



11-07-2001



101894395

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Herbruck's Poultry Ranch, Inc.  
(a Michigan corporation)

2. Name and address of receiving party(ies):

Egglund's Best, Inc.  
842 First Avenue  
King of Prussia, Pennsylvania 19406

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name
- Other: Assignment of an Undivided Interest

Execution Date: July 8, 1999

- Individual(s) citizenship:
- Association:
- General Partnership:
- Limited Partnership:
- Corporation-State: Pennsylvania
- Other:

11.2.01

If assignee is not domiciled in the U.S.A., a domestic representative designation is attached:  Yes;  No

(Designations must be a separate document from Assignment)

4. Application number(s) or registration number(s):

A. Trademark Application No.(s):

B. Trademark Registration No.(s):

2,358,522

5. Name and address of party to whom correspondence document should be mailed:

Elisabeth Stewart Bradley  
Morgan, Lewis & Bockius LLP  
Attn: TMSU  
1800 M Street, N.W.  
Washington, D.C. 20036

Telephone: 212-309-7058  
Facsimile: 212-309-6273  
E-Mail: ebradley@morganlewis.com

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) Cal. 1 x \$40.00 = \$ 40.00  
\_\_\_ x \$25.00 = \$ .00  
Total \$ 40.00

Authorized to be charged to deposit account

8. Deposit account number: DA 13-4520

DO NOT USE THIS SPACE

9. Statement and signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

James R. Sims III  
Name of Person Signing

Signature

November 2, 2001  
Date

Total number of pages including cover sheet, attachments and document: [ ]

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## AGREEMENT

THIS AGREEMENT is made on this 8<sup>th</sup> day of July, 1999, between Herbruck's Poultry Ranch, Inc., a Michigan corporation, having its principal office at 425 W. Grand River, Saranac, Michigan 48881, ("HPR"); and Egglan's Best, Inc. a Pennsylvania corporation, having its principal offices at 842 First Avenue, King of Prussia, Pennsylvania 19406, ("EB").

### BACKGROUND INFORMATION

HPR has invented and developed, at considerable ingenuity, cost and effort, a concept for Products, hereinafter defined, and in such development has accrued Technical Information and Know-How, including drawings, data, prototypes and any other information relating to said Products.

HPR is the owner, by assignment and otherwise, of all right, title and interest in and to said Technical Information and Know-How.

HPR has received numerous U.S. patents and has filed patent applications in the United States and Canada as disclosed in Exhibit A hereto and is owner, by assignment and otherwise, of all right, title and interest in such patents and patent applications and any patents which issue therefrom, said applications and patents issuing therefrom being collectively hereinafter defined as HPR Patent Rights.

EB desires to obtain an exclusive license in and to said Technical Information and Know-How and under said HPR Patent Rights in order to sell and use Products as hereinafter defined.

HPR desires to grant EB said exclusive license, based upon EB's expertise in the marketing and introduction of food products.

HPR and EB have each conceived, and may continue to conceive, numerous potential tradenames and EB will develop trademarks for the Products (hereinafter collectively referred to as the "Trademark" or "Trademarks"). It is the desire and intention of the parties that HPR and EB jointly own and be permitted to use and grant others the right to use the Trademarks ultimately used with the Products in Canada and the United States (hereinafter referred to as the "Territory"), such use to inure to the benefit of HPR under the related company provisions of Section V of the U. S. Trademark Act.

HPR filed on July 24, 1998 Intent to Use Trademark Applications, Serial No. 75/524870 and Serial No. 75/525225 and will file Statements of Uses upon first use of the Trademarks and it is the desire of HPR to grant EB rights under said Applications and Registrations issuing therefrom, as well as grant to EB the rights issuing under any counterpart Canadian Applications and Registrations.

Agreements/Herbruck/070699/Final

In consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. **Definitions.** As used herein, the term:

- 1.1 **"Products"** shall mean any egg container having a plurality of egg receiving pockets and a compartment occupying a space equivalent which is substantially greater than any one said egg pocket, said compartment for receiving ingredients such as, but not limited to, ham, cheese, salsa, spices, Hollandaise sauce, food coloring, Canadian bacon, mayonnaise, muffins and other components for egg meals.
- 1.2 **"HPR Patent Rights"** shall mean the United States patent application and Canadian patent applications listed on Exhibit A (which is made a part of this Agreement) and all divisions, continuations, continuations-in-part of such applications and any and all Letters Patents issuing therefrom, it being understood that such list will be completed and can be amended from time to time as said divisions, continuations and continuations-in-part are filed and as patents are issued.
- 1.3 **"Person"** shall mean any entity, whether an individual, trustee, corporation, partnership, joint stock company, trust, unincorporated organization, business association or firm, joint venture, a government or any agency, instrumentality or political subdivision thereof, or otherwise.
- 1.4 **"Franchisee"** shall mean any Person who is a party to a New Product Agreement by EB in accordance with Section 6 of this Agreement.
- 1.5 **"Market Service Fee"** shall mean a continuing charge of EB to its Franchisee's for services provided within the Franchise Territory.
- 1.6 **"Test Period"** shall mean the period during which EB evaluates the commercial viability of the Products.
- 1.7 **"Suggested Wholesale Price"** shall mean the prices suggested by Franchise Affairs Committee of the EB Board of Directors for franchisee to charge retailers for Products.
- 1.8 **"New Product Agreement"** shall mean the agreement between EB and the parties who shall produce and/or distribute the Products on EB's behalf, as presented in Exhibit D hereto.
- 1.9 **"Product Introduction Fees"** shall mean the initial fees paid to EB by the parties entering into New Product Agreements in order to introduce the Products.

## 2. Grant.

- 2.1 Under the terms and conditions set forth herein, HPR hereby grants to EB an exclusive license to sell, use, and manufacture the Products. EB shall have the right to grant sub-licenses for the sale, use and manufacture of the Products.
- 2.2 Under the terms and conditions set forth herein, HPR grants to EB an exclusive license to and the right to sublicense any and all patents related to the Products. This license encompasses existing patents, patents pending and patents to be applied for at any time during the life of this Agreement. HPR agrees not to produce, license, market or distribute the Products in any way other than as a Franchisee of EB.
- 2.3 Under the terms and conditions set forth herein, HPR and EB agree that any Trademarks used in connection with the marketing of the Products shall be jointly owned by both HPR and EB without regard to original ownership or the party conceiving the Trademark. EB shall have the exclusive right to license others to use such Trademarks. This provision encompasses existing trademarks, pending trademarks and trademarks to be applied for at any time during the life of this agreement. Either party may assign its ownership rights in any and all trademarks with the approval of the other party. Such approval shall not be unreasonably withheld. Further, during the life of this Agreement the parties or their assignee(s) of their Trademark ownership rights shall not at anytime use or license others to use such jointly owned Trademarks except in conjunction with and subject to the terms of this Agreement unless otherwise agreed in writing. HPR and EB agree that the costs of legal defense of the jointly owned trademarks shall be split equally between HPR and EB.

In the event it should become reasonably necessary to form one entity in order to enforce and/or maintain the parties rights in the trademarks, EB and HPR shall form a separate entity as owner of the Trademarks, such entity to be equally owned by EB and HPR.

## 3. HPR Compensation.

- 3.1 During the Test Period, a royalty of 1.7% of the suggested wholesale price of the Products sold by the Franchisees will be paid to HPR pursuant to Section 12.2 hereof.
- 3.1.1 Upon conclusion of the Test Period, EB shall evaluate the viability of the Products as described in Section 7 hereof.
- 3.1.2 Should the Products be deemed successful, an additional royalty of 2.3% of the suggested wholesale price of all products sold during the Test Period shall be paid to HPR within 30 days.

- 3.1.3** Should the Products be deemed unsuccessful, EB will be entitled to the retained royalties to the extent of its unreimbursed expenses associated with the Test Marketing. The balance of the retained royalties, if any, shall be sent to HPR. This Agreement shall then terminate, with the HPR Patent Rights being assigned back to HPR and deemed to be owned by HPR.
- 3.2** For all sales of the Products subsequent to the Test Period, HPR shall receive from EB a royalty of 4.0% of the suggested wholesale price of the Products, payable pursuant to Section 12.2 hereof.
- 3.2.1** In the event that individual package sales in any calendar year exceeds 30,000,000 but are less than 60,000,000 units, the royalty paid to HPR shall be 3.5% for those unit sales in excess of the 30,000,000 unit threshold. For the purpose of this section 3.2.1 and 3.2.2, a unit shall be defined as a six-egg equivalent carton. A twelve-egg carton shall be considered to be two units.
- 3.2.2** In the event that individual package sales exceed 60,000,000 units, the royalty paid to HPR shall be 3.0% for unit sales in excess of the 60,000,000 unit threshold.
- 3.2.3** The difference between a 4.0% royalty and the amounts paid pursuant to Sections 3.2.1 and 3.2.2 shall be retained by EB and shall be used for additional promotion of the Products.
- 3.2.4** In recognition of HPR's contribution to the promotion of the Products pursuant to Section 3.2.3, EB agrees to contribute an amount equal to the HPR contribution. This matching amount shall be over and above the contractual spending obligation in the New Product Agreements with the Franchisees.
- 3.3** Whether or not the packaging for the Products is supplied by HPR, HPR shall receive additional royalty payments of \$0.01 per six-egg equivalent carton and \$0.02 per twelve-egg equivalent carton (the "Carton Markup").
- 3.3.1** HPR shall make up to three sets of the carton mold, tool and die work available to approved carton suppliers at no cost. HPR shall supply all carton design and engineering work to approved carton suppliers at no cost.
- 3.3.2** The Carton Markup on cartons supplied by carton suppliers other than HPR shall be added to carton invoices sent to EB or its Franchisees.
- 3.3.3** EB shall require carton suppliers to remit the Carton Markup to HPR on a monthly basis.

- 3.3.4 Should HPR supply cartons, the Carton Markup shall be added to carton invoices sent to EB or its Franchisees.
- 3.3.5 Upon expiration of all HPR Patent Rights, including any subsequent extensions thereof, the carton markup shall be discontinued.
- 3.4 HPR will receive 8% of Product Introduction Fees collected by EB, excluding those from HPR's own territories, within 30 days from the end of the month during which the fees were received.
4. **Suppliers.** The parties hereto acknowledge that the Products are intended to be premium items and that high quality components are of the essence to the Products. HPR and EB therefore agree that both HPR and EB must approve suppliers of all components of the Products including the packaging. Such approval shall not be unreasonably withheld.
- 4.1 The eggs used in the Products may or may not be Egglard's Best brand eggs and may or may not be USDA inspected, at EB's sole discretion. EB shall set egg production and quality standards, with input provided by HPR.
- 4.2 HPR and EB will use their best efforts to ensure that at least two suppliers of each component of the Products are available at all times and to ensure that component prices are as low as possible with no markup paid to HPR or EB and with components supplied by HPR and EB being supplied at cost.
5. **Franchising.**
- 5.1 HPR acknowledges that EB shall likely enter into New Product Agreements for the production and distribution of the Products. The decision to enter into New Product Agreements and the selection of recipients shall be made by EB. The standard New Product Agreement is attached as Exhibit D hereto.
- 5.2 EB and HPR agree to affix to the package a notice stating: "Licensed under one or more of the following Patents," followed by a list of applicable patent numbers.
- 5.3 EB and HPR agree to affix to each package TM before issuance of a trademark registration and ® after a trademark registration is issued.
6. **Grant and Right of First and Second Refusal to HPR.**
- 6.1 EB hereby grants to HPR an exclusive New Product Agreement for the lower peninsula of Michigan and Chicago geographic region, more specifically described on Exhibit B. (In exchange for the grant of the exclusive New Product Agreement, HPR agrees to pay to EB two-thirds (2/3) of the customary New Product Fee for a specific territory, such amount to be paid pursuant to the terms of the standard New Product Agreement attached hereto as Exhibit D.

- 6.2 EB hereby grants to HPR a right of second refusal to obtain a New Product Agreement for the Products for the Indiana, Illinois, Ohio and Wisconsin geographic territories (currently owned by others for the EB product) and as described on the attached Exhibit C. HPR acknowledges that certain territories may be owned by EB. Should HPR purchase any of the additional territories pursuant to this section 6.2, HPR shall pay to EB two-thirds (2/3) of the customary fee. The right of first refusal for these territories shall be granted to EB's then current Franchisees for a period extending thirty (30) days past the sign up deadline specified for all Franchisees and shall then be offered to HPR.
7. **Test Marketing.** In order to determine the commercial viability of the Products, HPR and EB agree that the Products should initially be sold in select markets throughout the U.S.
- 7.1 All advertising and promotion costs associated with the test marketing will be borne by EB.
- 7.2 EB intends to use its best efforts to begin test marketing by the 4<sup>th</sup> Quarter 1999, provided conditions permit. HPR and EB acknowledge that this schedule is affected by numerous factors, many of which are beyond the control of EB and HPR. EB agrees test marketing will commence no later than September 30, 2000, unless otherwise extended by mutual agreement of EB and HPR.
- 7.3 The markets to be included in Test Marketing shall be selected by EB at its sole discretion. EB agrees that the Western Michigan Territory will be one of the initial markets to be introduced.
- 7.4 The Test Period shall conclude approximately seven months after the last test market is introduced, or whenever EB and HPR may reasonably agree based upon circumstances at the time.
- 7.5 Upon conclusion of the Test Period, EB shall, in its sole determination, decide whether the Products are commercially viable. EB shall provide written notice to HPR of its decision within 30 days of the conclusion of the Test Period or at such time as EB and HPR agree that the Test Period results can be sufficiently evaluated.
- 7.6 EB and HPR acknowledge that EB, HPR and the Franchisees have made substantial commitments and investments to effectively test, introduce and market the Products. It is anticipated that the Franchisees will invest a minimum of 1.5 million up front to take this product concept through its initial test market. As the test market evolves, substantial knowledge will be gained by all parties including supermarket retailers about the dynamics of sales, market situations and profitability of this product.

Since all of these parties (EB, HPR and the Franchisee) want this product concept to be successful, all parties will agree to keep an open mind and be flexible to potential modifications of this and other agreements if they are required for the achievement of the maximum potential of this product concept.

7.7 Should the decision be made not to introduce the Products pursuant to Sections 7.5 and 7.6 hereof, EB and HPR shall have no further obligations to each other under this Agreement except as specified to the contrary herein and with regard to the joint ownership of the Trademarks.

**8. Market Rollout.**

8.1 Once the decision be made to proceed with the introduction of the Products pursuant to Sections 7.5 and 7.6 hereof, EB will select an additional market from the HPR territory in the first group of markets to be introduced.

8.2 EB shall be responsible for all advertising and promotion of the Products.

8.3 Except as indicated in Section 8.1, EB shall be solely responsible for the timing of market introductions.

**9. Performance Standard.**

9.1 EB agrees to use its best efforts to maximize sales of the Products, within the context of prudent management.

9.2 EB and HPR agree to establish reasonable performance standards upon conclusion of the Test Period. HPR acknowledges that said performance standards will require unanimous approval by Executive Committee of EB's Board of Directors. EB agrees to reflect a performance standard in its agreements with its Franchisees. Should EB and HPR not agree, Section 20 of the Agreement shall apply.

**10. New Products.**

10.1 HPR and EB shall be involved in developing new items to be included as Products under this Agreement.

10.2 EB shall be responsible for the presentation of new items to Franchisees, retailers and other business partners.

10.3 Should HPR formulate new concepts or items which are fresh eggs and ingredients and are retail-based or supermarket-based, EB shall have the right of first refusal for ninety days to indicate its intent to market these concepts or items. Should EB opt to not market the new concepts or items, HPR shall be able to do so independently, provided that the new concepts or items do not compete with the then existing Products marketed pursuant to this Agreement.



11. **Quality Control / Quality Assurance.**

- 11.1 EB will include in the New Product Agreement a provision specifically allowing EB to inspect on the premises of the Franchisees the Products sold, manufactured or prepared by such Franchisee for the purpose of ascertaining or determining compliance with the terms of this Agreement. EB will insert into the Franchise Agreement a provision requiring the franchisee to furnish EB, upon request, samples of the Products which franchisee(s) sells or intends to sell pursuant to this Agreement. Upon request by HPR, EB in turn shall share these samples with HPR.
- 11.2 EB or its franchisees shall provide for the assembly, distribution and sale of the Products materially in accordance with the specifications, directions and processes reasonably agreed to by EB as specified by HPR or its representatives or agents from time to time. The quality of the Products shall be reasonably satisfactory to EB and HPR.

12. **Records.**

- 12.1 The accounting period shall be on a monthly basis.
- 12.2 Within 30 days of the end of each accounting period, EB shall furnish HPR with a written statement of the number of the Products used or sold by EB or any Franchisee in the preceding accounting period, setting forth the essential information concerning the uses and sales by EB and all Franchisee(s) of all Products subject to royalty and upon which royalty is calculated. Such information shall include the wholesale price of each Product licensed hereunder the quantity of Products, and the form of the Products. Payment, which shall be based upon EB's receipts from its Franchisees, shall accompany each statement.
- 12.3 EB agrees that it will at all times keep or shall cause to be kept complete, true and correct books of account containing a current record of sales and other data in sufficient detail to enable the royalties payable under this Agreement to be computed and verified. EB further agrees to permit HPR, its duly authorized agent or an independent certified public accountant to have access for inspection of said books of account at reasonable intervals during business hours.

13. **Tax Withholding.** In the event any national government, including the Government of Canada, imposes any taxes on any part of the payments required hereunder by EB to HPR and requires EB to withhold taxes from such payment, EB may deduct such taxes from such payments. Tax receipts indicating payments or withholding of taxes on behalf of HPR shall be promptly submitted to HPR. EB shall cooperate with HPR in a determination of the propriety of imposition of any such tax.

14. **Confidentiality.** The parties hereto acknowledge that HPR and EB will furnish confidential information to each other, including the Products sales results, market data, product specifications and food recipes for the Products. HPR and EB agree to hold all such information strictly confidential and to prevent dissemination of information concerning such information to any third parties. Such obligation shall include the requirement that any EB franchisees comply with the confidentiality provision of this paragraph. EB agrees to not use such recipes except in connection with the Products unless HPR provides express written consent to the contrary and agrees to require EB's franchisees to comply with this provision. HPR and EB agree that the business operations, formulae, techniques and methods of operations as utilized by each other are proprietary and confidential, and each agrees to maintain the confidentiality of all materials and information furnished by the other at all times, including after termination or expiration of this Agreement, for any reason whatsoever. Both EB and HPR, their employees, directors and officers or partners, as individuals, agree to maintain the confidentiality of all materials and information furnished by the other, and each shall obtain agreement from all such employees, directors, officers and partners on forms approved by the other. Each party hereto agrees that all information received by the other in connection with this Agreement, other than information in the public domain or later rightly revealed to the other through other sources not under a confidentiality obligation, shall be treated as confidential and shall be disclosed only as required by law, or to such employees and to such persons as must have said information in order to effect proper and efficient manufacture, sale or use of the Products. Each further agrees to make all reasonable efforts, and to take all reasonable precautions, to prevent any of its employees or personnel, or any other persons whatsoever, from making any unauthorized use or effecting any disclosure of any such information.

15. **Notices.**

15.1 All notices, requests, demands and other communications under this Agreement or in connection therewith shall be given to or be made upon the respective parties hereto as follows:

To Licensee: Eggland's Best, Inc.  
 842 First Avenue  
 King of Prussia, PA 19406  
 Attn: Kurt Misialek

To Licensor: Herbruck's Poultry Ranch, Inc.  
 6425 W. Grand River  
 Saranac, Michigan 48881  
 Attn: Stephen Herbruck

15.1.1 Should HPR desire to sell the HPR Patent Rights, or the HPR portion of the Trademark ownership, HPR shall first offer these items for sale to EB for a period of sixty (60) days after being notified by HPR of a proposed sale.

15.1.2 HPR shall have the right to sell or otherwise transfer the HPR Patent Rights or Trademark ownership; however, such sale or transfer requires the prior written consent of EB which shall not be unreasonably withheld. EB shall also have the right to sell or otherwise transfer the Trademark ownership; however, such sale or transfer requires the prior written consent of HPR which shall not be unreasonably withheld. Any recipient of Patent Rights or Trademark ownership shall be bound by the terms of this Agreement.

15.2 All notices, requests, demands and other communications given or made in accordance with the provisions of this Agreement shall be in writing, shall be forwarded by registered mail, and shall be deemed to have been given when deposited postage prepaid, addressed as specified in the preceding paragraph.

## 16. Construction and Assignment.

16.1 This Agreement shall be binding upon and inure to the benefit of HPR, its legal representatives, successors, heirs, and assigns, but shall not be transferable or assignable without prior written consent of EB which shall not be unreasonably withheld.

16.2 This Agreement shall be binding upon and inure to the benefit of EB, its legal representatives, successors, heirs, and assigns, but shall not be transferable or assignable without prior written consent of HPR which shall not be unreasonably withheld.

16.3 This Agreement shall be deemed to be a contract made under the laws of the State of Michigan, United States of America and, for all purposes, shall be interpreted in its entirety in accordance with the laws of said state. In the event this Agreement is translated into any language other than the English language for any purpose, the parties agree that the English version shall be the governing version.

16.4 Except as set forth herein, nothing contained in this Agreement shall be construed as conferring upon EB, its Franchisees or its customers, directly or by implication, estoppel or otherwise, any license under any trade secrets or know-how of HPR, and no such license or other rights shall arise from this Agreement or from any acts, statements or dealings resulting in or related to the execution of this Agreement.

## 17. Patents.

17.1 HPR warrants that it is the true owner of all right, title and interest in and to the HPR Patent Rights, and that it has not granted any licenses or assigned any rights under the HPR Patent Rights, granted any security interest in or otherwise pledged the HPR Patent Rights as collateral for financing, taken any other acts inconsistent with its ownership of the HPR Patent Rights, nor is aware of any claims of ownership of the HPR Patent Rights made by others.

- 17.2 HPR warrants that it has provided to EB all patents that HPR is aware have any relevance to the patentability and/or validity of the HPR Patent Rights. If a third party challenges the validity of the HPR Patent Rights and it is reasonable for HPR to defend, HPR shall defend the patentability and/or validity of the HPR Patent Rights at HPR's cost. In the event that the claims of the HPR Patent Rights are adjudicated to be invalid, and any remaining valid HPR Patent Right does not cover the activities of EB and its sub licensees under this agreement, HPR, EB and its sub licensees shall review the terms of this Agreement and shall in good faith determine the appropriate course of action.
- 17.3 HPR warrants that it has provided to EB all patents that HPR is aware have any relevance on the right to use the inventions described in HPR Patent Rights. Should a third party institute a patent infringement suit against HPR, EB or a sub licensee of EB, predicated on EB's or its sub-licensee's manufacture, use or sale of Products, HPR shall take whatever reasonable steps are necessary to defend against the infringement claim at HPR's cost.
- 17.4 HPR shall apply for and maintain a \$1,000,000 patent infringement indemnity insurance policy for three years in a manner suitable to EB in order to defend against infringement and validity claims; however, the maximum annual premium amount shall not exceed \$30,000 per year. In the event that the annual premium exceeds \$30,000, EB shall have the option to pay the additional premium necessary to maintain the coverage or to decrease the policy level to be consistent with the maximum premium amount. After three years, HPR can, at its option, provide the insurance coverage by self-insuring up to the same \$1,000,000 limit in a manner agreeable to both EB and HPR.
- 17.5 In the event that EB determines that a third party appears to be infringing one or more of the HPR Patent Rights, EB must provide evidence of such infringement to the attention of HPR.
- 17.5.1 HPR shall be required to abate such infringement or to institute infringement proceedings against such third party within ninety days in a manner satisfactory to EB.
- 17.5.2 If HPR does not abate such infringement or institute infringement proceedings against such third party within sixty days after written notice from EB that such third party appears to be infringing one or more of the HPR Patent Rights, EB shall have the right to take whatever reasonable steps it shall deem advisable, including but not limited to, settlement or the filing of suit for damages or to enjoin such sales or offers for sale by such third party. HPR will perform all acts that may become necessary or desirable to vest in EB the right to institute any such suit and shall, upon reasonable notice, cooperate and, to the extent deemed necessary or desirable by EB and at HPR's expense, participate in any suit to enjoin such infringement and to collect damages, profits and awards of any nature recoverable for such

infringement. The costs and expenses of such suit or settlement shall be initially paid by EB, but shall be reimbursed to EB via an offset against future royalties paid to HPR.

17.5.3 The proceeds from any settlement or award, net of any and all legal and other out-of-pocket costs incurred, shall be allocated to the HPR, EB and any effected sub licensees in amounts deemed by EB and HPR to be consistent with the damages incurred by each of these parties.

18. **Modification.** This Agreement embodies all of the understandings and obligations between the parties with respect to the subject matter hereof. No amendment or modification of this Agreement shall be valid or binding upon the parties unless made in writing, signed on behalf of each of the parties by their respective proper officers.

19. **Trademarks.**

19.1 HPR will furnish to EB, upon request, all trademark searches, trademark filings, correspondence and other information owned by HPR with respect to the Trademarks if EB elects to use the Trademark or Trademarks to sell and use the Products. HPR will conduct a common law search for the Trademarks which EB has selected and will furnish to EB the results of such searches. HPR will then represent to EB that, subject to the information developed in such searches, it is the owner of the Trademark.

19.2 EB will furnish to HPR, upon request, all trademark searches, trademark filings, correspondence and other information with respect to any trademark which EB elects to use in connection with the license to sell, sale of and use of Products. EB will use its best efforts to obtain ownership of, and become the exclusive owner (with HPR) of all trademarks that EB elects to use in connection with the license and sale of the Products.

20. **Arbitration.** In the event any dispute, claim or controversy should arise between the parties hereto out of or in connection with this Agreement, its validity, construction, or enforceability, or the breach of any terms or any of its provisions hereof, such dispute shall be settled by binding arbitration. In accordance with the rules of the American Arbitration Association at its regional office in Southfield, MI. Each party shall be responsible for the payment of its legal fees and expenses; however, the expenses of the arbitrator shall be paid equally by HPR and EB. The parties agree that judgement may be entered by any court of competent jurisdiction to enforce any such arbitration award.

21. **Duration and Termination Cancellation.**

21.1 Unless otherwise terminated as hereinafter set forth, this Agreement shall continue in force for a period of twenty (20) years, with two twenty (20) year renewal periods at EB's option on terms no more burdensome than in the initial agreement.

- 21.2 If EB shall at any time default in rendering any of the statements required hereunder, in the payment of any monies due hereunder, or in fulfilling any of the other material obligations hereof, and such default shall not be cured within 30 days after written notice thereof is given by HPR to EB, HPR shall have the right to terminate this Agreement by giving written notice of termination to EB: this Agreement thereby being terminated 15 days after such notice of termination is mailed by HPR. EB shall have the right to cure any such default up to, but not after, the giving of such notice of termination.
- 21.3 HPR shall have the right to terminate this Agreement by giving written notice of termination to EB in the event of any one of the following, such termination being effective upon receipt of such notice or five days after such notice is mailed, whichever is earlier:
- 21.3.1 Liquidation of EB;
  - 21.3.2 Insolvency or bankruptcy of EB, whether voluntary or involuntary;
  - 21.3.3 Appointment of a trustee or receiver for EB.
- 21.4 The waiver of any default under this Agreement by HPR shall not constitute a waiver of the right to terminate this Agreement for any subsequent or like default, and the exercise of the right of termination shall not impose any liability by reason of termination nor have the effect of waiving any damages to which HPR might otherwise be entitled.
- 21.5 Termination of this Agreement, either totally or as to any one or more designated HPR Patent Rights, for any cause whatsoever, shall in no manner interfere with, affect or prevent the collection by HPR of any and all sums of money due to it under this Agreement. Upon termination of this Agreement for any reason, EB's payments required by Section 3, but not yet due, shall become immediately due and payable.
- 21.6 If HPR shall at any time default in rendering any of the statements required hereunder, in the payment of any monies due hereunder, or in fulfilling any of the other material obligations hereof, and such default shall not be cured within 30 days after written notice thereof is given by EB to HPR, EB shall have the right to terminate this Agreement by giving written notice of termination to HPR: this Agreement thereby being terminated 15 days after such notice of termination is mailed by EB. HPR shall have the right to cure any such default up to, but not after, the giving of such notice of termination.
- 21.7 EB shall have the right to terminate this Agreement by giving written notice of termination to HPR in the event of any one of the following, such termination being effective upon receipt of such notice or five days after such notice is mailed, whichever is earlier:

21.7.1 Liquidation of HPR;

21.7.2 Insolvency or bankruptcy of HPR, whether voluntary or involuntary;

21.7.3 Appointment of a trustee or receiver for HPR.

21.8 The waiver of any default under this Agreement by EB shall not constitute a waiver of the right to terminate this agreement for any subsequent or like default, and the exercise of the right of termination shall not impose any liability by reason of termination nor have the effect of waiving any damages to which EB might otherwise be entitled.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first written above.

HERBRUCK POULTRY RANCH, INC.

By: *Stephen Blumh*

Its: President

EGGLAND'S BEST, INC.

By: *[Signature]*

Its: CFO