



# PINK LADY® AMERICA L.L.C.

1420 N 16<sup>th</sup> Ave, Yakima, Washington U.S.A. 98902

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## **TRADEMARK LICENSING AGREEMENT**

THIS TRADEMARK LICENSING AGREEMENT (“Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, between \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with an office at \_\_\_\_\_ and its affiliates (hereinafter called “\_\_\_\_\_”), and Pink Lady America, LLC, a limited liability company organized and existing under the laws of Washington, located at Yakima, WA (hereinafter called “Pink Lady”).

### **WITNESSETH:**

WHEREAS, \_\_\_\_\_ develops, services and sells food products at their business establishment (s); and

WHEREAS, Pink Lady is the owner in the United States and elsewhere of the registered trademark Pink Lady® for apples and other related products (hereinafter referred to as the “Pink Lady Trademarks”); and

WHEREAS, \_\_\_\_\_ desires the right to use the Pink Lady Trademarks on restaurant menus that incorporate the Pink Lady Trademarks and Pink Lady hereby grants \_\_\_\_\_ permission to do so on the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, the parties hereto agree as follows:

### **License Grant**

1. Pink Lady hereby grants to \_\_\_\_\_ the non-exclusive world-wide right to use the Pink Lady Trademarks for the sole purpose of using the brand on menus or products that incorporate Pink Lady® brand apples.

### **Confidential Information**

2. The parties acknowledge that all of the information communicated between the parties in connection with this Agreement or otherwise shall be deemed to be confidential in nature and, as between the parties, will be considered to be the exclusive property of disclosing party. Before issuing any press releases, the parties shall mutually agree in writing on the content of any press releases concerning or related to this Agreement, its terms or the use of the Pink Lady Trademarks.

### **Recognition of Ownership**

3. \_\_\_\_\_ recognizes Pink Lady's title to the Pink Lady Trademarks and the Pink Lady® brand and shall not at any time do or cause any act or thing which will in any way impair the rights of Pink Lady, its brand or the Pink Lady Trademarks. It is understood that \_\_\_\_\_ shall not acquire and shall not claim any title to the Pink Lady Trademarks and the Pink Lady® brand adverse to Pink Lady by virtue of the license granted to \_\_\_\_\_ or through \_\_\_\_\_'s use of the Pink Lady Trademarks and the Pink Lady® brand. Upon termination of this Agreement, \_\_\_\_\_ shall cease using the Pink Lady Trademarks within 180 days after the date of termination.

### **Infringements**

4. Pink Lady represents that it is the rightful owner of the Pink Lady Trademarks and is free to enter into this Licensing Agreement and grant the rights set forth herein. Pink Lady agrees to defend, indemnify, and hold \_\_\_\_\_ harmless against any and all third party claims brought against \_\_\_\_\_ arising out of or related to the Pink Lady Trademarks.

### **License Fees**

5. This is a license whose royalties are fully paid and satisfied so as to use the Pink Lady Trademarks under the conditions of this license.

### **Term and Termination**

6. (a) Except as set forth in paragraphs 7 (b) or (c), this Agreement shall have an initial term (the "Initial Term") of three years (3) from the date hereof, and shall automatically be renewed for successive one (1) year terms (each an "Extension Term" and the Initial Term and each Extension Term are collectively the "Term"), unless either party gives one hundred and eighty (180) days written notice of cancellation to the other prior to the expiration of the term then in effect.

(b) In case either party breaches any provision of this Agreement for any reason, the other party may immediately give written notice of intention to terminate this Agreement in thirty (30) days. Unless the breaching party corrects such breach within this thirty (30) day period, this Agreement shall automatically terminate.

(c) Either party may terminate this Agreement upon the filing by or against the other party hereto of a petition in bankruptcy or judicial or administrative declaration of insolvency, by giving notice to the filing party of intention to terminate.

(d) Should this Agreement be terminated for any reason, neither party shall be entitled to any consequential, special damages or punitive damages.

(e) Any waiver by either party of a breach of any term or condition of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other term or condition thereof.

**Notices**

7. Any notice or other communication required, contemplated or permitted under the terms of this Agreement must be given in writing by overnight courier such as DHL, Federal Express or Express Mail. Notice shall be deemed effective on the date sent. All notices or formal communications pursuant to this Agreement shall be sent to the parties as follows:

If to \_\_\_\_\_: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With copy to: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Pink Lady            Pink Lady America, LLC  
                                  1420 N 16<sup>th</sup> Ave  
                                  Yakima, WA 98902

**Assignments and Binding Effect**

8. Neither party shall directly or indirectly assign, sub-license, pledge, encumber, grant or otherwise transfer any of its rights conferred by this Agreement without the written consent of the other party; such consent shall not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and each of their respective authorized purchasers, successors and assigns.

**Entire Agreement**

9. This Agreement constitutes the entire agreement between the parties solely with respect to the licensing of the Pink Lady Trademarks. The Agreement supersedes any prior agreements or understandings, whether written or oral, between or among the parties regarding the licensing of the Pink Lady Trademarks. The parties agree that this Agreement may not be amended or changed in any way except by written instruments signed by each party.

**Choice of Law and Forum**

10. Except to the extent governed by the Lanham Act (15 U.S.C. §§ 1051 et seq.), this Agreement shall be interpreted and construed pursuant to the law of the State of Michigan without regard to its conflict of laws, and any lawsuit filed in connection with this Agreement by either party against the other shall be in a court located in the State of Michigan.

**Remedies**

11. All specific remedies provided for in this Agreement shall be cumulative and shall not be exclusive of one another or of any other remedies available in law or in equity. The failure to insist upon strict performance of any of the covenants or terms hereof to be performed shall not be construed as a waiver of such covenants or terms. Should either party breach this Agreement, the non-breaching party shall be entitled to receive from the breaching party all of its costs and expenses, including reasonable attorneys' fees.

**Severability**

12. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any law, rule or regulation, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

**Paragraph Headings**

13. The paragraph headings are for convenience only and shall not be deemed to affect in any way the language of the provisions to which they refer.

**Counterpart Agreements**

14. This Agreement may be executed by each of the parties in separate counterpart and have the same force and effect as if it had been executed as a single document.

**Opportunity for Review**

15. The parties acknowledge and state that they have had an opportunity to review the terms of this Agreement with their attorneys, that they understand the terms of this Agreement, and are entering into it freely, voluntarily and knowingly without duress or compulsion solely for the consideration contained herein and that they have mutually drafted and agreed to the terms hereof. Neither of the parties shall be deemed to be a drafter of this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be bound hereby, have caused this Agreement to be executed by their duly authorized representatives as of the day and year hereinabove set forth.

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

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

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

By: *Pink Lady America, LLC*

\_\_\_\_\_  
*John Reeves, General Manager*

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