

## FUNDRAISING PROMOTION PARTICIPATION AGREEMENT

THIS FUNDRAISING PROMOTION PARTICIPATION AGREEMENT (this "Agreement") is made and entered into on this 13 day of JULY, 2011 (the "Effective Date") by and among Have It Your Way Foundation, Inc., a Florida not for profit Corporation, with its principal place of business located at 5505 Blue Lagoon Drive, Miami, Florida 33126 (hereinafter referred to as "Foundation"); Burger King Corporation, a Florida corporation, with offices located at 5505 Blue Lagoon Drive, Miami, Florida 33126 ( hereinafter referred to as "BKC"); and \_\_\_\_\_, with offices located at \_\_\_\_\_ (hereinafter referred to as "Franchisee").

**WHEREAS**, BKC entered into a Fundraising Promotion Agreement (the "Promotion Agreement" ) dated July \_\_, 2011 with the Foundation wherein BKC agreed to conduct and facilitate fundraising activities in company-owned and participating franchised BURGER KING® restaurants (the "Participating Restaurants") for the benefit of the Foundation (collectively the "Promotion");

**WHEREAS**, in the Promotion Agreement, the Foundation consented to BKC and participating franchisees conducting fundraising activities for the Foundation's benefit;

**WHEREAS**, Franchisee desires to conduct the Promotion from October 1, 2011 through October 31, 2011, in its franchised BURGER KING® restaurants (the Franchised Restaurants) pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises hereinafter set forth, the parties agree as follows:

1. Elements of the Promotion: The Promotion shall consist of the following elements:

- a. Territory: United States, Canada and Puerto Rico.
- b. Promotion Dates: October 1, 2011 through October 31, 2011.
- c. Fundraising Activity: Sale of coupon books for \$1.00 each. Each book contains 8 coupons (four (4) coupons for one value-size french fries, three (3) coupons for one soft serve cone and one (1) coupon for a small Coke®, soft drink or ICEE®) each of which may be redeemed for a the items described therein. One hundred percent (100%) of all proceeds from participating restaurants' purchase of coupon book will be given to the Foundation. The initial minimum order of coupon books is 200 per restaurant. Neither BKC nor any participating Franchisees shall receive compensation for charitable services rendered in connection with this Promotion.
- d. How to Participate: **By July 29, 2011**: Information packet including Promotion Overview/Description, Participation Agreement, order forms, and Q & A will be sent to all franchisees via, eMessenger and via BKC communications. **August 15, 2011**: Deadline for ordering coupon booklets by sending order form, signed participation agreement and payment to the Have It Your Way Foundation via fax at (305) 378-7017 or mail to Have It Your Way Foundation, 5505 Blue Lagoon Drive, Miami, FL 33126. Franchisee must provide payment information for coupon booklets. **September 12, 2011**: Deadline for interior only POP materials and initial coupon orders to be received in restaurants.



**October 1, 2011 – October 31, 2011:** Coupon sales to consumers.

**October 1, 2011 – December 31, 2011:** Coupon redemption period.

**October 31, 2011:** Promotion Ends

This Promotion is subject to the charitable solicitation laws and/or regulations of the state in which the Promotion is being conducted.

**For New York only:** Notwithstanding anything in the Promotion Agreement to the contrary, the Foundation has the right to cancel this Agreement without cost, penalty or liability for a period of 15 days from the date on which the parties entered into this Agreement. If the Foundation exercises the right to cancel this Agreement, it shall send a copy of the notice of cancellation to BKC/Franchisee at BKC/Franchisee's address, as well as to the Attorney General's Office, Charities Bureau, The Capitol, Albany, NY 12224.

e. **Participation:** The list of Franchisee's participating restaurants is attached hereto as Attachment 1.

f. **Responsibilities of Franchisee.** Franchisee shall: (a) Conduct and participate in the Promotion in compliance with all applicable federal, state and local laws, rules, ordinances and regulations and in accordance with the terms and conditions set forth herein; (b) Follow the express instructions of BKC and Foundation, including using only those promotional and advertising materials provided and/or approved by BKC and Foundation; (c) Franchisee agrees to remit promptly to Foundation payment for all coupon books ordered and received from Foundation; (d) Cooperate with BKC and Foundation to deal promptly and appropriately with any consumer complaints which may arise from the Promotion, and if requested by BKC and Foundation, undertake factual investigation of any consumer complaints arising out of the Promotion; (e) Franchisee shall not print, publish or broadcast any materials regarding the Promotion without the prior written approval of BKC and CHARITY. Notwithstanding approval by BKC or CHARITY of any materials created by Franchisee (or by any other party on Franchisee's behalf), Franchisee shall be responsible at all times for insuring that said materials comply with all applicable laws. Franchisee acknowledges that the provisions of this agreement do not alter or amend any franchise agreements or any other agreements to between Franchisee and BKC. Franchisee understands, acknowledges and agrees that failure to strictly comply with this Agreement, including, its obligation to conduct its fundraising activities in full compliance with all applicable laws, rules and regulations shall constitute a default under this Agreement and the Franchisee's underlying Franchise Agreement with BKC.

g. **Responsibilities of BKC:** (a) Approve program design and implementation; (b) Provide promotional details to all franchisees and BKC field personnel; (c) Order all coupon books and promotional materials for BKC company-owned restaurants; and (d) Pay for coupon books ordered for company-owned BURGER KING® restaurants.

h. **Responsibilities of Foundation:** (a) Coordinate all aspects of program design and implementation; (b) Distribute franchisee Fundraising Promotion Participation Agreements; (c) Collect signed Fundraising Promotion Participation Agreements from franchisees; (d) Facilitate



coupon book ordering, fulfillment and distribution with coupon book vendor; (f) Acknowledge receipt of proceeds from each franchisee participant and BKC; (g) Use and allocate funds for the express purpose of the Promotion, including but not limited to, administration and award of local scholarships; (h) Meet all states' legal requirements for the provision of information materials and provide same to franchisees and BKC; (i) Prepare appropriate documents and register the promotion in all states where registration is required including the submission of all necessary information for commercial co-venturers' filings; (j) Ensure and warrant that the Promotion and all related materials comply with all applicable laws, rules and regulations of the state(s) in which it is being conducted and otherwise make any and all required disclosures (including, but not limited to the filing this Agreement and registration of the Promotion with any applicable state agencies); (k) Assume sole responsibility for ensuring that all Promotion proceeds are used by the Foundation for the purposes for which they are solicited; and (l) Acknowledge in writing to BKC the Foundation's receipt of BKC remittance check(s) and the total dollar amount received from the Participating Restaurants. The Foundation shall provide the referenced acknowledgment to BKC within thirty (30) days of the Foundation's receipt of the check(s). The Foundation acknowledges that (i) the Promotion is subject to the charitable contribution laws of the states in which it is being conducted; and (ii) Foundation is solely responsible for ensuring that all aspects of the Promotion are in compliance and/or accordance with the charitable contributions laws of the applicable state.

2. Indemnification. Franchisee agrees to, at all times, defend, indemnify and hold BKC and Foundation harmless from and against any and all claims, demands and causes of action, liability, judgments, damages, costs and expenses (including reasonable attorneys' fees) arising out of or based on Franchisee's failure to perform any of the agreements, terms, covenants, conditions or warranties of this Agreement. Franchisee acknowledges that the provisions of this Agreement do not alter or amend any franchise agreements or any other agreements to which Franchisee and BKC is a party.

3. Term and Termination. The term of the Agreement shall commence as of the date written on the first page hereof and shall continue until Franchisee has submitted payments due and owed to Foundation, unless earlier terminated in accordance with the provisions hereof. Franchisee's indemnity obligations referenced above shall survive expiration or the earlier termination of this Agreement and shall continue in full force and effect. BKC and Foundation may terminate this Agreement immediately if Franchisee fails to comply with or perform any provision or condition of this Agreement, or with 10 days notice for any reason whatsoever. If this Agreement is terminated for any reason once solicitation of funds has begun, Franchisee shall immediately turn over to the Foundation, any and all funds raised on Foundation's behalf within thirty (30) days.

4. Miscellaneous. The provisions contained herein constitute the entire agreement between the parties hereto with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter hereof by any party hereto or by any agent or representative of any party hereto which is not contained in this Agreement shall be valid or binding between the parties. The parties hereto are independent contractors, and nothing in this Agreement shall be deemed or construed to create, or have been intended to create a partnership, joint venture, employment or agency relationship between the parties hereto. If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be



deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein. No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective. Any failure on the part of BKC or Foundation to insist upon the performance of this Agreement or any part thereof shall not constitute a waiver of any right under this Agreement. Franchisee shall not assign its rights or delegate its obligations under this Agreement without BKC's and Foundation's prior written consent. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to its conflict of laws provisions. Venue for any lawsuit and/or proceeding arising out of and/or relating to this Agreement shall be solely and exclusively in Miami-Dade County, Florida, and Franchisee hereby waives any and all defenses applicable to venue, including, without limitation, improper venue or *forum non conveniens*. Franchisee agrees to be subject to the jurisdiction of the State of Florida, and to accept service of process by U.S. certified or registered mail, return receipt requested, of any summons and complaint arising out of this Agreement (thereby waiving any and all objections to and defenses regarding lack of personal jurisdiction, improper venue, insufficiency of service of process and insufficiency of process). Finally, this Agreement may be executed in two or more counterparts (a faxed signature page is as good as an original), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year written below.


**FRANCHISEE NAME**

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

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

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

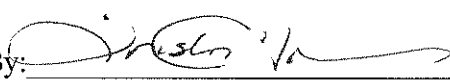
**HAVE IT YOUR WAY FOUNDATION, INC.**

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

Title: Executive Director

Date: 7/13/2011

**BURGER KING CORPORATION**

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

Title: VP Field Operations

Date: 7/13/11



**ATTACHMENT I**

**Franchisee Restaurants participating in the Promotion (to be completed by Franchisee):**

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