrees that Franchisor has the right, now or in the future, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business' facilities, and to operate, franchise or license those businesses and/or facilities as HERBIE'S BURGERS restaurants operating under the Marks, or any other marks following Franchisor's purchase, merger, acquisition or affiliation, regardless of the location of these facilities (which Franchisee acknowledges may be proximate to the Franchised Restaurant).

B. Transfer by Individual Franchisee to Business Entity for Convenience. If Franchisee is an individual, Franchisee may transfer his or her interest in this Agreement to a Business Entity for convenience of operation within the first 12 months of this Agreement by signing Franchisor's standard form of assignment and assumption agreement if (1) the Business Entity is formed solely for purposes of operating the Franchised Restaurant; (2) Franchisee owns and controls 100% of the equity interest; (3) Franchisee provides to Franchisor a copy of the Business Entity's formation and governing documents and a certificate of good standing from the jurisdiction under which the Business Entity was formed; (4) all holders of a legal or beneficial interest in the Business Entity has signed a Guaranty and Assumption of Obligations in the substantially form of Exhibit B; and (5) Franchisee pays to Franchisor its administrative and legal costs and any other expenses associated with the transfer. The term "**Business Entity**" means any person with the power to enter into contracts, other than a natural person. The term includes a corporation, limited liability company, limited partnership, and trust.

C. Transfer Among Owners; Transfer of Non-Controlling Interest. If Franchisee is a Business Entity, Franchisee's Owners may transfer their ownership interests in the Business Entity among each other, and may transfer up to a non-controlling interest in the Business Entity to one or more third parties, if: (1) Franchisee has provided to Franchisor advance notice of the transfer; (2) each new Owner has signed a Guaranty and Assumption of Obligations in the form of Exhibit B; (3) each existing and new Owner has signed a general release in favor of Franchisor and in the form Franchisor requires; and (4) Franchisee pays to Franchisor a \$2,500 transfer fee and reimburses Franchisor for its transfer-related costs and expenses, including reasonable attorneys' fees.

D. Transfer of Agreement; Transfer of Controlling Interest. All other transfers (including any sale or transfer of Franchisee's interest in this Agreement, the sale or transfer of all or substantially of the assets of the Franchised Restaurant in connection with a transfer of this Agreement, and the sale of a controlling interest in Franchisee if Franchisee is a Business Entity) require Franchisor's prior written consent. Franchisor will not unreasonably withhold its consent to a transfer, but may condition its consent on satisfaction of any or all of the following:

1. Franchisee shall have requested consent in writing and delivered to Franchisor a copy of the proposed transfer agreements, including sale terms, at least 30 days prior to the proposed transfer, and Franchisor has determined, in its sole and reasonable discretion, that the terms of the sale will not materially and adversely affect the post transfer viability of the Franchised Restaurant.

2. Franchisee shall have delivered to Franchisor, with a copy of the proposed transfer agreements, one half (\$5,000) of the Transfer Fee of \$10,000, which Franchisee understands will not be refunded to Franchisee if the proposed transfer does not occur;

3. The transferee has demonstrated to Franchisor's satisfaction that the transferee meets Franchisor's then-current educational, managerial and business standards; possesses a good moral

character, business reputation and credit rating; has the aptitude and ability to operate the Franchised Restaurant; and has sufficient equity capital to operate the Franchised Restaurant;

4. All of Franchisee's accrued monetary obligations and all other outstanding obligations to Franchisor, its Affiliates, and third party suppliers shall be up to date, fully paid and satisfied, and Franchisee must be in full compliance with this Agreement and any other agreements between Franchisee and Franchisor, its Affiliates and Franchisee's suppliers;

5. Franchisee or the transferee shall have agreed to refurbish the Franchised Restaurant Premises so that it meets Franchisor's image requirements for new HERBIE'S BURGERS restaurants;

6. Franchisee and each Owner and guarantor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its Affiliates and their respective officers, directors, shareholders, agents and employees in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances; provided, however, that any release will not be inconsistent with any state law regulating franchising;

7. Franchisee or the transferee has paid the balance of the \$10,000 Transfer Fee in the amount of \$5,000, and has reimbursed Franchisor for all reasonable costs and expenses Franchisor incurred (including its attorneys' fees) in facilitating the transfer;

8. The transferee has executed Franchisor's then-current form of franchise agreement, the terms of which may be materially different than the terms of this Agreement and may include, among other things, a different percentage royalty fee and different advertising obligations. The term of such agreement shall be the remaining term of this Agreement at the time of transfer;

9. If the transferee is a Business Entity, then the transferee's Owners each shall sign Franchisor's standard form of Guaranty and Assumption of Obligations;

10. You have complied with the requirements set forth in Section 16.G;

11. The transferee shall have complied with Franchisor's then-current initial training requirements; and

12. If Franchisor introduced the buyer to Franchisee, Franchisee has paid all fees due Franchisor under its then-current franchise resale policy or program.

Franchisee acknowledges that Franchisor has legitimate business reasons to evaluate the qualifications of potential transferees and to analyze and critique the terms of their purchase contracts with Franchisee and that Franchisor's contact with potential transferees to protect Franchisor's business interests will not constitute improper or unlawful conduct. Franchisee expressly authorizes Franchisor to investigate any potential transferee's qualifications, to analyze and critique the proposed purchase terms, to communicate candidly and truthfully with the transferee regarding Franchisee's operation of the Franchised Restaurant, and to withhold consent to economically questionable transactions. Franchisee waives any claim that the action Franchisor takes in good faith to protect its business interests in connection with a proposed transfer constitutes tortious interference with contractual or business relationships. Similarly, Franchisor may review all information regarding the Franchised Restaurant that Franchisee gives the proposed transferee, correct any information Franchisor believes is inaccurate, and give the proposed transferee copies of any reports Franchisee has given Franchisor or Franchisor has made regarding the Franchised Restaurant.

E. Transfers Void. Any purported transfer, by operation of law or otherwise, made without Franchisor's prior written consent will be considered null and void and will be considered a material breach of this Agreement.

F. Security Interest. Franchisee may grant a security interest in this Agreement or the franchise represented by this Agreement only to the limited extent permitted by Section 9-408 of the

Uniform Commercial Code. Any such security interest may only attach to an interest in the proceeds of the operation of the Franchised Restaurant and may not entitle or permit the secured party to take possession of or operate the Franchised Restaurant or to transfer your interest in the franchise without Franchisor's consent.

G. Right of First Refusal. If Franchisee receives a bona fide offer to purchase its interest in this Agreement or receives a bona fide offer to purchase all or substantially all of the assets of the Franchised Restaurant in connection with the buyer's acquisition of a franchise for a HERBIE'S BURGERS restaurant, or if any Owner receives a bona fide offer to purchase his or her equity interests in Franchisee (if Franchisee is a Business Entity), and Franchisee or such Owner wishes to accept such offer, Franchisee or the Owner must deliver to Franchisor written notification of the offer and, except as otherwise provided herein, Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of such written notification, to purchase the seller's interest on the same terms and conditions offered by the third party. The written notification must include a copy of the bona fide offer, signed by the seller, whose identity must be disclosed to Franchisor. If the bona fide offer provides for the exchange of assets other than cash or cash equivalents, the bona fide offer shall include the fair market value of the assets and Franchisee shall submit with the notice an appraisal prepared by a qualified independent third party evidencing the fair market value of such assets as of the date of the offer. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same right of first refusal by Franchisor as in the case of an initial offer. If Franchisor elects to purchase the seller's interest, closing on such purchase must occur by the later of: (1) the closing date specified in the third party offer; or (2) within 60 days from the date of notice to the seller of Franchisor's election to purchase. Franchisor's failure to exercise the option described in this Section 16.G shall not constitute a waiver of any of the transfer conditions set forth in this Article 16.

This Section 16.G grants Franchisor a right to purchase the seller's interest in the above-described assets regardless of whether the bona fide offer includes an offer to purchase other assets of the seller. If the offer includes an offer to purchase other assets, the proposed purchaser must specify the amount of the offer price allocated to the above-described assets. In such events, Franchisor may exercise its right of first refusal with respect to the above-described assets only. If the offer includes an offer to purchase interests in multiple franchise agreements, and/or multiple HERBIE'S BURGERS Restaurants, the proposed purchaser must specify the amount of the offer price allocated to each agreement or Restaurant, as applicable. In such event, Franchisor may exercise its right of first refusal with respect to all or any part of the offer.

The right of first refusal process described in the preceding paragraph will not be triggered by a proposed transfer that would not be allowed under Section 16.C, above. As noted in this Agreement's transfer section, there may be no transfer of the Franchised Restaurant unless it will continue to be operated as a HERBIE'S BURGERS Franchised Restaurant under a Franchise Agreement. Franchisee may not sell the assets of the Franchised Restaurant to anyone who will use those assets to operate anything other than a HERBIE'S BURGERS Franchised Restaurant. Franchisor may require Franchisee (or its owners) to send Franchisor copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction. Franchisor has the unrestricted right to assign this right of first refusal to a third party, who then will have the rights described in this Section 16.G.

## **17. DEATH OR INCAPACITY OF FRANCHISEE**

A. Transfer in the Event of Death or Incapacity. In the event of the death or incapacity of an individual Franchisee, or any partner of a Franchisee which is a partnership or any owner owning a

controlling interest of a Franchisee which is a Business Entity, the heirs, beneficiaries, devisees or legal representatives of said individual, partner or owner shall within ninety (90) days of such event:

1. Apply to Franchisor for the right to continue to operate the franchise for the duration of the term of this Agreement and any renewals hereof, which right shall be granted upon the fulfillment of all of the conditions set forth in Section 16.D. of this Agreement (except that no transfer fee shall be required); or

2. Sell, assign, transfer or convey Franchisee's interest in compliance with the provisions of Section 16.D. of this Agreement; provided, however, in the event a proper and timely application for the right to continue to operate has been made and rejected, the ninety (90) days to sell, assign, transfer or convey shall be computed from the date of said rejection. For purposes of this Article 17, Franchisor's silence on an application made pursuant to Section 16.D. through the ninety (90) days following the event of death or incapacity shall be deemed a rejection made on the last day of such period.

B. Failure to Comply with Transfer Provisions. In the event of the death or incapacity of an individual franchisee, or any partner or owner of a Franchisee which is a partnership or Business Entity, where the provisions of Article 17 have not been fulfilled within the time provided, all rights granted to Franchisee under this Agreement shall, at the option of Franchisor, terminate and Franchisor shall have the option to purchase the Franchised Restaurant in accordance with Section 15.I.

## **18. STEP IN RIGHTS**

A. Step-In Rights. To prevent any interruption of the operation of the Franchised Restaurant which would cause harm to the Franchised Restaurant and thereby depreciate the value thereof, Franchisee authorizes Franchisor to enter upon the Franchised Restaurant premises and to manage the operation of the Franchised Restaurant ("**Step-In Rights**"), upon the happening of any of the following events: (1) in the event that Franchisee is absent or incapacitated by reason of illness or death and is not, therefore, in the sole judgment of Franchisor, able to operate the Franchised Restaurant, (2) upon Franchisee's default under the Franchise Agreement and failure to cure within the required cure period, (3) upon Franchisor's receipt of information that would reasonably lead Franchisor to believe that Franchisee intended to permanently close the Franchised Restaurant or abandon franchise operations, or (4) upon termination or expiration of this Agreement (during the purchase option period and, if Franchisor exercises its option, pending closing on the purchase).

B. Governing Terms. If Franchisor elects to exercise its Step-In Rights, the following terms and conditions shall apply:

1. Term. Franchisor shall have the right to manage the Franchised Restaurant (either itself or through its designee, hereinafter the "**Manager**") for such period as Franchisor deems appropriate, but not to exceed ninety (90) days, unless mutually agreed by the parties.

2. Management Services. During the term, the Manager shall manage the day-to-day operations of the Franchised Restaurant. Franchisee grants Manager the exclusive right to manage the Franchised Restaurant during the term including, without limitation, the right to supervise the operation of the Franchised Restaurant, the right to purchase inventory and supplies for the Franchised Restaurant, and the right to hire, fire, and discipline employees of the Franchised Restaurant (including Franchisee's employees).

3. Compensation. As consideration for the management services provided hereunder, the Manager shall be entitled to a management fee equal to four hundred dollars (\$400) per day, plus reimbursement of all management-related costs and expenses incurred by Franchisor including, without limitation, salary, travel, and lodging expenses for personnel providing management services.

4. Revenue and Expenses. During the management term, all revenue from the operation of the business ("**Operating Revenue**") shall be kept in a separate account, and all costs and expenses of the

Franchised Restaurant (including, without limitation, Royalty Fees, Advertising Fund contributions, and other amounts due under this Agreement, credit card processing fees, inventory purchases, payroll expenses, occupancy costs and expenses, facility maintenance expenses, utility charges, license and service fees, etc.) (“**Operating Costs**”) shall be paid from Operating Revenue. For avoidance of doubt, Operating Costs include current payments of principal and interest due on any debt financing; but not any arrearages. If Operating Revenue is insufficient to fully satisfy the Management Fee and Operating Costs, at the Manager’s election (a) the Manager may advance necessary funds, in the form of a loan to Franchisee, subject to eighteen percent (18%) per month or the highest commercial contract interest rate the law allows, whichever is less, or (b) such expenses shall be paid to the extent of available Operating Revenue and in the order of priority that the Manager deems appropriate, in its sole discretion. If Operating Revenue exceeds Operating Costs, then the excess will be credited against amounts owed to Franchisor under this Agreement, and the balance (if any) will be remitted to Franchisee within ninety (90) days after termination of the management term. For avoidance of doubt, the Manager shall have no obligation to advance funds for purposes of paying expenses, all expenses shall remain the sole obligation of Franchisee.

5. Limitation of Liability. Franchisor (or the third party) will have a duty to use only reasonable efforts and, if Franchisor is not grossly negligent and does not commit an act of willful misconduct, will not be liable to Franchisee or its owners for any debts, losses, or obligations the Franchised Restaurant incurs, or to any of Franchisee’s creditors for any supplies, products, or other assets or services the Franchised Restaurant purchases, while Franchisor (or the third party) manages it. If Franchisor (or a third party) assumes the Franchised Restaurant’s management, Franchisor (or the third party) may retain all Gross Revenues, and need not pay Franchisee or otherwise account to Franchisee for any Gross Revenues generated while Franchisor (or the third party) manages the Franchised Restaurant.

6. Franchisor’s exercise of the management rights granted herein will not affect Franchisor’s right to terminate this Agreement under this Article 14 or any other of the parties’ rights or remedies under this Agreement or applicable law.

## 19. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

A. Independent Contractor. This Agreement does not constitute Franchisee as an agent, legal representative, joint venturer, partner, employee or servant of Franchisor for any purpose whatsoever. Franchisee may not represent to third parties that it is an agent of Franchisor and it is understood between the parties hereto that Franchisee shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of Franchisor, or to create any obligation, express or implied, on behalf of Franchisor. Franchisor does not participate in the hiring, disciplining, or discharging of Franchisee’s employees or in setting and paying wages and benefits to Franchisee’s employees, and Franchisee acknowledges that Franchisor has no power, responsibility, or liability with respect to the hiring, disciplining, or discharging of employees or in setting or paying their wages. Franchisee shall prominently display, by posting of a sign within public view, on or in the Premises, a statement that clearly indicates that the Franchised Restaurant is independently owned and operated by Franchisee as a HERBIE’S BURGERS franchise of Franchisor and not as an agent thereof.

B. Indemnification. Franchisee agrees to indemnify, defend, and hold harmless Franchisor, its affiliates, and their respective owners, directors, officers, employees, agents, successors, and assignees (the “**Indemnified Parties**”) against, and to reimburse any one or more of the Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of or relating to the Franchised Restaurant’s operation, the business Franchisee conducts under this Agreement, or Franchisee’s breach of this Agreement, including, without limitation, those alleged to be caused by the Indemnified Party’s negligence or willful misconduct, unless (and then only to the extent that) the claims, obligations, or damages are determined to have been caused wholly by the Indemnified Party’s negligence or willful misconduct in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction. Franchisee further agrees to indemnify Franchisor from and against all employment practices liability

claims asserted by Franchisee's employees against Franchisor, alleging liability under the "joint employer" theory of liability.

For purposes of this indemnification, "claims" include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including, without limitation, reasonable accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation or alternative dispute resolution, whether or not litigation or alternative dispute resolution is commenced. Each Indemnified Party may defend any claim against it at Franchisee's expense and agree to settlements or take any other reasonable remedial, corrective, or other actions.

This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against Franchisee under this Article 20. Franchisee agrees that failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from Franchisee under this Article 20.

## **20. NON-WAIVER**

No failure of Franchisor to exercise any power reserved to it hereunder, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms hereof. Waiver by Franchisor of any particular default by Franchisee shall not be binding unless in writing and executed by the party sought to be charged and shall not affect or impair Franchisor's right with respect to any subsequent default of the same or of a different nature; nor shall any delay, waiver, forbearance, or omission of Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants hereof affect or impair Franchisor's rights nor shall such constitute a waiver by Franchisor of any right hereunder or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

## **21. NOTICES**

All written notices, reports, and payments permitted or required to be delivered by this Agreement or the Confidential Operations Manual will be deemed delivered: **(i)** at the time delivered by hand; **(ii)** one (1) business day after transmission by facsimile or electronic mail if the sender has confirmation of successful transmission; **(iii)** one (1) business day after being placed in the hands of a nationally recognized commercial courier service for next business day delivery; or **(iv)** three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid. Notices shall be delivered to the addresses set forth on the first page of this Agreement. Either party may change its designated address for notices by delivering to the other party written notice of the change. Any required report that Franchisor does not actually receive during regular business hours on the date due (or postmarked by postal authorities at least two (2) days before then for reports unrelated to payments due under this Agreement) will be deemed delinquent.

## **22. COST OF ENFORCEMENT OR DEFENSE**

If Franchisor or Franchisee commences a legal proceeding against the other to enforce any term or provision of this Agreement, the prevailing party in the legal proceeding (as determined by the trier-of-fact) will be entitled to recover from the non-prevailing party the costs and expenses the prevailing party incurred in the proceeding, including, without limitation, court costs, reasonable accounting, attorneys', arbitrators', and related fees. In addition, if Franchisor incurs costs and expenses due to Franchisee's failure to pay when due amounts owed to Franchisor, to submit when due any reports, information, or supporting records, or otherwise to comply with this Agreement, Franchisee agrees, even if Franchisor does not initiate a formal

legal proceeding, to reimburse Franchisor for all costs and expenses it incurs, including, without limitation, reasonable accounting, attorneys', and related fees.

### **23. APPROVALS, REPRESENTATIONS**

Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor, and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing.

### **24. ENTIRE AGREEMENT**

A. Binding Agreement. This Agreement is binding upon Franchisor, and its successors and assigns, Franchisee and its heirs, successors, and assignst.

B. Modification. Subject to Franchisor's right to modify the Confidential Operations Manual and System standards, this Agreement may not be modified except by a written agreement signed by the duly-authorized officers of both parties.

C. Fully Integrated Agreement. This Agreement and its Exhibits (if any) constitute the entire, full and complete agreement between Franchisor and Franchisee concerning the subject matter hereof. There are no other oral or written understandings or agreements between Franchisor and Franchisee. Nothing in this Agreement, however, will require Franchisee to waive reliance on representations made in the franchise disclosure document that Franchisor delivered to Franchisee in connection with this offering. Franchisor may rely on the representations Franchisee made in its franchise application materials and any representations document or similar questionnaire Franchisee and/or its owners signed before signing this Agreement to confirm and acknowledge their understanding of the risks of entering into this Agreement and the absence of any improper or misleading statements made by Franchisor. Any policies Franchisor periodically adopts and implements to guide it in decision-making are subject to change, are not a part of this Agreement, and are not binding on Franchisor.

D. No Representations; No Reliance. Franchisee acknowledges that Franchisee has conducted an independent investigation of the HERBIE'S BURGERS franchise opportunity, and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will depend primarily on Franchisee's own efforts and market conditions outside of Franchisor's control. Except for the financial performance representations contained in Franchisor's franchise disclosure document, delivered to Franchisee in conjunction with this franchise offering, Franchisee acknowledges and represents to Franchisor that none of Franchisor's representatives or employees made any representations concerning the actual or projected gross revenue or profit of a HERBIE'S BURGERS Restaurant. Franchisee further acknowledges and represents to Franchisor that, in making its decision to purchase a franchise, Franchisee has not relied on any financial performance information provided by Franchisor's representatives or employees, except for information contained in Franchisor's franchise disclosure document. Franchisor makes no warranties or guarantees concerning the success or profitability of the Franchised Restaurant upon which Franchisee may rely, and Franchisor assumes no liability or obligation to Franchisee or any third party to which it would not otherwise be subject by providing any waiver, approval, advice, consent or services to Franchisee in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

### **25. SEVERABILITY AND CONSTRUCTION**

A. Each Section, part, term and/or provision of this Agreement shall be considered severable, and if, for any reason, any Section, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, sections, parts, terms and/or provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid sections, parts, terms and/or provisions shall be deemed not part of this Agreement. Franchisee shall be bound by any promise or covenant imposing the maximum duty permitted by law which is contained within the terms of

any provision hereof, as though it were separately stated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

B. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits attached hereto.

C. Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Franchisee and such of their respective successors and assigns as may be contemplated by this Agreement any rights or remedies under or by reason of this Agreement.

D. All captions herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof. The singular usage includes the plural, where appropriate in the context, and the masculine and neuter usages include the other and the feminine. References to a “controlling ownership interest” in Franchisee mean the percent of the voting shares or other voting rights that results from dividing one hundred percent (100%) of the ownership interests by the number of owners. In the case of a proposed transfer of an ownership interest in Franchisee, whether a “controlling ownership interest” is involved must be made both immediately before and immediately after the proposed transfer to see if a “controlling ownership interest” will be transferred (because of the number of owners before the proposed transfer) or will be deemed to have been transferred (because of the number of owners after the proposed transfer). “Person” means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative, or other legal or functional entity. Unless otherwise specified, all references to a number of days means calendar days and not business days. The words “include” and “including” are meant to be illustrative and not exhaustive and are deemed to be read in all cases as “including, without limitation” and/or “including but not limited to.”

E. This Agreement may be executed in duplicate, and each copy so executed shall be deemed an original. This Franchise Agreement may also be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. A signed copy of this Franchise Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Franchise Agreement. You agree that the electronic signatures or digital signatures (each an “**e-Signature**”) of any party to this Franchise Agreement shall have the same force and effect as manual signatures of such party and such e-Signature shall not be denied legal effect or enforceability solely because it is in electronic form or an electronic record was used in its formation. You agree that an e-Signature of either party is intended to: (i) authenticate the signature, (ii) represent the party’s intent to sign, and (iii) constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. You agree not to contest the admissibility or enforceability of either party’s eSignature.

F. The recitals set forth in this Agreement are specifically incorporated into the terms of this Agreement and hereby constitute a part thereof.

## **26. APPLICABLE LAW; FORUM SELECTION; JURY TRIAL WAIVER; WAIVER OF PUNITIVE DAMAGES**

A. Choice of Law. This Agreement takes effect upon its acceptance and execution by Franchisor. This Agreement shall be interpreted and construed under the laws of the State of New York,

which laws shall prevail in the event of any conflict of law, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15, U.S.C. sections 1051 et seq).

B. Non-Binding Mediation. Before any party may bring an action in arbitration or in court against the other, the parties must first meet to mediate the dispute (except for controversies, disputes, or claims related to or based on improper use of the Proprietary Marks, other intellectual property rights or confidential information). Any such mediation shall be non-binding and shall be conducted at a suitable location chosen by the mediator, which is within a five (5) mile radius of Franchisor's then current principal place of business, unless Franchisor agrees otherwise in writing. Notwithstanding anything to the contrary, this Section 26B shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under applicable laws, including the applicable laws for obtaining interim injunctions, without having to engage in mediation. Mediation hereunder shall be concluded within forty-five (45) days of Franchisee's receipt of the notice specifying the designated mediator or such longer period as may be agreed upon by the parties in writing. All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatever. Franchisor and Franchisee shall each bear its own costs of mediation, and each shall bear one-half (½) the cost of the mediator or mediation service. This Section 26B mandating non-binding mediation shall not be applicable to any claim or dispute arising under this Agreement or any other agreement between the parties which relates to the failure to pay fees or other monetary obligation(s) of either party under said agreement(s).

C. Arbitration. Franchisor and Franchisee agree that, subject to Section 26C and except for controversies, disputes, or claims related to or based on improper use of the Proprietary Marks, other intellectual property rights or confidential information, all controversies, disputes, or claims between Franchisor and Franchisor's affiliates, and Franchisor's and their respective shareholders, members, officers, directors, agents, and/or employees, and Franchisee (and/or Franchisee's owners, guarantors, affiliates, and/or employees) arising out of or related to: (1) this Agreement or any other agreement between Franchisee and Franchisor; (2) Franchisor's relationship with Franchisee; (3) the validity of this Agreement or any other agreement between Franchisee and Franchisor; or (4) any System standard; must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association. The arbitration proceedings will be conducted by one arbitrator and, except as this Section otherwise provides, according to the American Arbitration Association's then current rules. All proceedings will be conducted at a suitable location chosen by the arbitrator, which is within a five (5) mile radius of Franchisor's then current principal place of business. The arbitrator shall have no authority to select a different hearing locale. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

The arbitrator has the right to award or include in his or her award any relief which he or she deems proper, including money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys' fees and costs (as allowable under this Agreement or applicable law), provided that the arbitrator may not declare any Proprietary Mark generic or otherwise invalid.

Franchisor and Franchisee agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier.

Franchisor and Franchisee agree that arbitration will be conducted on an individual, not a class-wide, basis and that an arbitration proceeding between Franchisor and Franchisor's affiliates, and Franchisor's and its affiliates' respective shareholders, officers, directors, agents, and/or employees, and Franchisee (and/or Franchisee's owners, guarantors, affiliates, and/or employees) may not be consolidated with any other arbitration proceeding between Franchisor and any other person.

Despite Franchisor's and Franchisee's agreement to arbitrate, Franchisor and Franchisee each have the right to seek interim injunctive relief from a court of competent jurisdiction; provided, however, that

Franchisor and Franchisee must contemporaneously submit the applicable dispute for arbitration on the merits as provided in this Section 26C.

The provisions of this Section are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

D. Venue; Jurisdiction. Subject to the mediation and arbitration obligations in Sections 26B and 26C, Franchisee agrees that any action sought to be brought by either party shall be brought and maintained exclusively in a state or federal court serving the judicial district in which Franchisor maintains its principal place of business at the time the action is initiated, and the parties hereby waive all questions of personal jurisdiction or venue for purposes of carrying out this provision. Notwithstanding the foregoing, Franchisor may bring an action for injunctive relief in any court having jurisdiction to enforce its trademark or proprietary rights, the covenants not to compete, the restriction of disclosure of Confidential Information, and/or to enforce compliance with Franchisee's post-termination obligations under Article 15. The parties, including the owners of Franchisee, hereby waive all questions of personal jurisdiction for the purpose of carrying out this provision and agree that service of process may be made upon any of them in any proceeding arising out of or relating to this Agreement, the breach of this Agreement, or the relationship created hereby by any means allowed by New York or federal law.

E. Nonexclusivity of Remedy. No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

F. Waiver of Jury Trial. **Franchisor and Franchisee hereby agree that they shall and hereby do waive trial by jury in any action, proceeding or counterclaim, whether at law or at equity, brought by either of them, or in any matter whatsoever which arises out of or is connected in any way with this Agreement or its performance.**

G. Waiver of Punitive Damages. The parties hereby waive to the fullest extent permitted by law any right to or claim for punitive or exemplary damages against the other, and agree that, in the event of a dispute between them, they each shall be limited to the recovery of compensatory damages.

H. Contractual Limitations Period. No legal action or proceeding may be brought against Franchisor or its officers, directors, agents, or employees, for any claim or cause of action (whether sounding in contract, tort, or otherwise) unless such action or proceeding is instituted within two (2) years and one day from the date the claim or cause of action accrued. This provision is intended to shorten any applicable statute of limitations to the extent permitted by law.

## **27. FORCE MAJEURE**

Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, except the payment of monies, neither party shall be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of the parties, and in any event said time period for the performance of an obligation hereunder shall be extended for the amount of time of the delay. This clause shall not apply or not result in an extension of the term of this Agreement.

## **28. "FRANCHISEE" DEFINED; GUARANTY**

As used in this Agreement, the term "Franchisee" shall include all persons who succeed to the interest of the original Franchisee by permitted transfer or operation of law and shall be deemed to include not only the individual or entity defined as "Franchisee" in the introductory Section of this Agreement, but shall also include all partners (general and limited) of a partnership franchisee, and all owners and governing persons of a corporation or limited liability company franchisee, and both the trustee and beneficiaries of any franchisee that is a trust. By their signatures hereto, all such partners, owners, governing persons, trustees and beneficiaries (each an "**Owner**" for purposes of this Agreement) acknowledge and accept the duties and obligations imposed upon each "Owner" under this Agreement, and each Owner shall execute

the Guaranty and Assumption of Obligations (“**Guaranty**”) attached as Exhibit B and made a part hereof. If any Owner is, itself, a corporation, limited liability company, or other legal entity, each of the entity’s owners and governing persons will be considered an “Owner” for purposes of this Agreement; it being the parties’ intent that each individual who controls or holds a beneficial ownership in the Franchisee, directly or indirectly, will execute Exhibit B and be personally bound by the provisions applying to “Owners.”

## **29. CAVEAT**

A. No Warranty. The success of the business venture contemplated to be undertaken by Franchisee by virtue of this Agreement is speculative and depends, to a large extent, upon the ability of Franchisee as an independent businessperson and its active participation in the daily affairs of the business as well as other factors. Franchisor does not make any representation or warranty, express or implied, as to the potential success of the business venture contemplated hereby.

B. Business Judgment. Notwithstanding any contrary provisions contained in this Agreement, Franchisor and Franchisee acknowledge and agree that **(1)** this Agreement (and the relationship of the parties which arises from this Agreement) grants Franchisor the discretion to make decisions, take actions and/or refrain from taking actions not inconsistent with Franchisee’s explicit rights and obligations hereunder that may affect favorably or adversely Franchisee’s interests; **(2)** Franchisor will use its business judgment in exercising such discretion based on Franchisor’s assessment of Franchisor’s own interests and balancing those interests against the interests, promotion and benefit of the System and Franchised Restaurants generally (including Franchisor, and its Affiliates and other Franchisees), and specifically without considering Franchisee’s individual interests or the individual interests of any other particular Franchisee (examples of items that will promote or benefit the System and Franchised Restaurants generally include, without limitation, enhancing the value of the Marks and/or the HERBIE’S BURGERS brand, improving customer service and satisfaction, improving project quality, improving uniformity, enhancing or encouraging modernization, and improving the competitive position of the System); **(3)** Franchisor will have no liability to Franchisee for the exercise of its discretion in this manner and **(4)** even if Franchisor has numerous motives for a particular action or decision, so long as at least one motive is a reasonable business justification no trier of fact in any legal action shall substitute its judgment for Franchisor’s judgment so exercised and such action or decision will not be subject to challenge for abuse of discretion. IF FRANCHISOR TAKES ANY ACTION OR CHOOSES NOT TO TAKE ANY ACTION IN ITS DISCRETION WITH REGARD TO ANY MATTER RELATED TO THIS AGREEMENT AND ITS ACTION OR INACTION IS CHALLENGED FOR ANY REASON, THE PARTIES EXPRESSLY DIRECT THE TRIER OF FACT THAT FRANCHISOR’S RELIANCE ON A BUSINESS REASON IN THE EXERCISE OF ITS DISCRETION IS TO BE VIEWED AS A REASONABLE AND PROPER EXERCISE OF ITS DISCRETION, WITHOUT REGARD TO WHETHER OTHER REASONS FOR OUR DECISION MAY EXIST AND WITHOUT REGARD TO WHETHER THE TRIER OF FACT WOULD INDEPENDENTLY ACCORD THE SAME WEIGHT TO THE BUSINESS REASON.

## **30. REPRESENTATIONS AND ACKNOWLEDGMENTS**

A. Franchisee represents and acknowledges that it has received, read and understood this Agreement and Franchisor's franchise disclosure document; and that Franchisor has fully and adequately explained the provisions of each to Franchisee's satisfaction; and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this Agreement.

B. Franchisee has been advised to consult with its own advisors with respect to legal, financial and other aspects of this Agreement, the business franchised hereby and the prospects for that business. Franchisee has either consulted with such advisors or has deliberately declined to do so.

C. The covenants not to compete set forth in this Agreement are fair, reasonable and shall not impose any undue hardship on Franchisee, since Franchisee has other considerable skills, experience and education which afford Franchisee the opportunity to derive income from other endeavors.

D. Franchisee affirms that all information set forth in any and all applications, financial statements and submissions to Franchisor is true, complete and accurate in all respects, with Franchisee expressly acknowledging that Franchisor is relying upon the truthfulness, completeness and accuracy of such information.

E. Franchisee has conducted an independent investigation of the business contemplated by this Agreement and recognizes that, like any other business, an investment in a HERBIE'S BURGERS Franchised Restaurant involves business risks and that the success of the venture is primarily dependent upon the business abilities and efforts of Franchisee.

F. Except for representations contained in the franchise disclosure document delivered to Franchisee in connection with Franchisee's purchase of this franchise, Franchisee represents that, before the Effective Date of this Agreement, neither Franchisor nor any person purporting to speak on Franchisor's behalf has made any representations to Franchisee concerning the historical sales or profits of any HERBIE'S BURGERS restaurant, nor has made any promises or assumptions concerning the projected sales or profits of Franchisee's Franchised Restaurant. Franchisee further represents to Franchisor that Franchisee has not relied on any representations of this type, made by Franchisor or anyone purporting to speak on Franchisor's behalf, in making its decision to purchase the franchise.

G. Franchisee acknowledges that it has read this Agreement and Franchisor's franchise disclosure document and that it has no knowledge of any representations by Franchisor, or its officers, directors, shareholders, employees or agents that are contrary to the statements made in Franchisor's franchise disclosure document or to the terms herein.

H. If Franchisee and/or the Franchised Restaurant is located in California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin, then: no statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have duly executed, sealed and delivered this Agreement in duplicate the day and year first above written.

**ATTEST:**

**FRANCHISEHERBIES LLC:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

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

**ATTEST/WITNESS:**

**FRANCHISEE:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

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

**EXHIBIT A TO THE FRANCHISE AGREEMENT**  
**SITE SELECTION AREA, PREMISES, DESIGNATED AREA**

**If Franchisee Has Not Yet Identified A Premises**

Section 3.B. The Site Selection Area is: \_\_\_\_\_  
Map Enclosed: ☐ Yes ☐ No

Section 3.B. The Control Date is: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Exhibit A on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

**FRANCHISEHERBIES LLC FRANCHISEE**

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

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

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

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

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

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

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

**When Franchisee Has Identified A Premises**

As of the date set forth below, the Franchise Restaurant's Premises has been determined and, as such, Exhibit A is completed and/or supplemented as follows:

Section 1.A. The Premises is at: \_\_\_\_\_

Section 3.G. The Target Opening Date is: \_\_\_\_\_

Section 1.B. The Designated Area is: \_\_\_\_\_  
Map Enclosed: ☐ Yes ☐ No

but excludes all Closed Markets within such area. A “**Closed Market**” is any facility serving a captive market, including department stores, supermarkets, shopping malls, amusement parks, airports, train stations, travel plazas, casinos, nightclubs, restaurants, public facilities, college and school campuses, arenas, stadiums, ballparks, hospitals, office buildings, convention centers, airlines (in-flight service), military bases, and any other mass gathering events or locations, and facilities of any kind for which food and/or beverage service rights are contracted to a third party or parties (including, but not limited to, designated road ways and facilities adjacent thereto), whether inside or outside of the Designated Area. As used herein, the term “shopping malls” includes any retail center (enclosed or open), including “outlet malls,” with an aggregate gross leasable area in excess of 500,000 square feet.

If the Designated Area is defined by streets, highways, freeways or other roadways, or rivers, streams, or tributaries, then the boundary of the Designated Area shall extend to the center line of each such street, highway, freeway or other roadway, or river, stream, or tributary.

Section 3.B. Franchisor's required Modifications to Premises: \_\_\_\_\_

\_\_\_\_\_  
List of Modifications Enclosed: ☐ Yes ☐ No

**IN WITNESS WHEREOF**, the parties have completed and/or supplemented this Exhibit A on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FRANCHISEHERBIES LLC**

**FRANCHISEE**

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

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

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

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

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

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

## **EXHIBIT B TO THE FRANCHISE AGREEMENT**

### **GUARANTY AND ASSUMPTION OF OBLIGATIONS**

**THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS** (“Guaranty”) is given this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement of even date herewith (the “Agreement”) by FRANCHISEHERBIES LLC (“Franchisor”), each of the undersigned hereby personally and unconditionally (1) guarantees to Franchisor, and its successors and assigns, for the term of the Agreement (including extensions) and thereafter as provided in the Agreement, that \_\_\_\_\_ (“Franchisee”) shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement (including any amendments or modifications of the Agreement); and (2) shall be personally bound by, and personally liable for the breach of each and every provision in the Agreement (including any amendments or modifications of the Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities including, without limitation, the non-competition, confidentiality, and transfer requirements.

Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or non-performance of any obligations hereby guaranteed; (4) any right he may have to require that an action be brought against Franchisee or any other person as a condition of liability; (5) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchisee arising as a result of the undersigned’s execution of and performance under this Guaranty; and (6) any and all other notices and legal or equitable defenses to which he may be entitled.

Each of the undersigned consents and agrees that: (1) his direct and immediate liability under this guaranty shall be joint and several, both with Franchisee and among other guarantors; (2) he shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (4) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims (including the release of other guarantors), none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement (including extensions), for so long as any performance is or might be owed under the Agreement by Franchisee or its owners, and for so long as Franchisor has any cause of action against Franchisee or its owners; and (5) this guaranty will continue in full force and effect for (and as to) any extension or modification of the Agreement and despite the transfer of any interest in the Agreement or Franchisee, and each of the undersigned waives notice of any and all renewals, extensions, modifications, amendments, or transfers.

This Guaranty may be executed in duplicate, and each copy so executed shall be deemed an original. This Guaranty may also be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. A signed copy of this Guaranty transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Guaranty. You agree that the electronic signatures or digital signatures (each an “**e-Signature**”) of any party to this Guaranty shall have the same force and effect as manual signatures of such party and such e-Signature shall not be denied legal effect or enforceability solely because it is in electronic form or an electronic record was used in its formation. You agree that an e-Signature of either party is intended to: (i) authenticate the signature, (ii) represent the party’s intent to sign,

and (iii) constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. You agree not to contest the admissibility or enforceability of either party's e-Signature.

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

GUARANTOR(S)

PERCENTAGE OF OWNERSHIP IN  
FRANCHISEE

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

\_\_\_\_\_%

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

\_\_\_\_\_%

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

\_\_\_\_\_%

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

\_\_\_\_\_%

## **EXHIBIT C TO THE FRANCHISE AGREEMENT**

### **RENEWAL ADDENDUM**

**THIS RENEWAL ADDENDUM** (“**Addendum**”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”) by and between FRANCHISEHERBIES LLC, a New York limited liability company (“**Franchisor**”) and \_\_\_\_\_ having an address of \_\_\_\_\_ (“**Franchisee**”) (collectively, the “**Parties**”).

### **BACKGROUND**

- A. On or about \_\_\_\_\_, \_\_\_\_\_ the Parties entered into a franchise agreement (“**Original Franchise Agreement**”) pursuant to which Franchisor granted Franchisee the license, right, and obligation to establish and operate a HERBIE’S BURGERS Restaurant using the Marks and the System (the “**Franchised Restaurant**”).
- B. Franchisee now desires to renew its right to operate the Franchised Restaurant. Therefore, contemporaneously with the execution of this Addendum, Franchisor and Franchisee are entering into a renewal franchise agreement (“**Renewal Franchise Agreement**”) pursuant to which Franchisor is granting Franchisee a renewal license to continue the operation of the Franchised Restaurant.
- C. The Parties have agreed to alter the terms stated in the Renewal Franchise Agreement, as provided herein to reflect the Parties’ intentions and the terms of renewal.

### **AGREEMENT**

NOW, THEREFORE, that for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Franchisee’s Representations. Franchisee hereby represents and warrants to Franchisor that all necessary actions for the execution of the Renewal Franchise Agreement and this Renewal Addendum have been taken.
- 2. Term. Section 2.A. of the Renewal Franchise Agreement is replaced in its entirety with the following:

“Term. Unless sooner terminated as provided in this Agreement, the term of this Agreement begins on the Effective Date and expires \_\_\_\_ years after the Effective Date.”
- 3. Renewal Term. The first sentence of Section 2.B. of the Renewal Franchise Agreement is replaced with the following sentence:

“Renewal Term. Franchisee may renew its franchise right for \_\_\_\_ additional successive terms of \_\_\_\_ years if, at the end of the term, each of the following conditions has been satisfied:”
- 4. Restaurant Location. The Parties acknowledge that, as the Franchised Restaurant is currently open and operating at the Premises identified in Exhibit A, Sections 3.B. through 3.G. of the Renewal Franchise Agreement are not currently applicable to the Premises. However, Sections 3.B. through 3.G. remain in full force and effect in the event of any renewal of the Premises lease (Section 3.D), the Franchise Restaurant’s relocation (Section 3.I), or as otherwise provided for in the Renewal Franchise Agreement.

5. Operational Expenditures and Capital Expenses. Section 3.H of the Renewal Franchise Agreement, is replaced in its entirety with the following:

“Operational Expenditures and Capital Expenses. Franchisor periodically may modify standards, specifications, and operating procedures, and these modifications may obligate Franchisee to invest additional capital in the Franchised Restaurant and/or incur higher operating costs. Franchisee agrees to implement any changes in standards, specifications, and operating procedures within the reasonable time period Franchisor requests, whether they involve maintenance, repairs, refurbishing or remodeling the Franchised Restaurant, buying new operating assets, adding new products or services, or otherwise modifying the image of the Franchised Restaurant or the nature of the Franchised Restaurant’s operations, as if they were part of this Agreement as of the day it was signed. There are no limits on the upgrades and modifications that Franchisor may require Franchisee to make during the term of this Agreement.”

6. Initial Franchise Fee. Section 4.A. of the Renewal Franchise Agreement is amended to provide that no initial franchise fee shall be due.
7. Grand Opening. Section 9.A. of the Renewal Franchise Agreement is deleted in its entirety.
8. Ratification; Conflicting Terms. Notwithstanding anything to the contrary in the Renewal Franchise Agreement, in the event of a conflict between the provisions of the Renewal Franchise Agreement and the provisions of this Addendum, the provisions of this Addendum will control. The Parties agree that the Renewal Franchise Agreement remains fully effective in all respects except as specifically modified herein, and all the respective rights and obligations of Franchisee and Franchisor remain as written unless modified specifically herein.
9. This Addendum may be executed in duplicate, and each copy so executed shall be deemed an original. This Addendum may also be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. A signed copy of this Addendum transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Addendum. You agree that the electronic signatures or digital signatures (each an “**e-Signature**”) of any party to this Addendum shall have the same force and effect as manual signatures of such party and such e-Signature shall not be denied legal effect or enforceability solely because it is in electronic form or an electronic record was used in its formation. You agree that an e-Signature of either party is intended to: (i) authenticate the signature, (ii) represent the party’s intent to sign, and (iii) constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. You agree not to contest the admissibility or enforceability of either party’s e-Signature.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have executed this Agreement to be effective as of the Effective Date written above.

**FRANCHISEHERBIES LLC**

**FRANCHISEE**

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

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

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

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

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

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

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

## **EXHIBIT D TO THE FRANCHISE AGREEMENT**

### **LIABILITY WAIVER BY FRANCHISEE**

I am an/the owner of \_\_\_\_\_ (“**Franchisee Company**”). Franchisee Company has signed a franchise agreement with FRANCHISEHERBIES LLC. In consideration for the training to be provided to my employees and/or me by FRANCHISEHERBIES LLC and/or its affiliates (collectively, “**HERBIE’S BURGERS**”), I agree, both for myself and on behalf of Franchisee Company, to hold HERBIE’S BURGERS harmless from, and I hereby waive any and all liability of HERBIE’S BURGERS and its officers, directors, agents, employees, insurers, and franchisees for any injury, claim, damage, or incident which occurs in the course of training at any HERBIE’S BURGERS Restaurant or other designated training facility(s), whether or not such facility is owned or controlled by HERBIE’S BURGERS, specifically including personal injury, property damage, and employment-related claims, and even if caused in whole or in part by the negligence of HERBIE’S BURGERS or any HERBIE’S BURGERS employee.

I understand that:

- HERBIE’S BURGERS has invited my employees and me onto its premises for training solely by virtue of Franchisee Company’s franchise relationship with HERBIE’S BURGERS;
- Training may involve a variety of risks, including the risk of physical and/or emotional injury and property damage; and
- HERBIE’S BURGERS assumes no liability to me, Franchisee Company, or employees of Franchisee Company for any harm or claims of harm incurred or allegedly while in training and/or on HERBIE’S BURGERS’ premises.

I acknowledge that my employees must look solely to Franchisee Company and its benefits programs and workers compensation insurance to cover the costs of any treatment for injuries or other losses or damages that my employees may sustain in training. Neither I nor Franchisee Company will attempt to hold HERBIE’S BURGERS liable or financially responsible for any such losses or damages. I acknowledge that the indemnification clause of Franchisee Company’s franchise agreement with HERBIE’S BURGERS will apply to any claim against HERBIE’S BURGERS by any of Franchisee Company’s (or its affiliates’) employees.

I certify that Franchisee Company has and will maintain minimum insurance coverage as required by the franchise agreement, including worker’s compensation and employees’ liability per statutory requirements. At HERBIE’S BURGERS’ request, I agree to provide a certificate of insurance completed by Franchisee Company’s insurance carrier, certifying that the required minimum insurance coverage is in effect.

I give my consent for HERBIE’S BURGERS to arrange for medical treatment for any illness or injury that I or my employees might suffer while participating in the training program.

#### **FRANCHISEE COMPANY:**

\_\_\_\_\_

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

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

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

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

\_\_\_\_\_

, Individually

## **EXHIBIT E TO THE FRANCHISE AGREEMENT**

### **LEASE RIDER**

**THIS LEASE RIDER** (“**Lease Rider**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between FRANCHISEHERBIES LLC (“**Company**”), \_\_\_\_\_ (“**Franchisee**”), and \_\_\_\_\_ (“**Landlord**”).

WHEREAS, Company and Franchisee are parties to a Franchise Agreement, which is dated \_\_\_\_\_, 20\_\_\_\_ (the “**Franchise Agreement**”), for the operation of a HERBIE’S BURGERS Restaurant (the “**Restaurant**”); and

WHEREAS, Franchisee and Landlord propose to enter into the lease to which this Rider is attached (the “**Lease**”), pursuant to which Franchisee will occupy premises located at \_\_\_\_\_ (the “**Premises**”) for the purpose of constructing and operating the Restaurant in accordance with the Franchise Agreement; and

WHEREAS, Company has the right under the Franchise Agreement to require Franchisee to agree to the terms contained in this Lease Rider, and Landlord is willing to agree to the terms contained in this Lease Rider so that Company allows Franchisee to enter into the Lease.

NOW, THEREFORE, in consideration of Company’s willingness to allow Franchisee to enter the Lease with Landlord, and in consideration of the mutual undertakings and commitments set forth in this Rider and in the Franchise Agreement, the receipt and sufficiency of all of which the parties acknowledge, the parties agree as follows:

1. During the term of the Franchise Agreement, Franchisee shall be permitted to use the Premises for the operation of the Restaurant and for no other purpose.
2. Landlord consents to Franchisee’s installation and use of such trademarks, service marks, signs, decor items, color schemes, and related components of the HERBIE’S BURGERS system as Company may from time to time prescribe for the Restaurant.
3. Landlord agrees to furnish Company with copies of all letters and notices it sends to Franchisee pertaining to the Lease and the Premises at the same time it sends such letters and notices to Franchisee. All notices to Company shall be sent to 636 Providence Street, Albany, NY 12208, Attention: President, or to such other address of which Company notifies Landlord in writing from time to time. In case of a Notice of Default or a Default notice (pass any cure period), Landlord agrees to also provide Company electronic notice via e-mail to [franchising@herbiesburgers.com](mailto:franchising@herbiesburgers.com)
4. Company shall have the right, without being guilty of trespass or any other crime or tort, but has no obligation, to enter the Premises at any time and from time to time (i) to make any modification or alteration it considers necessary to protect the HERBIE’S BURGERS system and marks, (ii) to cure any default under the Franchise Agreement or the Lease, or (iii) to remove the distinctive elements of the HERBIE’S BURGERS trade dress upon the Franchise Agreement’s expiration or termination. Neither Company nor Landlord shall be responsible to Franchisee for any damages Franchisee might sustain as a result of any action Company takes in accordance with this provision. Company shall repair or reimburse Landlord for the cost of any damage to the Premises’ walls, floor, or ceiling that result from Company’s removal of trade dress items and other property from the Premises.
5. Landlord and Franchisee hereby agree that, upon Company’s request and at Company’s direction following the expiration or termination of the Franchise Agreement, Franchisee shall assign the Lease to Company or its Designee (the “**Permitted Transferee**”) and Landlord hereby consents to such an assignment and agrees not to impose any assignment fee or similar charge, or to increase or accelerate rent under the Lease, in connection with such an assignment. The original Franchisee shall continue to guarantee the Lease. Landlord and Franchisee also agree that, following the expiration or termination of the Franchise Agreement but before Company requests an assignment of the Lease as referenced above, Company or its

Designee may, upon Company's notice to Landlord and Franchisee, assume possession of the Premises for up to ninety (90) days, the specific amount of time to be determined by Company, during which Company or its Designee may operate the Restaurant to assess whether to request the Lease assignment referenced above. Company or its Designee shall comply with all Lease obligations that arise during its possession of the Premises but shall have no obligation to pay any delinquent rent or to cure any other default under the Lease that occurred or existed prior to the date of the assumption of possession. For purposes of this Lease Assignment, an "**Affiliate of Company**" is any entity controlling, controlled by, or under common control with Company. "**Control**" means the power to direct the management and policies of the entity in question, whether through the ownership of voting securities, by contract, or otherwise and includes any entity that operates a HERBIE'S BURGERS Restaurant under a management agreement with the Company. "**Franchisee of Company**" is any entity operating a HERBIE'S BURGERS restaurant under a valid franchise agreement with Company. "**Designee**" is an Affiliate of Company or another Franchisee of Company.

6. In the event Franchisee assigns the Lease to Company or its Designee in accordance with the preceding paragraph, the assignee must assume all obligations of Franchisee under the Lease from and after the date of assignment and Company or the Permitted Transferee shall comply with all Lease obligations (including without limitation the payment of all Rent incurred for the time of possession) that arise during the Review Period but shall have no obligation to pay any delinquent rent or to cure any other default under the Lease that occurred or existed prior to the date of the assumption of possession.

7. Franchisee may not assign the Lease or sublet the Premises (other than in accordance with paragraph 5) without Company's prior written consent, and Landlord will not consent to an assignment or subletting by Franchisee (other than in accordance with paragraph 5 and in accordance with the specific terms of the Lease) without first verifying that Company has given its written consent to Franchisee's proposed assignment or subletting.

8. Landlord and Franchisee will not amend or modify the Lease in any manner that could materially affect any of the provisions or requirements of this Lease Rider without Company's prior written consent.

9. Franchisee agrees that any default under the Lease will constitute a default under the Franchise Agreement. Franchisee and Landlord agree that any default under the Franchise Agreement will constitute a default under the Lease.

10. Franchisee agrees that Landlord shall give Company all sales and other information that Company requests regarding Franchisee's operation of the Restaurant (to the extent the Landlord is in actual possession of such items).

11. The provisions of this Lease Rider will supersede and control any conflicting provisions of the Lease.

12. Landlord acknowledges that Company (or its Designee) is not a party to the Lease and shall have no liability or responsibility under the Lease unless and until the Lease is assigned to, and assumed by, Company (or its Designee) as provided in paragraph 6 or Company (or its Designee) temporarily assumes possession of the Premises as provided in paragraph 5.

13. This Lease Rider may be executed in duplicate, and each copy so executed shall be deemed an original. This Lease Rider may also be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. A signed copy of this Lease Rider transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Lease Rider. You agree that the electronic signatures or digital signatures (each an "**e-Signature**") of any party to this Lease Rider shall have the same force and effect as manual signatures of such party and such e-Signature shall not be denied legal effect or enforceability solely because it is in electronic form or an electronic record was used in its formation. You agree that an e-Signature of either party is intended to: (i) authenticate the signature, (ii) represent the party's

intent to sign, and (iii) constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. You agree not to contest the admissibility or enforceability of either party's e-Signature.

**IN WITNESS WHEREOF**, the parties have executed this Lease Rider as of the date first above written.

**COMPANY:**

**FRANCHISEHERBIES LLC,**  
a New York limited liability company

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

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

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

**LANDLORD:**

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

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

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

**FRANCHISEE:**

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

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

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

**EXHIBIT D**  
**TO THE DISCLOSURE DOCUMENT**  
**FINANCIAL STATEMENTS**

**FRANCHISE HERBIES, LLC**

**FINANCIAL STATEMENT  
MAY 31, 2025**

FRANCHISE HERBIES, LLC

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## INDEPENDENT AUDITORS' REPORT

To the Members of  
Franchise Herbies, LLC

### **Opinion**

We have audited the accompanying balance sheet of Franchise Herbies, LLC (a New York Limited Liability Company), as of May 31, 2025, and the related notes to the financial statement.

In our opinion, the balance sheet referred to above present fairly, in all material respects, the financial position of Franchise Herbies, LLC as of May 31, 2025, in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statement section of our report. We are required to be independent of Franchise Herbies, LLC and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibilities of Management for the Financial Statement**

Management is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America; and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statement that is free from material misstatement, whether due to fraud or error.

In preparing the financial statement, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Franchise Herbies, LLC's ability to continue as a going concern within one year after the date that the financial statement is available to be issued.

### **Auditors' Responsibilities for the Audit of the Financial Statement**

Our objectives are to obtain reasonable assurance about whether the financial statement as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statement.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statement, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statement.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Franchise Herbies, LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statement.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Franchise Herbies, LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Aprio, LLP

Atlanta, Georgia  
August 18, 2025

FRANCHISE HERBIES, LLC  
BALANCE SHEET  
MAY 31, 2025

ASSETS

Current assets

Cash

\$ 15,000

Total assets

\$ 15,000

MEMBERS' EQUITY

Members' equity

\$ 15,000

Members' equity

\$ 15,000

See accompanying notes to the financial statement

FRANCHISE HERBIES, LLC  
NOTES TO FINANCIAL STATEMENT  
MAY 31, 2025

**Note 1**

**Summary of Significant Accounting Policies**

Nature of Operations:

Franchise Herbies, LLC, (the "Company"), a limited liability company, was formed on May 8, 2025 in the state of New York. The Company's principle purpose is to offer and sell franchises throughout the United States, operating as Herbie's Burgers, a fast casual burger restaurant with high quality ingredients. On May 19, 2025, the members contributed \$15,000 to the Company.

Basis of Accounting:

The financial statement of the Company has been prepared using the accrual basis of accounting in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Use of Estimates:

The preparation of financial statement in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statement. Actual results could differ from these estimates.

Concentration of Credit Risk Arising From Cash Deposits in Excess of Insured Limits:

The Company maintains cash balances at one commercial bank and this balance can exceed the FDIC insured deposit limit of \$250,000 per financial institution. The Company has not experienced any losses in this account through the date when the financial statement was available to be issued.

Income Taxes:

No provision has been made for income taxes because each member's proportionate share of the Company's income or loss is passed through to be included in the individual tax return of the member. The Company applies the guidance on accounting for uncertain tax provisions in FASB ASC 740 Income Taxes.

Fair Value of Financial Instruments:

The Company's financial instruments, including cash, are carried at cost, which approximates their fair value because of the short-term nature of these financial instruments.

**Note 2**

**Subsequent Events**

The Company evaluated subsequent events through August 18, 2025, when the financial statement was available to be issued. Management is not aware of any significant events that occurred subsequent to the balance sheet date but prior to the filing of this report that would have a material impact on the financial statement.

**EXHIBIT E**  
**TO THE DISCLOSURE DOCUMENT**

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**EXHIBIT F**  
**TO THE DISCLOSURE DOCUMENT**  
**LIST OF CURRENT FRANCHISEES AND**  
**FRANCHISES THAT HAVE LEFT THE SYSTEM**

**LIST OF HERBIE'S BURGERS FRANCHISED RESTAURANTS**  
**As of December 31, 2024**

*None.*

**Franchisees with Signed Franchise Agreements but Restaurant Not Open**  
**As of December 31, 2024**

*None.*

**List of Former Franchisees as of December 31, 2024**

Franchisees who have had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year, December 31, 2024, or who have not communicated with us within 10 weeks of the date of this disclosure document:

*None.*

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

**EXHIBIT G**  
**TO THE DISCLOSURE DOCUMENT**  
**GENERAL RELEASE LANGUAGE**

**FRANCHISEHERBIES LLC**

**GRANT OF FRANCHISOR CONSENT AND FRANCHISEE RELEASE**

FRANCHISEHERBIES LLC (“we,” “us,” or “our”) and the undersigned, \_\_\_\_\_ (“you” or “your”), currently are parties to a certain \_\_\_\_\_ *[Franchise Agreement]* (the “Agreement”) dated \_\_\_\_\_, 20\_\_\_\_. You have asked us to take the following action or to agree to the following request: *[insert as appropriate for renewal or transfer situation]* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

We have the right under the Agreement to obtain a general release from you (and, if applicable, your owners) as a condition of taking this action or agreeing to this request. Therefore, we are willing to take the action or agree to the request specified above if you (and, if applicable, your owners) give us the release and covenant not to sue provided below in this document. You (and, if applicable, your owners) are willing to give us the release and covenant not to sue provided below as partial consideration for our willingness to take the action or agree to the request described above.

Consistent with the previous introduction, you, on your own behalf and on behalf of your successors, heirs, executors, administrators, personal representatives, agents, assigns, partners, shareholders, members, directors, officers, principals, employees, and affiliated entities (collectively, the “Releasing Parties”), hereby forever release and discharge us and our current and former officers, directors, shareholders, principals, employees, agents, representatives, affiliated entities, successors, and assigns (collectively, the “HERBIE’S BURGERS Parties”) from any and all claims, damages (known and unknown), demands, causes of action, suits, duties, liabilities, and agreements of any nature and kind (collectively, “Claims”) that you and any of the other Releasing Parties now has, ever had, or, but for this document, hereafter would or could have against any of the HERBIE’S BURGERS Parties (1) arising out of or related to the HERBIE’S BURGERS Parties' obligations under the Agreement or (2) otherwise arising from or related to your and the other Releasing Parties' relationship, from the beginning of time to the date of your signature below, with any of the HERBIE’S BURGERS Parties. You, on your own behalf and on behalf of the other Releasing Parties, further covenant not to sue any of the HERBIE’S BURGERS Parties on any of the Claims released by this paragraph and represent that you have not assigned any of the Claims released by this paragraph to any individual or entity who is not bound by this paragraph.

We also are entitled to a release and covenant not to sue from your owners. By his, her, or their separate signatures below, your owners likewise grant to us the release and covenant not to sue provided above.

**The following language applies only to transactions governed by the  
Maryland Franchise Registration and Disclosure Law**

The release provided above will not apply to the extent prohibited by the Maryland Franchise Registration and Disclosure Law. You may commence a lawsuit against us in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

**FRANCHISEHERBIES LLC**

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

\_\_\_\_\_  
*[Name of Franchisee]*  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name of Owner]  
\_\_\_\_\_  
[Signature]  
Date: \_\_\_\_\_

**EXHIBIT H**  
**TO THE DISCLOSURE DOCUMENT**  
**STATE ADDENDA AND AGREEMENT RIDERS**



**NASAA REQUIRED MODIFICATIONS TO ITEM 22 OF THE FDD –**

**IN ADDITION TO CERTAIN STATE SPECIFIC ADDENDA THAT FOLLOW, THE FOLLOWING LANGUAGE SHALL BE APPLICABLE IN CALIFORNIA, HAWAII, ILLINOIS, INDIANA, MARYLAND, MICHIGAN, MINNESOTA, NEW YORK, NORTH DAKOTA, RHODE ISLAND, SOUTH DAKOTA, VIRGINIA, WASHINGTON, OR WISCONSIN.**

**No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.**

**FRANCHISEHERBIES LLC**

**STATE APPENDIX TO DISCLOSURE DOCUMENT**

**NEW YORK STATE ADDENDUM TO FDD**

1. The following information is added to the cover page of the Franchise Disclosure Document:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR RESOURCES OR INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN ANYTHING IN THIS FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPROPRIATE STATE OR PROVINCIAL AUTHORITY. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS THAT ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.

2. The following is to be added at the end of Item 3:

Except as provided above, the following applies to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

- A. No such party has an administrative, criminal, or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.
- B. No such party has pending actions other than routine litigation incidental to the business that is significant in the context of the number of franchisees and the size, nature, or financial condition of the franchise system or its business operations.
- C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the ten years immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

- D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the “Summary” sections of Item 17(c), titled “Requirements for a franchisee to renew or extend,” and Item 17(m), entitled “Conditions for franchisor approval of transfer”:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; this proviso intends that the non-waiver provisions of General Business Law Sections 687(4) and 687(5) be satisfied.

4. The following language replaces the “Summary” section of Item 17(d), titled “Termination by a franchisee”: “You may terminate the agreement on any grounds available by law.”

5. The following is added to the end of the “Summary” sections of Item 17(v), titled “Choice of forum,” and Item 17(w), titled “Choice of law”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or the franchisee by Article 33 of the General Business Law of the State of New York.

6. Franchise Questionnaires and Acknowledgements--No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

7. Receipts--Any sale made must be in compliance with § 683(8) of the Franchise Sale Act (N.Y. Gen. Bus. L. § 680 et seq.), which describes the

time period a Franchise Disclosure Document (offering prospectus) must be provided to a prospective franchisee before a sale may be made. New York law requires a franchisor to provide the Franchise Disclosure Document at the earliest of the first personal meeting, ten (10) business days before the execution of the franchise or other agreement, or the payment of any consideration that relates to the franchise relationship.

**EXHIBIT I**  
**PRE-CLOSING QUESTIONNAIRE**

## **PRE-CLOSING QUESTIONNAIRE**

***[To be completed by Franchisee and all Owners before signing Franchise Agreement]***

***DO NOT COMPLETE IF YOU ARE LOCATED, OR YOUR FRANCHISED BUSINESS WILL BE LOCATED IN: CALIFORNIA, HAWAII, ILLINOIS, INDIANA, MARYLAND, MICHIGAN, MINNESOTA, NEW YORK, NORTH DAKOTA, RHODE ISLAND, SOUTH DAKOTA, VIRGINIA, WASHINGTON, OR WISCONSIN.***

As you know, you and FRANCHISEHERBIES LLC (the “Franchisor”) are about to enter into a franchise agreement for the development, opening and operation of a HERBIE’S BURGERS® franchised outlet (the “Outlet”). The purpose of this Questionnaire is to determine if any improper sales practices have occurred, including, whether any statements or promises were made to you. Franchisor has not authorized and that may be untrue, inaccurate or misleading. Please review each of the following questions carefully and provide honest and complete responses to each question. **The answers you provide in this Questionnaire are material to Franchisor and Franchisor is relying on all such answers in agreeing to enter into a franchise relationship with you.**

1. Have you received and personally reviewed Franchisor’s Franchise Disclosure Document?

Yes\_\_\_\_ No\_\_\_\_

2. Did you sign a receipt for the Franchise Disclosure Document indicating the date you received it?

Yes\_\_\_\_ No\_\_\_\_

3. Have you received and personally reviewed the FRANCHISEHERBIES LLC Franchise Agreement and all accompanying Exhibits?

Yes\_\_\_\_ No\_\_\_\_

4. Has any employee or other person speaking on behalf of Franchisor made any statement, representation or promise concerning the revenue, profits or operating costs of a HERBIE’S BURGERS® Outlet operated by Franchisor or any of its affiliates?

Yes\_\_\_\_ No\_\_\_\_

5. Has any employee or other person speaking on behalf of Franchisor made any statement, representation (aside from the disclosure provided in Item 19 of the FDD) or promise concerning the revenue, profits or operating costs of a HERBIE’S BURGERS® Outlet operated by a franchisee?

Yes\_\_\_\_ No\_\_\_\_

6. Has any employee or other person speaking on behalf of Franchisor made any statement or promise concerning any HERBIE’S BURGERS® Outlet that is contrary to, different from, or in addition to, the information contained in the Disclosure Document?

Yes\_\_\_\_ No\_\_\_\_

7. Has any employee or other person speaking on behalf of Franchisor made any statement or promise regarding the amount of money you may earn or revenue you may derive in operating a HERBIE'S BURGERS® Outlet?

Yes\_\_\_\_ No\_\_\_\_

8. Has any employee or other person speaking on behalf of Franchisor made any statement or promise concerning the amount of revenue a HERBIE'S BURGERS® Outlet will generate?

Yes\_\_\_\_ No\_\_\_\_

9. Has any employee or other person speaking on behalf of Franchisor made any statement or promise regarding the costs you may incur in operating a HERBIE'S BURGERS® Outlet that is contrary to, or different from, the information contained in the Disclosure Document?

Yes\_\_\_\_ No\_\_\_\_

10. Has any employee or other person speaking on behalf of Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a HERBIE'S BURGERS® Outlet?

Yes\_\_\_\_ No\_\_\_\_

11. Has any employee or other person speaking on behalf of Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that Franchisor will furnish to you that is contrary to, or different from, the information contained in the Disclosure Document?

Yes\_\_\_\_ No\_\_\_\_

12. Do you understand that Franchisor's approval of a location for the Outlet does not constitute an assurance, representation or warranty of any kind as to the successful operation or profitability of the Outlet at the location?

Yes\_\_\_\_ No\_\_\_\_

13. Do you understand that the approval of Franchisor of a financing plan for operation of the Outlet does not constitute any assurance that such financing plan is favorable, or not unduly burdensome, or that the Outlet will be successful if the financing plan is implemented?

Yes\_\_\_\_ No\_\_\_\_

14. Do you understand that in all dealings with you, the officers, directors, employees and agents of Franchisor act only in a representative capacity and not in an individual capacity and such dealings are solely between you and Franchisor?

Yes\_\_\_\_ No\_\_\_\_

If you have answered "Yes" to any of questions 4 through 11, please provide a full explanation by attaching an additional page. You understand that your answers are important to us and that we will rely on them.

**By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.**

PROSPECTIVE FRANCHISEE/APPLICANT:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT J**  
**STATE EFFECTIVE DATES**

The following states require that the Franchise Disclosure Document be registered or filed with the state or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This Franchise Disclosure Document is registered, on file, or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates:

| State    | Effective Date |
|----------|----------------|
| New York |                |

In states that do not require a franchise registration or exemption filing, the effective date of this disclosure document is August 18, 2025.

**EXHIBIT K**  
**RECEIPTS**

## **ITEM 23**

### **RECEIPT**

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If FRANCHISEHERBIES LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

New York, and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If FRANCHISEHERBIES LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C., 20580 and the appropriate state administrator listed in Exhibit A. FRANCHISEHERBIES LLC's agents for service of process are also listed in Exhibit B.

Issuance Date: August 18, 2025

The franchise sellers for this offering are: Nicholas Warchol or \_\_\_\_\_  
FRANCHISEHERBIES LLC, 636 Providence Street, Albany, NY 12208, 518.858.6371.

I received a disclosure document from FRANCHISEHERBIES LLC issued August 18, 2025 (or the date reflected on the State Effective Dates page) that included the following Exhibits:

#### State Appendix to Disclosure Document

- A. List of State Agencies
- B. List of Agents for Service of Process
- C. Franchise Agreement
- D. Financial Statements
- E. Table of Contents of the Confidential Operations Manual
- F. List of Franchisees and Franchisees that have Left the System
- G. General Release Language
- H. State Addenda and Agreement Riders
- I. Pre-Closing Questionnaire
- J. State Effective Dates
- K. Receipts

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

SIGNED: \_\_\_\_\_,  
individually and/or as an officer, member, or  
partner of \_\_\_\_\_,  
(a \_\_\_\_\_ corporation)  
(a \_\_\_\_\_ partnership)  
(a \_\_\_\_\_ limited liability company)

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

[Date, Sign, and Return to FRANCHISEHERBIES LLC]

## **ITEM 23**

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- H. State Addenda and Agreement Riders
- I. Pre-Closing Questionnaire
- J. State Effective Dates
- K. Receipts

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

SIGNED: \_\_\_\_\_,  
individually and/or as an officer, member, or  
partner of \_\_\_\_\_,  
(a \_\_\_\_\_ corporation)  
(a \_\_\_\_\_ partnership)  
(a \_\_\_\_\_ limited liability company)

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

[Date, Sign, and Keep for Your Own Records]