

# Franchise Agreement

The following document is a sample service-based franchise agreement (where a unique service is sold). It is included in this Appendix B to illustrate typical terms and restrictions contained in franchise agreements. It was drafted pursuant to rules and laws in effect in 2012. It is provided as a reference resource. If you are contemplating a franchise venture, it is recommended that you consult with an attorney and have him or her review any franchise agreement before you execute the agreement.

As either a potential franchisor or a prospective franchisee, acquaint yourself with the evaluation pointers discussed in Chapter 2 and other portions of this book, and make your own evaluation of the sample franchise agreement.

As a franchisor, be aware of your franchisee's needs, because if the franchisee fails, so will you. You will want to supply all the support necessary to ensure the possibility of your franchisee's success.

**NOAH'S ARK FRANCHISING INC.**

**AARDVARKS ONLY**

**FRANCHISE AGREEMENT**

This Contract Is Subject to Arbitration

## TABLE OF CONTENTS

<b>1.</b>	<b>GRANT OF FRANCHISE LICENSE</b> .....	<b>6</b>
1.1	Definitions .....	6
1.2	Grant of Franchise .....	10
1.3	Scope of Franchise Operations .....	10
1.4	Reasonable Business Judgment .....	10
1.5	Reservation of Rights .....	10
1.6	Other Covenants Relating to the Grant of this License .....	11
<b>2.</b>	<b>OPENING PERIOD, EXCLUSIVE TERRITORY, DEVELOPMENT AND RELATED RIGHTS, AND OBLIGATIONS.</b> .....	<b>12</b>
2.1	Opening Period .....	12
2.2	Franchised Location .....	13
2.3	Approval of Lease .....	13
2.4	Exclusive Territory .....	14
2.5	Permitting, Design, and Build out .....	14
2.6	Computers, Software, and Other Office Equipment .....	15
2.7	Purchase of Startup Kits .....	15
2.8	Other Furniture, Fixtures and Equipment .....	16
2.9	Approval Process for Other Goods and Services .....	16
2.10	Relocation .....	16
2.11	Maintenance and Renovation .....	16
2.12	Purchase of Additional Territory .....	17
<b>3.</b>	<b>FEES, ADVERTISING AND REPORTING.</b> .....	<b>17</b>
3.1	Initial Franchise Fee .....	17
3.2	Royalty .....	17
3.3	Advertising and Advertising Fees .....	18
3.4	Grand Opening .....	19
3.5	Other Fees .....	19
3.6	Reporting .....	19
3.7	Method of Payment .....	20
3.8	Application of Payments .....	21
3.9	Record Keeping and Auditing .....	21
<b>4.</b>	<b>Term and Successor Franchise Rights</b> .....	<b>22</b>
4.1	Effective Date and Initial Term .....	22
4.2	Successor Franchise Rights .....	22
4.3	Conditions of Refusal .....	23
4.4	Successor Franchise Renovation .....	23
<b>5.</b>	<b>MANUALS AND SERVICES PROVIDED TO YOU BY US.</b> .....	<b>23</b>
5.1	Manuals .....	23
5.2	Services Provided by Us Prior to Commencement of Operations .....	23
5.3	Services Offered by Us During the Operation and Optional Assistance .....	24

<b>6.</b>	<b>PROPRIETARY INFORMATION, THE SYSTEM, COPYRIGHTS, AND MARKS . . .</b>	<b>24</b>
6.1.	Proprietary Information . . . . .	24
6.2.	Marks and Copyrights . . . . .	26
6.3.	Infringement . . . . .	27
6.4.	Business Name and Contact Information . . . . .	27
6.5.	Modification and Discontinuation . . . . .	28
6.6.	Protection of All Information . . . . .	28
6.7.	Innovations by You . . . . .	29
<b>7.</b>	<b>TRAINING . . . . .</b>	<b>29</b>
7.1.	Initial Training . . . . .	29
7.2.	Additional Training, Seminars, and Other Education Development Programs . . . . .	30
7.3.	Annual Conference . . . . .	30
7.4.	Employees and Employee Training . . . . .	30
<b>8.</b>	<b>QUALITY CONTROL . . . . .</b>	<b>31</b>
8.1.	System Compliance . . . . .	31
8.2.	Compliance with Applicable Laws . . . . .	32
8.3.	Inspections . . . . .	32
8.4.	Approved Products, Product Purchases and Approval Method . . . . .	32
8.5.	Appearance and Customer Service . . . . .	32
8.6.	Timely Delivery of all Reports and Fees . . . . .	33
8.7.	Notification of Deficiencies . . . . .	33
8.8.	Compliance with all Terms of this Franchise Agreement . . . . .	33
8.9.	Management . . . . .	33
8.10.	Hours of Operation . . . . .	33
8.11.	Modification and Pricing . . . . .	34
8.12.	Disclosure . . . . .	34
8.13.	Variances . . . . .	34
<b>9.</b>	<b>TRANSFERS . . . . .</b>	<b>34</b>
9.1.	Sale or Assignment by Franchisor . . . . .	34
9.2.	Transfer by You . . . . .	35
9.3.	Conditions of Approval of any Transfer . . . . .	35
9.4.	Invalidity of Transfers . . . . .	36
9.5.	Death or Incapacity . . . . .	36
9.6.	Right of First Refusal . . . . .	37
9.7.	Transfer After Retaking Possession . . . . .	37
<b>10.</b>	<b>DEFAULT AND TERMINATION . . . . .</b>	<b>38</b>
10.1.	Termination by Franchisor—Effective upon Notice . . . . .	38
10.2.	Termination by Franchisor—Thirty Days’ Notice . . . . .	40
10.3.	Cross Default . . . . .	40
10.4.	Diligent Pursuit of Cure . . . . .	40
10.5.	Expiration at the End of the Initial Term . . . . .	40
10.6.	Our Rights to Damages . . . . .	41

10.7	Limitation of Right to Bring Action and Waiver of Punitive, Exemplary or Consequential Damages. . . . .	41
10.8	State or Federal Law Prevails . . . . .	42
10.9	Payment of Fees is an Independent Covenant . . . . .	42
10.10	Action Against the Franchisor. . . . .	42
<b>11.</b>	<b>OBLIGATIONS OF FRANCHISEE UPON TERMINATION OR EXPIRATION . . .</b>	<b>43</b>
11.1	Obligations upon Termination or Expiration . . . . .	43
11.2	Additional Matters. . . . .	44
<b>12.</b>	<b>RIGHT TO PURCHASE . . . . .</b>	<b>44</b>
<b>13.</b>	<b>RELATIONSHIP BETWEEN THE PARTIES . . . . .</b>	<b>44</b>
13.1	Independent Contractor . . . . .	45
13.2	No Fiduciary Relationship . . . . .	45
13.3	Posting of Signs. . . . .	45
<b>14.</b>	<b>INDEMNIFICATION. . . . .</b>	<b>45</b>
<b>15.</b>	<b>RESTRICTIVE COVENANTS . . . . .</b>	<b>45</b>
15.1	In-Term Covenant Not to Compete . . . . .	45
15.2	Post-Term Covenant Not to Compete . . . . .	46
15.3	No Disclosure . . . . .	46
15.4	Other Protection . . . . .	46
15.5	Survival. . . . .	47
15.6	Reasonable Restriction and Savings Clause . . . . .	47
15.7	Franchisor Is Entitled to Injunctive Relief. . . . .	47
<b>16.</b>	<b>DISPUTE RESOLUTION . . . . .</b>	<b>47</b>
16.1	Resolution before Arbitration . . . . .	47
16.2	Resolution Under Arbitration. . . . .	49
16.3	Confidentiality. . . . .	50
16.4	Discovery, other Procedural Matters, Fees and Costs. . . . .	50
16.5	Disputes Not Subject to the Mediation/Arbitration Process . . . . .	51
16.6	The Intentions of the Parties . . . . .	51
16.7	Survival of Obligations . . . . .	51
<b>17.</b>	<b>INSURANCE . . . . .</b>	<b>52</b>
17.1	Insurance is Required; Coverage . . . . .	52
17.2	No Limitations on Coverage . . . . .	52
17.3	Franchisor May Procure Insurance Coverage . . . . .	53
17.4	Destruction of Premises or Vehicle . . . . .	53
<b>18.</b>	<b>MISCELLANEOUS. . . . .</b>	<b>53</b>
18.1	Entire Agreement—Merger . . . . .	53
18.2	Modification. . . . .	54
18.3	Delegation . . . . .	54
18.4	Review of Agreement . . . . .	54
18.5	No Waiver. . . . .	54
18.6.	No Right to Set Off or Third Party Beneficiaries. . . . .	54

18.7 Invalidity ..... 55  
18.8 Notices ..... 55  
18.9 Time is of the Essence and Construction ..... 55  
18.10 Survival of Provisions and Independent Covenants ..... 55  
18.11 Force Majeure ..... 55  
18.12 Guaranty ..... 56  
18.13 Acknowledgements ..... 56  
18.14 Recitals, State Specific Amendment, Closing Acknowledgement, Statement of Understanding, and Signatures ..... 56

**EXHIBITS**

- Exhibit 1 Statement of Ownership
- Exhibit 2 Designated Area, Franchised
- Exhibit 3 Guarantee
- Exhibit 4 Collateral Assignment of Lease Agreement
- Exhibit 5 Collateral Assignment of Contact and Electronic Information
- Exhibit 6 General Release
- Exhibit 7 Closing Acknowledgments
- Exhibit 8 State Specific Addendum

# NOAH'S ARK FRANCHISING INC.

## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** ("Franchise Agreement" or "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Noah's Ark Franchising Inc., a Colorado corporation, hereinafter known as "Noah's Ark Franchising Inc.", "Franchisor", "we" or "us", or words of a similar nature, and \_\_\_\_\_ and \_\_\_\_\_, known individually or collectively as "Franchisee," "Franchisees", "you", "your", or words of a similar nature. You and we may sometimes be referred to in the singular as a "Party" or jointly as the "Parties."

### Recitals

**WHEREAS**, Franchisor permits you to operate under our service marks, trademarks, trade names, and logos (jointly the "Marks") and permit you to operate your Business using our "System."

**WHEREAS**, you desire to enter into an agreement with us so as to be able to obtain the rights to open and operate a Business using the Marks and the System developed by us; and

**WHEREAS**, you declare that you have fully investigated and familiarized yourself with the essential aspects and purposes of this opportunity and have been advised by counsel, or have had the reasonable opportunity to be advised by counsel chosen by you, of the terms and conditions of this Franchise Agreement, and you agree that your consistent and uniform operation of the Business using the System are essential.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, terms, and conditions herein contained and the acts to be performed by the respective parties hereto, the Parties agree as follows:

### Covenants

#### ARTICLE 1

#### Grant of Franchise License Definitions, Grant of Franchise License, License, Reasonable Business Judgment, and Reservation of Rights

##### *1.1-Definitions*

Unless otherwise defined in the body of this Franchise Agreement, the following capitalized terms has the meaning set forth here:

"Affiliate" means Ark Pet Services, Inc.

"Business" or "Franchised Business" means your operation of a business pursuant to this Franchise Agreement, under the Marks.

"Change of Control" in reference to a Transfer under Article 9 means that: (i) the natural person franchisee takes on a partner regardless of whether such partner is in control or not; (ii) a natural person franchisee converts to a business entity franchisee and then delivers more than 49% of the equity interest of such business entity to

another Person; (iii) a business entity franchisee takes on any number equity partners and delivers more than 49% of the equity interest to such Persons; or, (iv) the franchisee (whether a natural person or business entity) in any manner delivers control of the day-to-day operations of the Franchised Business to a Person who has not first been approved by us. All Designated Managers must first be approved by us.

“Claims” has the meaning given to that term in Article 14.

“Competitive Business” is any business that offers daycare services and grooming and training for aardvarks.

“Computer System” means the computer hardware and software that we require you to have in order to operate, all which is more fully set forth in the Franchisee Manuals or in handouts that we provide.

“Compliance” means that you: (i) are current in all respects in reference to this Franchise Agreement; (ii) have received written notices from the Franchisor of breach of this Agreement (each of which was timely cured) no more than four (4) times during the Initial Term; and no more than 1 time during any Successor Franchise Term; and, (iii) you are not in breach at the time that Successor Franchise Rights are sought.

“Customer List” means the name and all contact information of each Person that used your services at or through the Business.

“Default Notice Fee” means the then-current fee that we charge if we are required to send you a notice of default.

“Designated Area” is defined by geographic boundaries such as a perimeter defined by streets, landmarks, highways or similar methods, or by political or mailing boundaries including neighborhoods, cities, counties and zip codes. We reserve the right to change the method of identifying a Designated Area at any time.

“Designated Manager” means the person besides your Principal Operator and you that has received our training and is authorized by you to operate the Business from day to day. The Designated Manager need not be an owner of any interest in the Business.

“Due Date” shall be the date on which all Royalties and other fees are due to us pursuant to Article 3.

“Effective Date” shall be the date that this Franchise Agreement is fully executed by us. There is no agreement and this is not a contract between us until that date.

“Electronic Funds Transfer” or “EFT” means the bank-to-bank transfer from your account of your Royalties and other charges into our account.

“Event of Default” shall be any default of any provision of Sections 10.1 through 10.3 of Article 10.

“Exclusive Territory” means the geometric shape, the center of which is your Franchised Location and the radius of which is approximately 10 miles (more or less). The final perimeter will conform to physical, geographic, zip codes, political, and/or other boundaries and will be decided by us using our Reasonable Business Judgment.

“Fair Market Value” means the value that a reasonable person who is under no duress or obligation would pay for the furniture, fixture, equipment, or item that is being sold by a seller who is under no duress or obligation. If Franchisor and Franchisee do not agree to the Fair Market Value, it will be established by an independent appraisal. The appraisal shall be done at our expense by an appraiser selected by us but who is independent and disinterested in the outcome of any such valuation. No goodwill shall be considered associated with the valuation of any item being so valued.

“Force Majeure” means that except for monetary obligations hereunder which are due regardless of the existence of an event of Force Majeure, or as otherwise specifically provided in this Franchise Agreement, if either Franchisor or Franchisee shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lock-outs, labor troubles, inability to procure materials,



failure of power, restrictive governmental laws or regulations, riots, insurrection, war, or other causes beyond the reasonable control of the Party required to perform such work or act under the terms of this Agreement not the fault of such party, then performance of such act shall be excused for the period of the delay, but in no event to exceed 45 days from the stated time periods in this Agreement.

“Franchise Disclosure Document” or “FDD” means the disclosure document that was delivered to you at least 14 calendar days before you signed this Franchise Agreement or paid any money to the Franchisor.

“Franchised Location” means the physical location of the Franchised Business, the address of which shall be identified in Exhibit 2.

“Franchisee National Advertising Account” will be the account into which all Franchisee National Advertising Fees are deposited as more fully set forth in Article 3.

“Franchisee Parties” means your Principal Operator, any Designated Manager, you, any officers, directors, Managers, Members, the holder of any equitable interest in a business entity, your family members that actively participate in the Business, all others who may take an active role in the operation of the Business as well as any agents, servants, employees and all others in active concert or participation with you in operation of the Business.

“Franchisee Training Program” means the training we provide to you under Article 7.

“Franchisor” means the person or entity identified herein as the Franchisor and shall also include Franchisor’s predecessors, the Affiliate (as applicable), any parent and their respective shareholders, directors, officers, managers, members, employees, and agents, and all successors, and assignees of the persons or entities so named in this section and Franchisor’s officers, directors, shareholders, members, managers, equity holders, employees, agents, successors, assigns or all others whose conduct is charged to Franchisor.

“Grand Opening” means the advertising completed at or around the opening of the business and “Grand Opening Cost” is \$500.

“Gross Revenue” means the total of all revenues and income from the sale of all products and services from all sources in connection with the Business, whether or not sold at or from the “Franchised Location” (as that term is defined in Item 11), whether received in cash, in services in kind, from barter and/or exchange, on credit (whether or not payment is received), or otherwise. You may deduct from Gross Revenue all sales tax or similar taxes, which by law are chargeable to clients by any taxing authority. You may also deduct from Gross Revenue the amount of any documented refunds. All payments made to us including Royalties will be paid through EFT.

“Indemnified Parties” has the meaning given to it in Article 14.

“Initial Franchise Fee” and “IFF” means the fee that you pay us for the award to you of the rights granted to you under this Agreement, as more fully described in Article 3.

“Initial Term” has the meaning given to it in Article 4.

“Involuntary Transfer” means the transfer or assignment of: any interest in this Franchise Agreement; any of your interest in the Business; a substantial portion of the assets of the Business; any interest in the business entity that is the Franchisee (except as permitted by this Franchise Agreement) or the transfer or assignment of any other asset or interest as a result of: any insolvency or bankruptcy proceeding; the foreclosure of any manner of lien or encumbrance; the taking as a result of a divorce or separation, or in the case of a business entity any action by the equity owners or creditors the result of which is the loss of any interest described herein; or through any other means or method over which the Franchisee has no control, or against which Franchisee cannot substitute a bond or other monetary instrument so as to avoid such Involuntary Transfer.

“Late Fee” means our then-current late fee for failure to timely make payments hereunder which now is \$100 plus 1.5% per month for any payment not timely made.

“Local Advertising Fee” will have the meaning given to it in Article 3.

“Manual” means the operations manuals (that may be more than one manual, booklet, or handout), that are delivered to you before you open for business, that may be amended from time to time, and which Franchisee Manuals disclose the operating methods used in the Business.

“Marks” means all trademarks, trade names, logos, service marks, and similar commercial symbols that we require you to use in identifying your Business, and as more fully stated in Article 6.

“National Advertising Fee” has the meaning given to it in Article 3.

“National Advertising Fund” has the meaning given to it in Article 3.

“Opening Period” means the date by which you must be open for business as more fully defined in Article 2 below.

“Party” or the “Parties” means the Franchisor, the Franchisee and any Franchisee Party.

“Person” means a natural person or a business entity.

“Principal Operator” means the person authorized by the business-entity Franchisee to receive our training, to operate the Business, and to act as the contact between us. The Principal Operator must own no less than twenty five percent (25%) of the equity in the franchisee business entity.

“Proposed Transferee” means the person or entity to whom Franchisee wishes to Transfer an interest as more fully described in Article 9.

“Proprietary Information” has the meaning given to it in Article 6.

“Quality Control Methods” has the meaning given to it in Article 8.

“Reasonable Business Judgment” Use of our Reasonable Business Judgment will mean that our determination on a given matter will prevail even in cases where other alternatives are also reasonable so long as we are intending to benefit, or are acting in a way that could reasonably benefit any component of the System or the Marks, any one or more of the franchisees, or any other aspect of the franchise system. Such decisions may include, but will not be limited to, decisions that may: enhance or protect the Marks and the System; increase customer satisfaction; increase the use of the services all franchisees offer; and matters that correspond with franchisee satisfaction. Franchisor will not be required to consider any Franchisee’s particular economic or other circumstances when exercising our Reasonable Business Judgment. Reasonable Business Judgment decisions will not affect all franchisees equally, and some may be benefited while others are not.

“Regional Advertising Program Cooperative Fee” has the meaning set forth in Article 3.

“Relocation Fee” means our then-current fee charged if we approve of the move of your Franchised Location.

“Renovation” means the updating of your Franchised Location to our then-current look and feel, which will occur no more often than once every 5 years.

“Right of First Refusal” has the meaning given to it in Article 9.

“Royalty” means the 7% of the Gross Revenue as more fully described in Article 4.

“Startup Kit” contains your initial inventory of printed materials, including brochures, stationery, advertising materials, and logoed apparel.

“Startup Kit Fee” is \$750.

“Successor Franchise Fee” is 50% of the then-current IFF.

“Successor Franchise Rights” has the meaning given to it in Article 4.

“Successor Franchise Term” has the meaning given to it in Article 4.

“System” means without limitation: the manner and method of training that we deliver to you; the

operations, standards, and procedures that you will use in the day-to-day operation of the Business; advertising programs; the economic and financial characteristics of the Business; any copyrighted, trade secret or confidential information owned by us; the Proprietary Information; the trademarks, service marks, and logos; and all other copyrighted, trade secret or confidential information owned by us. You must operate in accordance with our System. This definition may be supplemented by other language of this Franchise Agreement and by us from time to time.

“Technology Maintenance Fee” means our then-current fee you will pay us to maintain your presence on our internet web system. Payment is due with Royalties.

“Training” has the meaning given to it in Article 7.

“Transfer” has the meaning given to it in Article 9.

“Transfer Fee” is 50% of the then current IFF.

### ***1.2-Grant of Franchise***

- a. The Franchisor grants to the Franchisee, and the Franchisee accepts from the Franchisor, the non-exclusive right to use the System in connection with the establishment and operation of one Business at the Franchised Location. The Franchisee agrees to use the Marks and the System as they may be changed, improved, and further developed by the Franchisor from time to time, only in accordance with the terms and conditions of this Agreement. The Franchisee shall complete the Statement of Ownership found at Exhibit 1.
- b. As part of the grant of this Franchise Agreement, you agree that before you sign, you will be subject to an initial credit and criminal background check. You further agree that we have the right to recheck your credit and criminal background at any time during the Term (or any Successor Franchise term) of this Agreement.

### ***1.3-Scope of Franchise Operations***

You will comply at all times with your obligations hereunder and shall continuously use his best efforts to promote and operate the Business. The Franchisee shall utilize the Marks, System, and Manuals to operate all aspects of the Business franchised hereunder in accordance with the methods and systems developed and prescribed from time to time by the Franchisor. The Business shall offer all products and services that the Franchisor designates and shall be restricted from offering or selling any products and services not previously approved by the Franchisor in writing.

### ***1.4-Reasonable Business Judgment***

We will use our Reasonable Business Judgment in the exercise of our rights, obligations, and discretion, except where otherwise indicated. As part of its Reasonable Business Judgment, and in order to respond timely to market conditions and the needs and wishes of customers to the Businesses, we reserve the right, in our sole and exclusive determination, to vary any standard of the System, the Marks, or the Franchisee Manuals.

### ***1.5-Reservation of Rights***

We and our Affiliate reserve the right, among others, to:

- a. Own, franchise, or operate businesses that are similar to your Business (and which use the Marks and the System) at any location outside of your Exclusive Territory, regardless of the proximity to your Exclusive Territory;
- b. Use the Marks and the System to sell any products or services (which may be similar to those that you will sell) through any alternate channels of distribution within or outside of the Exclusive Territory. These alternate channels include, but are not limited to, retail locations (such as grocery stores or similar retail outlets), and other channels of distribution, such as television, mail order, catalog sales, wholesale to unrelated retail outlets, or over the internet. You cannot use alternate channels of distribution without our express permission, which may be granted or denied for any reason or for no reason at all. You will not receive compensation for any such sales;
- c. Use and license others to use, either within or outside of your Exclusive Territory or in alternate channels of distribution, other trademarks, trade names, service marks, logos, proprietary information, and methods of operation that are not the same as or confusingly similar to the Marks, in the operation of a business that offers goods, services, and related products and services which may be similar to, or different from, the Business;
- d. Purchase, or be purchased by, or merge, or combine with any other business, including a business that competes directly with your Business, wherever located; and,
- e. Acquire and convert to our System any businesses offering services and products similar to those offered by you, including such businesses operated by competitors or otherwise operated independently, or as part of, or in association with any other system or chain, whether franchised or corporately owned, and located outside of the Exclusive Territory.
- f. Though we can use alternative channels of distribution within your Exclusive Territory to make sales of goods, items, and services associated with the System and the Marks, or associated with any other system or trademarks, service marks, trade names, logos, and the like, we have not done so as of the date of this disclosure document. We reserve the right to do so at any time.
- g. Our Affiliate has established a business that is substantially similar to the one being offered here. It will never open a competing business in any portion of your Exclusive Territory.

#### ***1.6-Other Covenants Relating to the Grant of this License***

- a. WE BOTH AGREE TO WAIVE THE RIGHT TO A JURY TRIAL AND TO BE AWARDED EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN ANY ACTION BROUGHT IN REFERENCE TO THE RELATIONSHIP BETWEEN YOU AND US.
- b. WE BOTH AGREE THAT EACH OF US IS LIMITED TO BRINGING ANY LEGAL CLAIM AGAINST THE OTHER WITHIN ONE YEAR OF THE DATE THAT THE FACTS WHICH GIVE RISE TO THE CLAIM WERE DISCOVERED OR ONE YEAR FROM THE DATE THAT SUCH FACTS REASONABLY SHOULD HAVE BEEN DISCOVERED.
- c. THIS FRANCHISE AGREEMENT DESCRIBES THE TERMS AND CONDITIONS ON WHICH WE CURRENTLY OFFER FRANCHISES TO NEW FRANCHISEES. WE MAY OFFER FRANCHISES UNDER DIFFERENT TERMS AND CONDITIONS IN ORDER TO ENHANCE, BUILD, AND PRESERVE THE SYSTEM.
- d. Franchisee covenants, represents, and warrants as follows and acknowledges that Franchisor is relying upon such covenants, representations, and warranties in making its decision to enter into this Agreement:

- i. Franchisee acknowledges that he has received and has read this Franchise Agreement and all Exhibits attached hereto. Specifically, the Franchisee has been advised by us to seek out and use professional counsel of Franchisee's choosing in order to interpret any terms, covenants, or conditions of this Franchise Agreement and advise on the relationship overall. It is the Franchisee's sole and exclusive obligation to obtain such counsel, and Franchisor will not provide any legal, financial, or other counsel in reference to this Franchise Agreement.
- ii. Franchisee has adequate funding to purchase and operate the Business and, as a result, is financially capable of undertaking the risks involved in the opening and operation of any business. Franchisee knows of no circumstances that would lead to litigation against him in the future.
- iii. All statements made by Franchisee in writing in connection with its application for this Franchise were, to the best of its knowledge, true when made and continue to be true as of the date of this Agreement.
- iv. Franchisee is not a party to any litigation or legal proceedings other than those that have been disclosed to Franchisor by Franchisee in writing.
- v. Franchisee and its owners agree to comply with and to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws as defined below. As a result, the Franchisee and its owners certify, represent, and warrant that: (A) none of their property or interests is subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and its owners are not otherwise in violation of any of the Anti-Terrorism Laws; (B) none of them is listed in the Annex to Executive Order 13224 (which can be accessed at <http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>); (C) it will refrain from hiring (or, if already employed, retain the employment of) any individual who is listed in the Annex; (D) it has no knowledge or information that, if generally known, would result in Franchisee, its owners, their employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224; (E) it is solely responsible for ascertaining what actions it must take to comply with the Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that its indemnification responsibilities set forth in this Agreement pertain to its obligations under this subparagraph; and (F) any misrepresentation under this subparagraph or any violation of the Anti-Terrorism Laws by Franchisee, its owners, agents, and employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered with Franchisor or any of Franchisor's affiliates (if any). For purposes of this Franchise Agreement, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations, and other regulations found at 31 CFR 515, 595, 597, and any laws which now pertain or which may in the future pertain to the matters of this Section.

## **ARTICLE 2**

### **Opening Period, Exclusive Territory, Development and Related Rights, And Obligations**

#### ***2.1-Opening Period***

- a. The typical length of time between the signing of the Franchise Agreement and the opening of a Business is approximately 5 to 7 months (Opening Period).

- b. We will extend your Opening Period one time for a reasonable time in the event factors beyond your reasonable control prevent you from meeting the deadlines and you request an extension of time from us at least 15 days before the end of the opening period. If after the passage of such reasonable time, the Franchisee has failed to open for business, Franchisor has the right to terminate this Agreement without any right to cure.

## **2.2–Franchised Location**

- a. If you do not already have a Franchised Location selected and approved before you sign this Franchise Agreement, you and we will identify a Designated Area at Exhibit 1 within which to find a Franchised Location. The Designated Area gives you the exclusive right during the defined time period to find and develop your Business.
- b. Our assistance in connection with the selection and approval of a location is limited to providing written criteria for a satisfactory Franchised Location, reviewing the information provided by you to determine whether the location fulfills the requisite criteria, and at our option, an on-site inspection if requested by you and at your cost. Using our Reasonable Business Judgment, we base our approval of your proposed site on a variety of factors including, but not limited to the various demographic characteristics of the site (including population density, income, and the like), geographic, political and physical boundaries, extent of competition, mix of residential and commercial, and whether the proposed site is urban, suburban, or rural.
- c. **Our employees and we have no special expertise in selecting sites. Any approval is intended only to indicate that the proposed site meets our minimum criteria based upon our general business experience.**
- d. **OUR APPROVAL OF A LOCATION DOES NOT INFER OR GUARANTEE THE SUCCESS OR PROFITABILITY IN ANY MANNER.**

## **2.3–Approval of Lease**

- a. After we approve the proposed Franchise Location, you will have 30 days to negotiate a lease that must be submitted to us for approval. We will approve or disapprove the lease agreement within 15 days after receipt. We have the option to require that the lease: i) be collaterally assigned to us by Collateral Assignment of Lease agreement (Exhibit 4); or, ii) contain the following terms and conditions:
  - i. The landlord must agree that without its consent, the lease and your right, title and interest under the lease may be assigned to us or our designee; and,
  - ii. The landlord must provide written notice to us (at the same time it gives such notice to you) of any default by you under the lease. We must be given an additional 15 days after your period of cure has expired, to cure, at our sole option, any such default and, upon the curing of such default, we must be given the right to enter upon the leased premises and assume your rights under the lease as if the lease had been assigned by you to us.
- b. You will operate your Business and use the Marks, the Proprietary Information, and the System only at the Franchised Location.
- c. **OUR APPROVAL OF ANY LEASE DOES NOT INFER OR GUARANTEE THE SUCCESS OR PROFITABILITY OF YOUR BUSINESS.**

- d. Once the site and the lease have been approved by us, the location will be your Franchised Location, and an Exclusive Territory will be identified by us, all of which will be identified in Exhibit 2 of this Franchise Agreement.

#### **2.4–Exclusive Territory**

- a. You will be assigned an Exclusive Territory at the time that the Franchised Location and the lease are approved. Your Exclusive Territory will continue in force during the initial and any Successor Term of the Franchise Agreement.
- b. We will not permit another franchisee, or company- or Affiliate-owned business to operate within your Exclusive Territory. Except as set forth below in the reservation of rights, we will not accept or solicit orders to provide services in your Exclusive Territory.
- c. You may advertise the Business only within your Exclusive Territory unless regional or cooperative advertising is implemented or unless you get our permission to advertise outside the Exclusive Territory. You can accept customers from anywhere including another franchisee’s territory, and other franchisees can accept customers from your Exclusive Territory.
- d. All franchisees can advertise on the internet only through our web portal; except that we may grant you the right to separately advertise or promote your business on the internet only after you have first received our express written permission to do so. Our decision to grant or deny this right will be based upon our Reasonable Business Judgment.

#### **2.5–Permitting, Design, and Build Out**

- a. After this Agreement is signed, after the lease is signed, and when Exclusive Territory is defined, but before commencing the construction of the Business, the Franchisee, at its expense, shall comply with all of the following requirements:
  - i. We will supply you with generic plans for the design and build out of the interior and exterior structure. Franchisee will deliver the generic plans to a local architect and/or engineer who will conform the drawings to the Franchised Location. Franchisee shall submit the completed drawings to us for approval. We shall approve, disapprove, or comment on the plans within thirty (30) calendar days of the date that they are delivered. If we make comments, you shall revise the plans to conform to the comments within fifteen (15) days of delivery to you. If we disapprove of the plans, we will provide comments. Thereafter, you will have thirty (30) days to revise the plans so that they can be approved by us;
  - ii. Franchisee shall use a qualified general contractor or construction supervisor to oversee the construction of the Business and completion of all improvements, and Franchisee shall submit to Franchisor a statement identifying the general contractor or construction supervisor;
  - iii. Franchisee shall obtain all licenses, permits and certifications required for lawful construction and operation of the Business including, without limitation, building, zoning, access, parking, driveway access, sign permits, and licenses, and shall certify in writing to Franchisor that all such permits, licenses, and certifications have been obtained. Franchisee shall obtain all health, safety, and other permits and licenses required for operation of the Business and shall certify that all such permits and licenses have been obtained prior to the Opening Date;

- iv. Franchisee shall cause such construction to be performed only in accordance with the site plan, and other plans and specifications approved by Franchisor and no changes will be made to the approved plans and specifications, or the design thereof, or any of the materials used therein, or to interior and exterior colors thereof, without the express written consent of Franchisor.
- v. Franchisee will complete the interior and exterior with such furniture, Startup Kits, fixtures, workout and other equipment, signage, and the like so as to conform with our then-current look and equipment.
- b. Should the Franchisee be unable to obtain all necessary permits and licenses during the stated period and extension time period or periods as a result of causes beyond the reasonable control of Franchisee (unless the requirement for the timely issuance of such permits and licenses is waived in writing by Franchisor), this Agreement may be terminated upon written notice from one party to the other without the necessity of further action or further documentation by either party. Franchisor will retain all fees that were paid to that date.
- c. We may if requested by you, agreed upon by us, and at your cost send a representative to the site to ensure that construction is completed to our specifications. We will charge our then-current fee that will be found in the Operations Manual.

### ***2.6–Computers, Software, and Other Equipment***

- a. The Business must have such computer and other equipment as Franchisor designates in the Manuals.
- b. Franchisee will be required to purchase, lease, or license one (1) desk-top computer of any make or model that must have the latest version of the Microsoft® operating system. It must have the following software installed and operational: i) the latest version of Microsoft Word and Excel; ii) the latest version of Internet Explorer®; and iii) the latest version of QuickBooks®. You may already own a computer and software that meets these requirements.
- c. We may in the future offer a proprietary software or web-based programs that may include accounting, word processing and other features. There may be a fee for such programs.  
You will be required to maintain the computer to keep it operational. You must maintain all software stored with all patches that may come from the manufacturer. The maintenance for hardware and software may occur at any time and as a result, there can be no estimate of the cost.
- d. You are not required to maintain any hardware or software maintenance contracts.
- e. We will require you to update all other computer hardware no more often than once every five (5) years.
- f. The computer in the Business must be attached to a high-speed internet access point. We will have the right to, and will remotely access your computer to obtain information about your operations. This information may be used by us for any purpose and may include identification of your Business by name.

### ***2.7–Purchase of Startup Kits***

- a. You must purchase the Startup Kit from our Affiliate or us. The content of the Startup Kit and the cost are more fully described in the Manuals. Any replacement inventory for the Startup Kit must be purchased from us or another approved vendor.



### **2.8–Other Furniture, Fixtures and Equipment**

You will also be required to purchase all furniture, fixtures and equipment necessary to open and operate the Business. This list will be supplied to you in the manuals, as updated from time to time, and will include, but not be limited to: retail display kiosks or shelving, washing and grooming stations, tools including electric and manual grooming equipment, and similar items sufficient to provide the services offered. The list of required items will be delivered to you in the Manuals. You may be required to purchase additional or new equipment as the needs of the market place dictate. This will be communicated to you through amendments to the Manuals and may occur at any time.

### **2.9–Approval Process for Other Goods and Services**

- a. In some cases, you may wish to purchase a required good or service from a supplier that has not been previously approved by us. We will charge our then-current fee for this service. We do not maintain written criteria for approving suppliers and thus, these criteria are not available to you or your proposed supplier. To obtain our approval, you must submit such information as we may reasonably require in order to evaluate the prospective supplier. We will evaluate the submitted information and will provide written notice of our decision to you within 30 days. We may grant or deny approval for any reason or for no reason at all. Other than as stated here, we have no other process for approving suppliers.
- b. Approval of alternative suppliers may be revoked by us if we determine in good faith that the goods or services they are supplying no longer meet the quality standards that are in effect at that time. We will notify you if we revoke our approval of any suppliers and you must immediately stop purchasing disapproved goods or services or purchases from a disapproved supplier.

### **2.10–Relocation**

You may relocate your Business within your Exclusive Territory only if you first obtain our express written permission which permission will be considered using our Reasonable Business Judgment. If you are permitted to relocate, you must first have any location and its lease approved by us in the same manner as we are then approving locations for new franchisees. You will pay us our then-current relocation fee that now is \$5,000 (as provided in the Manuals). If the result of your relocation is that you encroach on the exclusive territory of another franchisee, you will not be permitted to relocate to that proposed site.

### **2.11–Maintenance and Renovation**

- a. You will be required to maintain your Business as needed to ensure a clean, safe and attractive business. This may require you to purchase new equipment to replace worn-out equipment, and may require you to repaint or take other remedial action. This will be done as often as is necessary to maintain a safe, secure and attractive Business. There can be no estimate of these costs, as the maintenance will vary depending work that must be done.
- b. You will be required to renovate the Business every 5 years in order to meet our then-current configuration (Renovation). Renovation will also be required at the time that you are: awarded Successor Franchise Rights; at each 5 year period during such Successor Franchise Rights term; and, after a transfer but before the new owner reopens the Franchised Location for business (with

the understanding that if the renovations can be made while the Business is in operation, then the transferee will be permitted to make such changes while open). To the extent that this requires you to purchase goods that can be obtained only from our Affiliates, or us you will be required to make such purchases. Renovations may include changes to interior and exterior decor, furniture, fixtures, equipment, small wares, and changes to the system in order to conform to the then-current franchise system look and feel. We cannot estimate the cost of such renovation.

### **2.12–Purchase of Additional Territory**

- a. You do receive rights to be awarded additional franchises. In order to qualify you must:
  - i. Have been in operation for at least 12 months;
  - ii. Be in compliance with your Franchise Agreement at the time that you seek to purchase an additional site;
  - iii. Have received no notices of default from us during the years prior to the date that you apply for consideration of such a grant;
  - iv. Meet the then-current financial and business requirements that are applied to a new franchisee;
  - v. Demonstrate the business and financial ability to operate multiple Businesses;
  - vi. Have operated your current Business in such a manner that we, using our Reasonable Business Judgment, deem to be sufficient to warrant granting you an additional location;
  - vii. Using our then-current site criteria, have a location that will qualify as a Franchised Location; and
  - viii. Be granted the right after we use our Reasonable Business Judgment.
- b. If we grant you the right to an additional Business, you will sign the then-current franchise agreement and, if we deem it appropriate, you will attend additional training. **The new franchise agreement may have terms significantly different from this franchise agreement including a different IFF, royalty structure, advertising fee structure and the like.**

## **ARTICLE 3 Fees, Advertising, and Reporting**

### **3.1–Initial Franchise Fee**

- a. Your IFF is \$15,000.
- b. If you fail to meet the deadlines for the selection of a site or submit incomplete information regarding a site to us or if we fail to do so or we fail to reach an agreement as to a site, we have the right to terminate the Franchise Agreement, refund 40% of the IFF and retain the remainder to offset our costs

### **3.2–Royalty**

You will pay a royalty of seven percent (7%) of the Gross Revenue on a monthly basis. (Royalty).

All Royalties are due on the third business day of the month following the month for which such Royalty is due.

### **3.3–Advertising and Advertising Fees**

- a. *Local Advertising*
  - i. You will be required to spend a minimum of 2 percent of your monthly Gross Revenue for local advertising placement. We must first approve any advertising before it is placed in any medium, with the added requirement that such advertisement(s) be sent to us at least thirty (30) days before it is to be used. We will have 15 days within which to approve. If we do not deliver to you written notice in that time, the copy will be deemed to be approved.
  - ii. You may advertise on the internet only through our internet portal.
  - iii. You may only advertise within your Exclusive Territory, though you can accept customers from anywhere including another franchisee’s territory, and other franchisees can service customers from your Exclusive Territory.
- b. *National Advertising Fund and Regional and Cooperative Advertising*
  - i. We do not now, but will, when we have 20 Businesses opened, collect 1 percent of the Gross Sales each month for advertising, concept development, collateral materials and other items for the benefit of the System (National Advertising Fee). The National Advertising Fee will be due at the same time as your Royalties and as part of the EFT withdrawal. The National Advertising Fee will be placed in an interest bearing checking account, savings account, or any other account of our determination (Account). Any monies not used in any year will be carried to the next year. The Account will be administered by us at our sole discretion and may be used by us for all advertising expenditures reasonably intended to benefit the System, and for the payments to us of costs related to administering the Account such as reasonable salaries, administrative costs, travel expenses and overhead. National Advertising Fees are used to promote the services sold by the franchises and are not used to sell additional franchises.
  - ii. We make no guarantee to you or to any other franchisee that advertising expenditures from the Account will benefit you or any other franchisee directly or on a pro rata basis. We will assume no other direct or indirect liability or obligation to you with respect to collecting amounts due to the Account or with respect to maintaining, directing or administering the Account.
  - iii. Any company or Affiliate-owned Businesses will participate in any national or regional advertising programs in the same manner as the franchisees. Any fees not used in a calendar year will be rolled-over for use in the next or any subsequent year.
  - iv. The National Advertising Fee will be used for the creation and placement of various advertising and promotional products. The media in which such advertising may be disseminated includes but is not limited to printed materials, posters, window clings, danglers in the Business, and/or the creation of television, internet, radio and print on a local or regional basis. The advertising will be produced and placed by us or by a local, national or international advertising agency.
  - v. Upon your prior written request, we will make available to you, no later than 120 days after the end of each calendar year, an annual unaudited financial statement for the Account.
  - vi. We reserve the right, upon 30 days prior written notice to you, to allocate all or a portion of the National Advertising Fees to a regional advertising program (Regional Program) for the benefit of Businesses located within a particular region. We have the right to determine the composition

of all geographic territories and market areas for the implementation of such a Regional Program and to require that you participate in it as and when it may be established. If the Regional Program is implemented on behalf of a particular region, we will only use contributions from franchisees within such region to the extent reasonably calculable by us. We will control and administer the Regional Program though we will permit franchisees within the region to reasonably suggest the manner of such expenditures. Upon your prior written request, we will make available to you, no later than 120 days after the end of each calendar year, the annual unaudited financial statement for the Regional Program account.

- vii. We may also establish an advertising cooperative (Advertising Cooperative) for a particular region to enable the cooperative to self-administer the Regional Program. If an Advertising Cooperative is established in your area, you must participate in it.
- viii. The Advertising Cooperative will be administered by the franchisees in the cooperative. We have the right to change, dissolve, or merge any such cooperative. The cooperative will prepare unaudited financial statements and will deliver the same to use within 90 days of its year end. Each Regional Advertising Cooperative must adopt written governing documents. A copy of the governing documents of the Advertising Cooperative (if one has been established) for your region is available upon request.
- ix. We have the right to terminate the National Advertising Fund. We will not terminate the National Advertising Fund until all contributions and earnings have been used for advertising and promotional purposes or we have returned your pro rata share.
- x. All advertising fees collected by us will be referred to collectively as the “Advertising Fees”.

### **3.4–Grand Opening**

In addition to the advertising requirements described above, commencing no earlier than 60 days after the opening you will be required to spend \$500 to advertise the grand opening of your Business. The grand opening plans advertising must be approved by us in the same manner as is your local advertising.

### **3.5–Other Fees**

- a. We will create your own affiliated homepage that will be sponsored on our website, and you will pay us the \$1,000.00 Technology Startup Fee. You will also pay the then-current monthly Technology Maintenance Fee as more fully described in the Manual.
- b. Unless otherwise stated, all fees are payable in one lump sum, are due at the time you sign the Franchise Agreement, and are non-refundable under any circumstances.
- c. There are not now, but in the future, there may be other fees that we may charge. All such fees will be disclosed in the Manuals, in updates, or in other communications to you.
- d. We reserve the right to change or waive the fees mentioned above under special circumstances determined through our sole discretion.

### **3.6–Reporting**

- a. On a monthly basis and using the forms that we require and provide, you will deliver to us: a royalty report that accurately reflects all Gross Revenue generated during the preceding one-month period.

This report must be received by us no later than the third business day of the month following the month for which it is due.

- b. You will also deliver to us: a) profit and loss statements, balance sheets and trial balances prepared in accordance with generally accepted accounting principles, consistently applied, for each accounting period, to be received by Franchisor within fifteen (15) days after the expiration of each calendar quarter; b) a complete financial statement for your fiscal year, including, without limitation, both an income statement and balance sheet, which may be unaudited, together with such other information in such form as Franchisor may require; c) copies of all tax returns relating to sales at the Business to be received by Franchisor within ten (10) days of the end of the state sales tax reporting period; and, d) such other additional records, reports, information, and data as Franchisor may reasonably designate, in the forms, at the times and the places reasonably required by Franchisor, or as specified in the Manual or in writing. We have the right to change the required information that we may require and prior to requiring the same will provide you with reasonable written notice through a change to the Operations Manual.
- c. The reports may be unaudited. All reports delivered by you will be signed and verified by you, or your principal financial or executive officer as being true and accurate.
- d. Franchisee hereby grants us permission to release to Franchisee's landlord, lenders or prospective landlords or lenders, and to disclose in our franchise disclosure document, any financial and operational information relating to Franchisee and/or the Business.

### ***3.7–Method of Payment***

- a. No later than 10 days prior to the opening of the Business, the Franchisee will execute an authorization agreement for the EFT from the Franchisee's bank account to the Franchisor's bank account. The EFT method will be used to collect Royalties, Advertising Fees, and any fees due under this Agreement. We have the right to change the method of collection at any time after reasonable notice is given to the Franchisee.
- b. All Royalties, Advertising Fees and other fees due to us will be deposited into the Franchisee's operating account no later than 12:00 noon Mountain Time on third business day following the month for which the fees are due (Due Date). Franchisor will then sweep the operating account and deduct these fees.
- c. In the event that the Franchisee fails to have sufficient funds in the account on the Due Date, or otherwise fails to pay any Royalties or other fees due under this Franchise Agreement, the Franchisee shall owe a \$100.00 late fee which shall be due and payable for each day that the payment is late without other notice than this Agreement. This fee is in addition to all Royalties or other fees due. This will be automatically assessed and debited or paid along with the late debit or other such payment of Royalties. In addition, the Franchisor shall charge interest on any payments made after the Due Date at 1½ percent per month (Default Rate); except, the Late Fee will not exceed the maximum legal rate permitted by the law.
- d. The Franchisee acknowledges that this subsection does not constitute the Franchisor's agreement to accept such payments after they are due or a commitment to extend credit to, or otherwise finance the operation of the Business. In no event shall the Franchisee be required to pay interest at a rate greater than the maximum interest rate permitted by applicable law. The collection of any late fee and the acceptance of any late payment will not diminish the Franchisor's right to any other remedies available under this Franchise Agreement.

**3.8–Application of Payments**

- a. Notwithstanding any designation by the Franchisee as to the desired application of the payment, the Franchisor shall allocate any payments made by the Franchisee: first to any late fees and interest owed to us; then to any past due Royalties or other fees; then to any obligations that Franchisee has to any third party vendors that are paid by the Franchisor on your behalf; and then to the current Royalties and other fees owed to the Franchisor. The allocation set forth above shall not serve to postpone any payments that are due on any current or future due date.
- b. We will also have the sole discretion to allocate in the same manner as stated in this subsection, any payments, or any credits from third party vendors that are delivered to the Franchisor on the Franchisee's behalf. To the extent necessary to carry out the intent of this subsection, the Franchisee hereby appoints the Franchisor as its attorney-in-fact, and grants his power of attorney for the sole purpose of allocating any such funds received. This power of attorney shall continue throughout the term of this Agreement, any extension thereof and if applicable, after the termination of this Agreement, but in the latter case, only to the extent that the Franchisee still owes money to the Franchisor from his operation of the franchise.

**3.9–Record Keeping and Auditing**

- a. You agree to record all sales at the time of the sale in your computer or other sales recording system approved by us. You agree to retain all computer records, charge account records, sales slips, orders, return vouchers, sales tax reports, and all of your other business records and related background material, for at least seven (7) years following the end of the year in which the items were or should have been generated.
- b. Our designated agents or we will have the right, at all reasonable times, to examine and copy the books, records, and tax returns of Franchisee and the Business. We will also have the right, at any time, to have an independent audit made of the books of the Business. If an inspection should reveal that any payments to Franchisor have been understated in any report then you will immediately pay to us the amount understated upon demand, in addition to interest on such amount from the date such amount was due until paid, at the Default Rate, calculated on a daily basis. If an inspection discloses an understatement of two percent (2%) or more in any payment to Franchisor, Franchisee shall pay the difference and shall reimburse us for any and all costs and expenses relating to the inspection (including, without limitation, travel, lodging and wage expenses and reasonable accounting and legal costs). At our discretion, Franchisee may also be required to submit audited financial statements prepared at your expense, by an independent auditor that we approve. If an inspection discloses an understatement in any payment to Franchisor of four percent (4%) or more, such act or omission may constitute grounds for termination of this Agreement. The foregoing remedies shall be in addition to any other remedies that we have pursuant to this Agreement and as provided at law and in equity.

## ARTICLE 4

### Term and Successor Franchise Rights

#### **4.1–Effective Date and Initial Term**

- a. This Agreement shall be effective on the Effective Date. There is no agreement and this is not a contract between us until that date.
- b. The Initial Term is 10 years from the Effective Date.
- c. If we are required by law to give you notice before the termination or expiration of this Franchise Agreement, and if we fail to do so, this Franchise Agreement will remain in effect until we have given the required notice.

#### **4.2–Successor Franchise Rights**

At the end of the Initial Term, the Franchisee shall have the option to renew its franchise rights for two additional 5-year terms (each a “Successor Franchise Term”) by acquiring Successor Franchise Rights under the following conditions:

- a. if we do not exercise our right to refuse to offer Successor Franchise Rights as permitted under 4.3 below;
- b. you are, at the time you apply for Successor Franchise Rights, in Compliance;
- c. you will sign a franchise agreement that may contain materially different terms and conditions than your original contract. We will only change the boundaries of your Exclusive Territory by mutual consent. The Royalty, advertising fees, and other fees will be no more than are charged to new franchisees who sign the franchise agreement at that time. Such agreement must be signed and delivered to us no later than forty-five (45) days before the end of the then-current term. If it is not so delivered, then you will be deemed to have withdrawn your decision to purchase Successor Franchise Rights, and such rights will thereafter no longer be available to you;
- d. you sign the most current form of General Release, a copy of which current form is found at Exhibit 4. Notwithstanding the foregoing, to the extent that the law of the state in which the Business is located has determined that the requirement that a franchisee sign a general release be unenforceable, then this requirement shall be deemed to be deleted, and the franchisee shall not be required to sign the same; or if signed, then such general release shall be deemed to not be enforceable. If, however, the law of the state in which the Business is located permits the Franchisee to sign such general release, then the Franchisee shall sign such a release as part of the process described in this Section. Notwithstanding the foregoing, excluded from any release are claims arising from representations in the FDD.
- e. you pay the Successor Franchise Fee. The Successor Franchise Fee is deemed to be earned when you pay it and is not refundable under any circumstances;
- f. you exercise the option for Successor Franchise Rights by giving written notice of such exercise to us not earlier than one year or later than one hundred eighty (180) days prior to the scheduled expiration of this Franchise Agreement; and
- g. the Successor Franchise Rights under the new Franchise Agreement shall begin on the day following the end of the then-current term.

#### ***4.3.–Conditions of Refusal***

The Franchisor will not be obligated to grant the Franchisee Successor Franchise Rights if the Franchisee has:

- a. i) Received a fourth written notice of breach of any combination of terms, covenants or conditions of this Agreement during any 12 month period even though each such breach may have been timely cured; or, ii) has received a third written notice of breach of any combination of terms, covenants or conditions of the franchise agreement in effect during any Successor Term even though each such breach may have been timely cured;
- b. Failed to comply with any of the conditions necessary to obtain Successor Franchise Rights as described in subparagraph 4.2 above;
- c. Is in breach of this Franchise Agreement at the time that you attempt to exercise your right to purchase Successor Franchise Rights, and even if such breach is timely cured; or,
- d. We have determined in good faith and after using our Reasonable Business Judgment not to grant Successor Franchise Rights.
- e. Upon occurrence of any of the events described just above, we will give you written notice at least sixty (60) days prior to the expiration of the Initial Term, and such notice shall set forth the reasons for such refusal to offer successor franchise rights.

#### ***4.4–Successor Franchise Renovation***

In order to maintain a clean appearance, in order to meet the then-current decor requirements, and as a condition to granting Successor Franchise Rights, you must Renovate the Business as required by Article 2.

General maintenance of the Business is not considered to be a Renovation.

## **ARTICLE 5**

### **Manuals and Services Provided To You By Us**

#### ***5.1–Manuals***

- a. We will provide you one or more operations manuals, technical bulletins or other written materials (collectively referred to as the “Manuals”) covering our standards, specifications and operating and marketing procedures to be used by you in operating the Business. You will comply with the Manuals as an essential aspect of your obligations under this Agreement. Your failure to comply substantially with the Manuals will be considered by us to be a breach of this Agreement. The Manuals will be updated from time to time and you must comply with any changes in every update within the time period provided in such updates.
- b. You will only use the Marks, the System, and any Proprietary Information as specified in the Manuals. The Manuals are the sole property of the Franchisor and shall be used by you only during the term of this Agreement and in strict accordance with the terms and conditions of this Agreement.

#### ***5.2–Services Provided by Us Prior to Commencement of Operations***

- a. Except as stated below, the Franchisor is not required to provide you with any assistance.
- b. Before you open your business, we will:



- i. Assist you in selecting a Franchised Location by providing site selection criteria as described in Article 2 above.
- ii. Review your lease.
- iii. Once your Franchised Location is approved, we will designate your Exclusive Territory.
- iv. Furnish mandatory design specifications, layout criteria, and specifications for furniture, fixtures and equipment for the Business.
- v. Furnish the Startup Kit.
- vi. Offer training as more specifically set forth in Article 7.
- c. If requested by you and at your cost, we may agree to send a representative to the Business to ensure that improvements are completed to our specifications
- d. At our option, the day before opening and for 2 days thereafter, we may send a representative to the Business to help with opening and initial operations.

### ***5.3–Services Offered by Us During the Operation and Optional Assistance.***

- a. During the operation of your Business, we will provide the following services:
  - i. Modify, update or change the System including but not limited to the adoption and use of new or modified list of authorized and approved suppliers, trade names, trademarks, service marks, or copyrighted materials, new products, a new and evolving menu of services and new techniques.
  - ii. Provide you with access to local advertising materials.
  - iii. Help you coordinate your Grand Opening.
  - iv. Provide feedback from the polling of your computers including a comparison of your cost of goods to those of other Businesses.
  - v. Periodically advise you or offer guidance to you on other matters concerning the operation of your Business.
  - vi. Conduct quality control visits (both announced and unannounced), and also use a “secret shopper” program.
  - vii. At such time in the future as we deem appropriate, we will hold an annual conference at which new ideas and other matters will be discussed.
- b. We may provide you with additional training and support on an as-needed basis and for the then-current fee. You may request additional support and the same will be given in our sole discretion. Any costs incurred by us in providing such additional services shall be paid by you.

## **ARTICLE 6**

### **Proprietary Information, the System, Copyrights, and Marks**

#### ***6.1.–Proprietary Information***

- a. Franchisee and all Franchisee Parties acknowledge that each will obtain from the Franchisor knowledge of proprietary matters, techniques, and business procedures that are necessary and essential to the operation of the Business, without which information Franchisee could not effectively and efficiently operate. Franchisee and all Franchisee Parties further acknowledge that the methods of operation used in the operation of the Business are unique and novel to the System.

- b. As used herein, “Proprietary Information” includes, but is not limited to:
- i. persons, corporations or other entities which are, have been or become franchisees of the System and any investors therein;
  - ii. persons, corporations or other entities which are, have been or become customers of the Business;
  - iii. the terms of and negotiations relating to past or current franchise agreements with respect to the System;
  - iv. the operating procedures of, and each component of the System, including without limitation: distinctive management, bookkeeping and accounting systems and procedures; advertising; promotional and marketing methods; personnel hiring and training procedures; and the like;
  - v. the economic and financial characteristics of the System and Franchisees, including without limitation: pricing policies and schedules, profitability, earnings and losses, and capital and debt structures; and,
  - vi. the services and products offered from the Business;
  - vii. any common law or statutory copyrighted materials and the protection afforded thereby; and,
  - viii. the Franchisee Manuals.
- c. In consideration of the time and effort that we have put into the System and its goodwill, and for other good and valuable consideration, you agree that we retain ownership and control of your Customer List. You may use the Customer List only in conjunction with the operation of the Franchised Business. Upon expiration of this Franchise Agreement or earlier termination for any reason, the Customer List will be retained by Franchisor.
- d. During the term of this Agreement and following the expiration or termination of this Agreement, Franchisee agrees not to divulge, directly or indirectly, any Proprietary Information (including the content of the Customer Lists) to any person or entity, without the prior written consent of Franchisor which consent will be granted or denied for any reason or for no reason at all. Nothing contained herein shall be construed so as to require Franchisor to divulge any portion of the Proprietary Information.
- e. You may disclose Proprietary Information only to such of its employees, agents and representatives as must have access to it in order to operate the Business. Franchisee shall obtain from each such employee, representative or agent, an agreement that such person shall not during the course of his employment, representation, or agency with Franchisee, or at any time thereafter, use, divulge, disclose or communicate, any of the Proprietary Information, directly or indirectly, in any form or manner, to any person or business entity.
- f. You acknowledge that any failure to comply with the requirements of this Article will cause Franchisor irreparable injury, and Franchisor shall be entitled to obtain specific performance of, or an injunction against any violation of, such requirements. Franchisee waives any requirements for the posting of any bond(s) relating thereto.
- g. You have the right to use the Proprietary Information only in the Exclusive Territory, and only for so long as you shall fully perform and comply with all of the conditions, terms and covenants of this Agreement, and our policies and procedures that we prescribe from time to time.
- h. You acknowledge that we have the sole right to license and control your use of every component of the Proprietary Information. You also acknowledge that you have not acquired any right, title, or interest in or to any component of the Proprietary Information and will not in the future acquire any such

interest. You are granted the limited, non-exclusive license to use the same in the operation of Business as disclosed in this Franchise Agreement.

- i. You will not copy any component of the Proprietary Information unless we specifically authorize it in writing, which authorization may be granted or denied for any reason or for no reason at all.
- j. Your Principal Operator, any Designated Manager, and your Franchisee Parties will never during the term of this Agreement, or at any time after the termination or expiration of this Agreement, reveal to any component of the Proprietary Information to any person or entity nor use it for any other business.
- k. We reserve the right to require each of the Franchisee Parties to sign a non-disclosure and non-competition agreement

## 6.2.–Marks and Copyrights

- a. The following Mark is registered on the Principal Register of the United States Patent and Trademark Office (USPTO):

Registration Number	Description of Mark	Principal or Supplemental Register of the USPTO	Registration Date
1,234,567	AARDVARKS ONLY	Principal	March 2, 2011

- b. We also claim common law copyrights and copyright protection in and on all of the components of the System, including, but not limited to, the Marks, the content of the Manuals and related materials, training modules and techniques, our website, all advertisements in any medium, including the internet, and other promotional and written materials. Each and every component of the System is our proprietary, trade secret, and confidential information (Proprietary Information). Any component of the Proprietary Information can be used by you only as described in this Franchise Agreement.
- c. You have the right to use the Marks only in the Exclusive Territory and only for so long as you shall fully perform and comply with all of the conditions, terms, and covenants of this Franchise Agreement and our policies and procedures that we prescribe from time to time.
- d. Except as permitted in the Franchisee Manuals, you shall not use any of the Marks as part of an electronic mail address or on any sites on the Internet and the Franchisee shall not use or register any of the Marks as part of a domain name on the Internet.
- e. Any use of a Mark in advertising must be with our prior written approval as set forth in this Franchise Agreement and in the Franchisee Manuals.
- f. Your Franchisee Parties and you will not: (i) directly or indirectly contest nor aid in contesting the validity of the ownership of the Marks; (ii) in any manner interfere with or attempt to prohibit our use of the Marks, any component of the System or derivatives thereof, or any of the Proprietary Information or any other name that is or becomes a part of our System; or, (c) at any time interfere with the use of the Marks by our other franchisees or licensees.
- g. Your Franchisee Parties and you further agree to execute any and all additional documents and assurances reasonably requested by us in connection with our ownership and use of the Marks and agree to fully cooperate with us or any of our other franchisees or licensees in securing all necessary and required consents of any federal or state agency or legal authority.

- h. If you purchased this franchise through a business entity, or if you convert to a business entity other than a sole proprietorship, each individual who owns any equity interest in the business entity may be required to sign the Guaranty. The Guaranty requires each guarantor to assume all of the obligations of the Franchisee and makes each Guarantor subject to the restrictive covenants of this Franchise Agreement

### **6.3–Infringement**

- a. You will promptly notify us in writing of any possible infringement on the Marks, or any component of the Proprietary Information, or the use by others of any trademark, portion of the System, or any component of the Proprietary Information that may be the same as, or confusingly similar to that used by us.
- b. You acknowledge that we shall have the right, in our sole discretion, to determine whether any action will be taken on account of any possible infringement or illegal use of the Marks, the System or the Proprietary Information. We may commence or prosecute such action in our own name and may join you as a party to the action if we determine it to be reasonably necessary for the continued protection and quality control of the Marks, and each component of the System. If you learn that any third party, whom you believe is not authorized to use the Marks, is using them, or any variant of them, you must promptly notify us. We will determine whether or not we wish to take any action against the third party. You will have no right to make any demand, or to prosecute any claim against the alleged infringer. We will not pay any franchisee for exercising these rights. You must cooperate with us in any way necessary in the event of such an infringement.
- c. We have the right to control any administrative proceedings or litigation involving a Mark, or any component of the System or the Proprietary Information. If you learn of any claim against you for alleged infringement, unfair competition, or similar claims, you must promptly notify us. We will take the action we deem necessary to defend you. We must indemnify you for any action against you, by a third party, based solely on alleged infringement, unfair competition, or similar claims. We have no obligation to defend or indemnify you, if the claim against you related to your use of the Marks, or the System or Proprietary Information is in violation of this Franchise Agreement.

### **6.4–Business Name and Contact Information**

- a. You will not use the phrase “Noah’s Ark”, “Aardvarks Only”, or “Noah’s Ark Aardvark Services” (or any commercially similar derivation of each such phrase) or any portion of the Marks in the legal name of your corporation, partnership or any other business entity used in conducting the business provided for in this Agreement. You also agree not to register or attempt to register a trade name using the any of the above phrase (or any commercially similar derivation of each such phrase) in your name, or that of any other person or business entity, without our prior written consent that may be withheld for any reason or for no reason at all. You may do business as “\_\_\_\_\_ Corporation (or other business entity) doing business as Noah’s Ark of \_\_\_\_\_ (city/county/state)” so long as this is only a “doing business as” or fictitious name and not part of the business entity name.
- b. Except as permitted in the Manuals, you will not use any of the Marks as part of an electronic mail address or on any sites on the internet, nor shall you use or register any of the Marks as part of a domain name on the internet.

- c. Franchisee understands and agrees that the telephone number(s), URLs, customer lists, and email addresses for the Business constitute a part of the System and are subject to the restrictions of this Agreement. Accordingly, Franchisee shall not change the telephone number(s) for the Business without prior notice and written approval by Franchisor. Franchisee shall advertise and publicize the telephone number(s) for the Business in the manner prescribed by Franchisor. You will sign the Collateral Assignment of Contact and Electronic Information found at Exhibit 5. Upon termination of this Agreement, all contact information shall be deemed the property of the Franchisor.

### **6.5–Modification and Discontinuation**

- a. In the event that the Franchisor, in its sole discretion, shall determine it necessary to modify or discontinue use of any Marks or any portion of the Proprietary Information or the System, or to develop additional or substitutes for any such component, you will, within a reasonable time after receipt of written notice of such a modification or discontinuation from us, take such action, at your sole expense, as may be necessary to comply with such modification, discontinuation, addition or substitution.
- b. You have the right to use the Marks, the System, and the Proprietary Information only in the Exclusive Territory, and only for so long as you shall fully perform and comply with all of the conditions, terms and covenants of this Franchise Agreement, and our policies and procedures that we prescribe from time to time.
- c. All other use of the Marks must be with our prior written approval (which may be granted or denied for any reason or no reason at all).
- d. Any and all goodwill associated with any component of the Proprietary Information (including the Marks and the System) including any goodwill that might be deemed to have arisen through your activities, shall inure directly and exclusively to the benefit of the Franchisor. You further agree to execute any and all additional documents and assurances reasonably requested by us in connection therewith and agree to fully cooperate with us or any of our other franchisees or licensees in securing all necessary and required consents of any federal or state agency or legal authority. If you take any action that in any manner disparages, brings disrepute to, or other harms the goodwill associated with the Marks, the System, or the Proprietary Information, we will have the right to terminate immediately this Franchise Agreement without granting you any right to cure.

### **6.6–Protection of All Information**

- a. You agree to:
  - i. fully and strictly adhere to all security procedures prescribed by us for maintaining the secrecy of the Marks, each component of the System, and all of the Proprietary Information;
  - ii. disclose such information to your employees only to the extent necessary to make and market our products;
  - iii. refrain from using any component of the Marks, the System or the Proprietary Information in any other business or in any manner not specifically authorized or approved by us in writing; and
  - iv. exercise the highest degree of diligence and make every effort to maintain the absolute confidentiality of all such information during and after the term of the Franchise Agreement.

- b. Franchisee and each Franchisee Party also agrees to refrain from conducting any activity at the Franchised Business or in connection therewith, or take any action at the Business which is illegal, or take any action or fail to take any action either at the Business, or outside the Business, or during personal time, which could result in damage to, or disparagement of the Marks, System, or Proprietary Information, or which reasonably could, or does negatively impact the reputation and goodwill associated therewith.

Any breach of this covenant will result in immediate termination for which no cure is provided.

### **6.7–Innovations by You**

- a. During the Initial Term or any Successor Term, you may create, design, or otherwise improve upon any portion of the System, the Marks, the Proprietary Information or the like (Innovation). Any such Innovation will be deemed to be the sole and exclusive property of the Franchisor and not Franchisee. Upon the creation of such Innovation, you will immediately notify the Franchisor in writing that will describe in detail, the nature of the Innovation. The Franchisor shall have the sole and exclusive right to approve or disapprove of any such Innovation for any reason or for no reason at all. If we approve of it, we may permit you to use the Innovation and may, in our sole and exclusive option, permit any one or more franchisees or company-owned stores to use any portion of the Innovation.
- b. You agree that as between us, we will own the right, title and interest to the Innovation. You agree to take any action necessary to ensure that we obtain such right, title and interest, so long as such action costs you nothing.
- c. We are not obligated to pay you for the Innovation, though we reserve the right to do so, without incurring the obligation to pay you or any other franchisee for any future Innovation.

## **ARTICLE 7 Training**

### **7.1–Initial Training**

- a. For the first franchise that you buy, you, or if you are a business entity, your Principal Operator must complete the Franchisee Initial Training to our commercially reasonable satisfaction. Your Designated Manager may, but is not required to attend training. Training participants will not receive any compensation from the Franchisor while attending the Franchisor’s training
- b. The initial training program length and its content is more fully set forth in the Franchisee Manuals or in handouts that we may give you.
- c. You must pass our initial training to our reasonable satisfaction. If you fail to pass training, we have the right to terminate this Franchise Agreement for which no refund of the IFF will be offered.
- d. You may wish to have initial training completed at your location. If you request this of us, and if we agree in our sole discretion to provide this service, you will pay our then-current and non-refundable Remote Training Fee. You may have to travel by car to the nearest franchisee in order to get this training. You may incur travel fees including room and board.

### ***7.2–Additional Training, Seminars, and Other Education Development Programs***

- a. You may wish to get on-site training from us. This is optional and is not required for the operation of the business unless you feel it is necessary. We will charge our then-current fee, plus all costs for travel, lodging, and food. This training can take place at any time.
- b. If you request additional, extraordinary, or refresher courses or training, we may, at our option, charge our then-current per diem fee plus expenses.
- c. We may also offer additional training on-line or through web seminars (webinars). There may be a fee for such training. We will notify you of the training and the fee. Some of this training may be mandatory.
- d. We will provide such bulletins, brochures, manuals and reports, if any, as may from time to time be published regarding plans, policies, developments, and activities. In addition, we may provide such communication concerning new developments, techniques, and improvements in and to the System and the Proprietary Information, as we feel may be relevant to the operation of the Business.
- e. If you propose to sell or transfer the Business to a third party, part of our approval process will be the requirement that the transferee attend training and that he pay for the training at our then-current fee (Item 6).
- f. In addition to the annual conference (described below), and though we do not now, we have the right, in the future to require you, and at least one of your principals or key employees to attend a local or regional training meeting one (1) time per year. All mandatory meetings will be offered without charge of a tuition or fee; however, you will be responsible for all travel and living expenses that are associated with attendance. Any additional local or regional meetings will last between 1 and 2 days and will be held at a location to be approved by us that will be within easy car or bus commuting distance. Any instructors at such meetings will either be our principals, or other persons not yet identified by us, but whose identity and background will be disclosed to you before the meeting.

### ***7.3–Annual Conference***

We do not now, but may, in the future, have an annual conference that, if held, will require attendance by all franchisees. You will be responsible for the payment of all expenses for travel, accommodations, food, and other expenses incurred. Though none is now required, we may in the future require an attendance fee. When it is known, you will be provided with the duration of such a meeting, as well as its location, the identities of those who will present information at the meeting, and the content of any seminars or information that will be delivered at that time. The annual conference will be held in a location to be determined by us.

### ***7.4–Employees and Employee Training***

Your employees are not our employees. You are exclusively responsible for the day-to-day performance of any and all employees including, but not be limited to: training of the employees; day-to-day management and oversight; employee discipline; hours worked; scheduling; the payment of taxes; purchasing any workers compensation or other insurance; and following all municipal, state, and federal rules, laws, and statutes pertaining to the employees.

## ARTICLE 8 Quality Control

In addition to all other obligations and representations of yours that are set forth in this Franchise Agreement, you also agree as follows:

### **8.1–System Compliance**

- a. You agree that the use of, and strict adherence to, all instructions concerning the Marks, System, the Manuals, and the Proprietary Information, and adherence to our standardized design and specifications for decor of the Business and uniformity of equipment, layouts, signs, and other incidents of the Business, are essential to the image and goodwill of the System.
- b. You will use the System, Marks, Manuals, and Proprietary Information only for the operation of the Business and shall not use them in connection with any other line of business or any other activity.
- c. Franchisee, and any of its employees, may not: a) conduct any business at the Business other than that authorized pursuant to this Agreement; or, b) conduct any activity at the Business that could result in damage to, or disparagements of the Marks, the System, or the reputation and goodwill of Franchisor.
- d. You will maintain in sufficient supply, and use at all times only such products, goods, materials, and services specified by us, so as to permit the Business to operate at full capacity, and you will refrain from selling or offering for sale, any other products of any kind or character without first obtaining the express approval of Franchisor, which shall be granted or denied for any reason or no reason at all.
- e. You will use and display the Marks at the Business in all capacities, including but not limited to; forms, business cards and stationery, paper and plastic products, and other supplies; or other items we may, in the future, designate.
- f. You will purchase from our Affiliate, our authorized and approved suppliers, or us those products that carry our Marks.
- g. You will comply with all other contracts that you enter into in reference to the operation of the Business with the understanding that your breach and failure to cure the breach of any material contract could result in the termination of this Agreement.
- h. You will refrain from engaging in any trade practice or other activity or the sale of any product or literature from the Business, which we determine to be a deceptive trade practice, harmful to the goodwill of the System or the Marks, or which may reflect unfavorably on the reputation of you, other franchisees, or us.
- i. You will maintain the Business in a good, clean, and sanitary condition. You will maintain, repair or replace any item of decor (interior or exterior) and the furniture, fixtures and equipment as necessary in order to present a first class image to the public.
- j. You may not alter, change, or modify the System in any way without our prior written consent and approval that we may grant or deny for any reason or for no reason at all.
- k. You will participate in reasonable market research, testing, and product and service development programs.
- l. You agree not to engage in any activity or practice that results or may reasonably be anticipated to result in any public criticism of the System or any part thereof.
- m. You will accept cash, credit or debit cards, and if you accept checks, you will use a check verification system approved by us. You agree to use only the credit card processor approved by us for any of your credit card processing.



**8.2–Compliance with Applicable Laws**

- a. You agree to comply with all applicable laws, ordinances, and regulations, or rulings of every nature whatsoever which in any way regulate or affect the operation of your Business. We have disclosed to you that the municipality, city, county or state in which you are operating may have special rules, regulations or laws that affect the operation of your Business. You and not we are responsible for determining the scope of such rules, regulations, or laws and you must adhere to the same to the fullest extent required by the law.
- b. We have not made, and you have not relied on, any representation that no licenses, or only certain licenses, are necessary in connection with the operation of your Business.
- c. You agree to obtain all building permits and inspections before you open your Business.
- d. You agree to timely make all payments of taxes, employee withholding, and all similar assessments.
- e. **Your failure to comply with this subsection 8.2 will be a breach of this agreement for which no cure will be provided.**

**8.3–Inspections**

- a. You hereby consent to reasonable inspections and audits of the Business during normal business hours. As a result of such audits we may find matters that require immediate attention. In such an event, you will be required to make changes to the Business or any portion of your operation of the Business in order to comply.
- b. You will permit our agents or us at any reasonable time, to remove from the Business samples of items without payment therefore, in amounts reasonably necessary for testing by an independent laboratory or us. The samples will be used to determine whether each meets our then-current standards and specifications. In addition to any other remedies it may have under this Agreement, we may require you to bear the cost of such testing if the supplier of the item has not previously been approved by us or if the sample fails to conform to our specifications.
- c. You agree to cooperate and assist Franchisor with any customer or marketing research program that Franchisor may institute from time to time. Franchisee’s cooperation and assistance shall include, but not be limited to, the distribution, display, and collection of customer comment cards, questionnaires, and similar items.

**8.4–Approved Products, Product Purchases and Approval Method.**

- a. **We and our Affiliates have the right (without incurring any liability) to consult with your suppliers about the status of your account with them and to advise your suppliers and others with whom you, we, our Affiliates, and other franchise owners deal, that you are in default under any agreement with our Affiliate or us (but only if we have notified you of such default).**
- b. You also agree that all furniture, fixtures, equipment, electronic equipment, and all other goods or services supplied by the Business shall comply with our standards and specifications. You must purchase the same from designated or approved sources and suppliers.
- c. You agree to discontinue selling or offering for sale or using any products Franchisor may, in its absolute discretion, delete from its standards and specifications for any reason whatsoever or for no reason whatsoever.

### ***8.5–Appearance and Customer Service***

- a. You will give prompt, courteous, and efficient service to your customers, and shall otherwise operate the Business in strict compliance with the System and the policies, practices, and procedures contained in the Manuals (or otherwise communicated to you in writing) so as to preserve, maintain, and enhance the reputation and goodwill of your Business and the System.
- b. You will be required to have all personnel wear clean uniforms (conforming to such specifications as to color, design, etc. as Franchisor may designate, from time to time), while working at the Business, and to cause all employees to present a clean, neat appearance and render competent and courteous service to customers, as may be further detailed in the Manual.
- c. You will hire a sufficient number of employees and maintain sufficient inventories as necessary to operate the Business at its maximum capacity.
- d. You will have no jukeboxes, games of chance, video games, newspaper racks, children’s rides, telephone booths, and cigarette, gum, candy, or other vending machines installed in or at the Business unless you first receive our express written approval.
- e. You will issue and honor all gift certificates, coupons, and gift and loyalty cards and will administer customer loyalty and similar programs. You must participate in, and comply with the requirements of, our gift card and loyalty programs.

### ***8.6–Timely Delivery of all Reports and Fees***

You will timely deliver to us all reports and fees as required herein or in the Manuals.

### ***8.7–Notification of Deficiencies***

Should we notify you at any time of defects, deficiencies, or unsatisfactory conditions concerning the Business, you agree to immediately correct any such item or items, and in every event making such corrections within the time period for any cure that is granted by this Franchise Agreement or by the Manuals.

### ***8.8–Compliance with all Terms of this Franchise Agreement***

You agree to comply with all covenants and duties placed upon you by this Agreement and such compliance is deemed to part of this Article 8 though it may not be specifically enumerated herein.

### ***8.9–Management***

You, your Designated Manager or Principal Operator shall be required to devote his or her full time, attention and best efforts to the management and operation of the Business and the compliance with this Franchise Agreement.

### ***8.10–Hours of Operation***

- a. Unless otherwise mutually agreed in writing, you must operate the Business during such hours and on such days as will be required by the Operations Manual. All days and hours of minimum required operation are subject to change at our discretion. You shall keep from participating in conflicting

enterprises or any other activities, which would be detrimental to, or interfere with, the operations of the Business.

- b. You understand and agree that the limited non-exclusive license granted to you herein is based on your commitment to the operation of the Business and your performance under this Franchise Agreement.

### **8.11–Modification and Pricing**

- a. We may reasonably change or modify the System, the Manuals and the Marks and you agree to accept, be bound by, use, implement and display any such changes to the System. You will make whatever expenditures are reasonably required to implement such changes or modifications. We shall have complete ownership and control of any changes, modifications, enhancements, or suggestions whether made by you or us.
- b. We may, from time to time, advise you concerning suggested retail prices for goods and services. Franchisor and Franchisee agree that any list or schedules of prices furnished to Franchisee by Franchisor are suggested retail prices. Nothing contained herein shall be deemed a representation by Franchisor that the use of the Franchisor’s suggested prices will in fact optimize profits. Franchisee may charge any price he deems appropriate for any good or service.

### **8.12–Disclosure**

We can disclose in our disclosure documents or elsewhere any information concerning you or your Business, including your name, address, telephone number, financial, and other information.

### **8.13–Variances**

We may approve exceptions to, or changes in, the uniform standards for you or other franchisees that we believe are necessary or desirable under particular circumstances. You have no right to object to such variances or to obtain the same variances for yourself.

## **ARTICLE 9 Transfers**

### **9.1–Sale or Assignment by Franchisor**

This Franchise Agreement and all rights and obligations hereunder are fully assignable and transferable by us and if so assigned or transferred, shall be binding upon and inure to the benefit of our successors and assigns. We may be sold, or we may sell any portion of or all of our Marks, System and Proprietary Information, or other assets to a competitor or to any other entity. In addition, we may go public, may engage in a private or other placement of some or all of our securities, may merge, or acquire other entities or assets which may be competitive with the System, or not, we may be acquired by a competitive or other entity and/or may undertake any refinancing, leveraged buy-out or other transaction. You waive all claims, demands, and damages with respect to any transaction allowed under this section or otherwise. You will fully cooperate with any such proposal, merger, acquisition, conversion, sale, or financing.

**9.2–Transfer by You**

- a. This Franchise Agreement is personal as to you, and is being entered into in reliance upon, and in consideration of, the qualifications and representations of you and if you are a business entity then the Franchisee Parties. Therefore, this Franchise Agreement, any of its rights or privileges, and any equitable, capital, voting, non-voting or other interest in the Franchisee (or Franchisee Parties) will be assigned, sold, transferred or divided in any manner by you or anyone else only after you have obtained our express prior written approval.
- b. In order to obtain such written approval, you will provide us with all documentation relating to the proposed transfer of the Franchise or the Franchised Business. We will notify you of our approval or disapproval within 30 days after we receive all of the information that we may request from you. If we do not respond within this 30-day period, the proposed transfer will be deemed to be disapproved by us. Said approval will be based upon our Reasonable Business Judgment and will be conditioned as below described.
- c. The term “Transfer” includes the voluntary, involuntary, direct, or indirect assignment, sale, gift or other disposition by you (or by any equity owner of the Franchisee) of any interest in: this Franchise Agreement; the ownership of the Franchisee; or any assets of the Franchised Business (other than in the normal course of business). A Transfer also includes a disposition resulting from a: divorce; insolvency; corporate or partnership dissolution proceeding; otherwise by operation of law; in the event of death, the transfer or disposition by will or under the laws of intestate succession; declaration of, or transfer in trust; and any other direct or indirect assignment, sale, gift, pledge, mortgage or the granting of any security interest encumbering the assets of the Franchised Business.
- d. If a proposed Transfer is only among existing shareholders or members of a corporate or limited liability company franchisee, or among existing partners of a partnership franchisee, and if there is no Change in Control, then there will be no Transfer Fee and we will not be entitled to exercise our “Right of First Refusal” which is described below. All other conditions to the approval of a proposed Transfer however will apply.
- e. If the proposed Transfer could result in a Change in Control, then all of our rights apply and such Transfer will be subject to our approval
- f. Each certificate of a corporate- or limited-liability-business-entity- franchisee shall have endorsed upon its face that assignment or transfer thereof is subject to the restrictions of this Agreement. You agree to provide us with a copy of each such certificate so that we can ensure compliance with this provision.

**9.3–Conditions of Approval of any Transfer**

- a. In determining the acceptability of the Proposed Transferee, we will consider, among other things, our then-current standards for new franchisees, including the net worth, credit worthiness, background, training, personality, reputation and business experience of the Proposed Transferee, the terms and conditions of the proposed transfer, and any circumstances that would make the transfer contrary to our Reasonable Business Judgment or the best interests of the System.
- b. We may meet with the Proposed Transferee and candidly discuss all matters relating to the Franchise Agreement and the Franchised Business. In no case will you or a Proposed Transferee rely on us to review or evaluate any proposed transfer. We will not be liable to you or the Proposed Transferee or any other person or entity relating to the transfer.

- c. As a condition of any Transfer otherwise permitted under this Franchise Agreement, you agree as follows:
  - i. you will notify us of proposed Transfer or Assignment by sending a written notice to us and enclosing a copy of the written offer from the Proposed Transferee;
  - ii. you must be in Compliance with this Franchise Agreement and not be in default hereunder at the time you request the transfer;
  - iii. all accounts payable and other monetary obligations to any Affiliate or us must be paid in full;
  - iv. you must have timely submitted all required reports, financial statements and other documents;
  - v. the terms and conditions of the proposed Transfer or Assignment must be provided in writing to us;
  - vi. if approved, the Proposed Transferee must sign the then-current form of franchise agreement which may contain terms, covenants and conditions that are significantly different than those found in this Franchise Agreement;
  - vii. the Proposed Transferee must attend training and will pay tuition (if any) that is then being charged to new franchisees. The Proposed Transferee will also pay for his travel, room and board expenses for such training;
  - viii. the Transferee or you must pay the Transfer Fee upon execution of the franchise agreement by the Proposed Transferee;
  - ix. your Franchisee Parties and you must execute the then-current form of General Release to us. A copy of the current form of General Release is attached as Exhibit 4.
  - x. all restrictive covenants found in this Franchise Agreement including any post-term covenant not-to-compete, any indemnification covenants, confidentiality obligations, and the provisions relating to dispute resolution will survive any transfer and continue to be your obligation.

#### ***9.4–Invalidity of Transfers***

- a. Involuntary Transfers by you, such as by legal process including bankruptcy, assignment for the benefit of creditors, assignment as security for any financial or non-financial matter or otherwise, are not permitted, are not binding on us, and are grounds for the termination of this Franchise Agreement without the right to cure. You agree that using this Franchise Agreement as security for a loan, or otherwise encumbering this Franchise Agreement, is prohibited unless we specifically consent to any such action in writing prior to the proposed transaction.
- b. You agree not to grant a sub-franchise under this Franchise Agreement, nor to otherwise seek to license or permit others to use this Franchise, the Franchised Business, or any of the rights derived by you under this Franchise Agreement and any manner that violates the provisions herein.
- c. Any attempt to complete a Transfer or Assignment without our express permission will be considered a breach of this Franchise Agreement for which no cure shall be provided.

#### ***9.5–Death or Incapacity***

- a. Upon the death or permanent disability of the Franchisee or the Principal Operator, the executor, administrator, conservator, guardian or other personal representative of such person shall transfer the Franchisee's interest in this Franchise Agreement or such interest in the Franchisee entity to an

approved third party who may be the heirs or successors of the deceased or disabled individual. Such disposition of this Franchise Agreement or such interest (including, without limitation, transfer by operation of law, intestacy, bequest or inheritance) shall be completed within a reasonable time, not to exceed 180 days from the date of death or permanent disability, and shall be subject to all terms and conditions applicable to transfers contained in this Article as though the transferee were being introduced to us by the deceased or disabled Franchisee; provided, however, that for purposes of this section, there shall be no transfer fee charged by the Franchisor.

- b. Failure to transfer the interest in this Agreement or such interest in the Franchisee entity within said period of time shall constitute a breach of this Agreement for which no additional cure may be granted.
- c. For the purposes hereof, the term “permanent disability” shall mean a mental or physical disability, impairment or condition that is reasonably expected to prevent or actually does prevent the Franchisee or the owner of a controlling interest in the Franchisee entity from supervising the management and operation of the Franchised Business for a period of 120 days from the onset of such disability, impairment or condition.

### ***9.6–Right of First Refusal***

In the event of a Transfer, you agree the same is subject to our 30-day right of first refusal to purchase such rights, interest or assets on the same terms and conditions as are contained in the written offer for the Transfer or Assignment (Right of First Refusal) provided, however, the following additional terms and conditions shall apply:

- a. you will notify us of such offer by sending a written notice to us (which notice may be the same notice as required by Section 9.3 above), enclosing a copy of the written offer from the Proposed Transferee;
- b. the 30 day Right of First Refusal period will run concurrently with the period in which the Franchisor has to accept or not accept the Proposed Transferee;
- c. such Right of First Refusal is effective for each proposed transfer and any material change in the terms or conditions of the proposed transfer shall be deemed a separate offer on which a new thirty (30) day right of first refusal shall be given to us;
- d. if the consideration or manner of payment offered by a Proposed Transferee is such that we may not reasonably be required to furnish the same, then we may purchase the interest which is proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the cash value of the consideration proposed to be paid by the Proposed Transferee, an independent appraiser shall be designated by the Franchisor, whose determination will be binding upon the parties. All expenses of the appraiser shall be paid for equally between the Franchisor and the Franchisee; and
- e. if we choose not to exercise the Right of First Refusal, you will be free to complete the Transfer, subject otherwise to your compliance with this Franchise Agreement. Our failure to reply to your notice of a proposed sale within the 30-day period is deemed a waiver of such Right of First Refusal.

### ***9.7–Transfer After Retaking Possession***

- a. In some cases, you will make a Transfer or Assignment under this Article, but will agree to finance part of the consideration offered to you by the Transferee. In such an event, you may also agree that if the Transferee fails to perform under your financial arrangement that you will be able to retake

possession of the Business. In such circumstances, and regardless of the fact that we may have approved of the original Transfer after reviewing the transfer documents (which may include an “asset purchase agreement,” “stock purchase agreement,” or similar document), if you retake possession of the Business, you will be permitted to operate it strictly on a temporary basis and as though you were the Designated Manager under the Transferee’s franchise agreement. In such an event, you must apply to us within thirty (30) days of retaking possession, as a new Proposed Transferee. We will then have the right to evaluate granting you a new license in the same manner as we would a proposed Transferee. This evaluation will include a review of the situation using our Reasonable Business Judgment. We will also have the rights granted under subsection section 9.6.

- b. IN SOME CASES, WE MAY NOT APPROVE OF YOU AS A TRANSFEREE, THE RESULT BEING THAT YOU WILL BE REQUIRED TO CLOSE THE BUSINESS. THERE IS NO GUARANTEE OF APPROVAL BY US.

## **ARTICLE 10**

### **Default and Termination**

#### ***10.1–Termination by Franchisor—Effective upon Notice***

Upon occurrence of any of the following events, we have the right, at our option, to terminate this Franchise Agreement and all rights granted you hereunder, without affording you any opportunity to cure any default (subject to any state laws to the contrary, where such state law shall prevail), effective upon mailing, or if by overnight or hand delivery, then effective on the date of such delivery, or the date of refusal by you to accept such delivery, upon the occurrence of any of the following events:

- a. if you cease to operate the Business or otherwise abandon the Business for a period of fourteen (14) consecutive days, or any shorter period that indicates your intent to discontinue operation of the Business, unless and only to the extent that full operation of the Business is suspended or terminated due to acts of God, fire, flood, earthquake, or other similar causes beyond the Franchisee’s control and not related to the availability of funds to you;
- b. if you: become insolvent, as that term is commonly defined using generally accepted accounting principles, consistently applied; are adjudicated as bankrupt; if any action is taken by you, or by others against you under any insolvency, bankruptcy, or reorganization act; or if you make an assignment for the benefit of creditors or a receiver is appointed by the Franchisee. This provision may not be enforceable under federal bankruptcy law, 11 U.S.C. §§ 101 et seq.;
- c. if any material judgment or award (or several judgments or awards which in the aggregate are material) is (are) obtained against you and remain(s) unsatisfied or of record for thirty (30) days or longer (unless a supersedes or other appeal bond has been filed); if execution is levied against the Business or any of the property used in the operation of the Business and is not discharged within five (5) days; or if the real or personal property of the Business or the business which operates the Franchisee shall be levied upon in accordance with the law of the state in which the Business is located;
- d. if any criminal background check (as permitted by you under Exhibit 3 and which may be conducted at any time during any term of this Franchise Agreement), discloses, or if we learn through any other method, that you have been arrested for, convicted of, or plead no contest to, a crime (whether a petty

- offense, misdemeanor, or felony) involving moral turpitude; are arrested for, convicted of, or plead no contest to, a felony of any nature; or are arrested for, convicted of, or plead no contest to, any crime (whether a petty offense, misdemeanor, or felony), or civil offense that is reasonably likely, in the sole opinion of the Franchisor, unfavorably reflects on the System, Marks, or the goodwill or reputation thereof;
- e. if any credit background check determines that your status as a debtor has materially negatively changed from any prior report so that your ability to continue to operate the Business is commercially substantially in doubt;
  - f. if you fail to pay any Royalties, fees, payments, the Note (if we provided financing in accordance with Article 3), or any other amounts due us, including any amounts which may be due as a result of any agreements between you and us within five (5) days after receiving notice that such fees or amounts are overdue;
  - g. if you misuse or fail to follow our direction and guideline concerning use of the Marks or any component of the Proprietary Information, and fail to correct the misuse or failure within ten (10) days after notification from us; except that if your violation of this subparagraph (g) is intentional, there will be no 5-day right to cure and default and termination will be immediate;
  - h. if you disclose to any unauthorized person any component of the Proprietary Information or the System;
  - i. if during the Initial Term of this Franchise Agreement (or during any Successor Franchise Rights term) you have received from us four (4) written notices of default as to any term, covenant, or condition (or combination thereof) of this Franchise Agreement and are again in default of the same or any other portion, term, or covenant of this Agreement, even if all prior breaches were timely cured;
  - j. if during any Successor Term you receive one (1) written notice of default as to any term, covenant, or condition (or combination thereof) of this Franchise Agreement and are again in default of the same or any other term, covenant, or covenant of this Agreement, even if the breach was timely cured;
  - k. if you Transfer or Assign this Franchise Agreement, an interest in the Business, a substantial portion of the assets of the Business, or the business which operates the Franchisee or otherwise violate the terms of Article 9 above;
  - l. if you violate any municipal, state, or federal law that applies in any way to the Business or your operation under the Franchise Agreement, and you then fail to cure the same within any time to cure provided by the governmental entity which cited the Franchisee;
  - m. if you make any material misrepresentations relating to the acquisition of your rights under this Franchise Agreement.
  - n. you violate any covenant or condition of 1.6(d)(v) above;
  - o. you violate any other covenant or condition which contains its own cure provision and then fail to cure within the time period provided therein;
  - p. if you have employees, and you fail to pay any employee his or her wages;
  - q. if you fail, refuse, or neglect to obtain any prior written approval or consent as required by this Agreement;
  - r. if you engage in any unauthorized business or practice or sell any unauthorized product or service from the Business;
  - s. if you fail to pay any tax (including but not limited to payroll, sales, income, or any other tax due as a result of the operation of the Business);



- t. if one or more complaints are received by us from customers concerning: you; the operation of your Business; your demeanor; or for any other reason during any twelve (12) month period;
- u. if you take any action, fail to take any action, or are arrested at any time either during normal business hours, or outside business hours which action, failure to act, or arrest, in our commercially reasonable judgment results in, or may reasonably result in the disparagement of the Marks, the System, or any portion of the Proprietary Information; or
- w. if you fail to add new lines of good and services after we have notified you in writing and have given you reasonable time to comply which will be no longer than 60 days.

### **10.2—Termination by Franchisor—Thirty Days’ Notice**

- a. We have the right to terminate this Agreement (subject to any state laws to the contrary, in which case such state law shall prevail) effective upon 30 days written notice to the Franchisee, if the Franchisee breaches any other term, covenant, or condition of this Franchise Agreement and fails to cure the default during such 30-day period.
- b. After the passage of said period without cure, this Agreement will terminate without further notice to you.
- c. Any of the itemized defaults under subparagraphs 10.1 or 10.2 will be known as an “Event of Default.”

### **10.3—Cross Default**

If Franchisee is a party to any other franchise agreements with us, or any contracts with our Affiliates, and if such agreement is breached and not timely cured within the time period permitted in such document with the result being that that franchise agreement or other agreement is terminated, then the Franchisor shall have the right to terminate this Agreement without affording you any additional right to cure.

### **10.4—Diligent Pursuit of Cure**

- a. If the breach is one for which cure is provided in subparagraph 10.2 above, then if you undertake the cure within five days of the date that you receive our notice, and if you continue to pursue such cure in good faith but are unable to complete the cure within the time period provided in this Franchise Agreement, then you shall be given up to an additional 10 days after the end of the first cure period within which to complete such cure. If you fail to continually pursue the cure during this additional time period or are unable to complete such cure within this additional time period, then we have the right to terminate the Franchise Agreement without further notice to you.
- b. Notwithstanding anything to the contrary herein, we have the right, in our sole discretion, to grant you an extended period of time to cure. In such an event, however, we will not be deemed to have waived our rights to later strictly enforce any right to cure, or to deny you the right to cure a future breach for which no cure is provided or to take such action as is allowed to us by this Franchise Agreement if you fail to cure during the extended period granted to you.

### **10.5—Expiration at the End of the Initial Term**

Unless it is terminated earlier, this Franchise Agreement will expire at 12:00 midnight Mountain Time on the last day of the then-current term.

**10.6—Our Rights to Damages**

Upon your failure to cure any Event of Default (if cure is provided), we may proceed to enforce any or all of the following non-exclusive remedies or any other remedy, claim, cause of action, award, or damages allowed by law or equity, with the understanding that the pursuit of any one remedy shall not be deemed an election or waiver by us to pursue additional remedies as all remedies are cumulative and are not exclusive:

- a. Bring one or more actions for: lost profits as measured by the Flat Royalties and other fees that would have been due and payable had breach and default not occurred; penalties and interest as provided for in this Franchise Agreement; and for all other damages sustained by us as a result of your breach of this Franchise Agreement.
- b. Accelerate the balance of any outstanding installment obligation due hereunder and bring an action for the entire accelerated balance.
- c. Bring an action for temporary or permanent injunctions and orders of specific performance enforcing the provisions of this Franchise Agreement and otherwise stop you from engaging in actions prohibited hereby, including, without limitation: (a) improper use of the Marks or System; (b) unauthorized assignment of the Franchise Agreement; (c) violation of any of the restrictive covenants; and (d) your failure to meet or perform your obligations upon termination or expiration of this Franchise Agreement.
- d. Terminate this Franchise Agreement and proceed to enforce our rights under the appropriate provisions. Such termination shall be effective upon delivery of a notice of termination to you without further action by us.
- e. If you: operate the Business after Transfer, repurchase, termination or expiration; use any of the Marks, Proprietary Information, or any component of the System; violate any surviving covenants after any termination or expiration, then, in addition to any remedies provided above, and in addition to any other remedies in law or equity (all of which shall be cumulative and shall not be deemed to be an election of remedies to the exclusion of other remedies), our remedies will include, but will not be limited to, recovery of the greater of: (a) all profits earned by you in the operation of the business using our Marks or System after such Transfer, Assignment, repurchase, termination, or expiration; and (b) all Flat Royalties, advertising contributions, and other amounts which would have been due if such Transfer, Assignment, repurchase, termination, or expiration had not occurred; and (c) any other remedies available in law or equity.
- f. Further, you agree that, in the event you continue to operate or subsequently begin to operate any other business, you will not use any reproduction, counterfeit, copy, or colorable imitation of the Marks, either in connection with such other business or in the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute our exclusive rights in and to the Marks and the System, and you further agree not to utilize any designation of origin, description, or representation that falsely suggests or represents an association or connection with Franchisor.

**10.7—Limitation of Right to Bring Action and Waiver of Punitive, Exemplary or Consequential Damages**

- a. FRANCHISOR AND FRANCHISEE ARE LIMITED TO BRINGING ANY LEGAL CLAIM AGAINST THE OTHER WITHIN ONE YEAR OF THE DATE THAT THE FACTS WHICH

GIVE RISE TO THE CLAIM WERE DISCOVERED OR ONE YEAR FROM THE DATE THAT SUCH FACTS REASONABLY SHOULD HAVE BEEN DISCOVERED.

- b. BOTH FRANCHISOR AND FRANCHISEE AGREE TO WAIVE THE RIGHT TO A JURY TRIAL AND TO BE AWARDED EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

\_\_\_\_\_  
Initials of Franchisee

\_\_\_\_\_  
Initials of Franchisee

\_\_\_\_\_  
Initials of Franchisor

### ***10.8–State or Federal Law Prevails***

If any mandatory provisions of governing state law prohibit termination of the franchise agreement as described herein, or if the same otherwise limit franchisor’s rights to terminate by imposing different rights or obligations as are found herein, then such mandatory provisions of state law shall be deemed incorporated into the agreement by reference and shall prevail over any inconsistent terms in the agreement. If no such law exists, or if such law exists but permits the franchisee to agree to abide by the termination provisions as set forth herein instead of that state law, then the franchisee agrees that the terms of this agreement shall prevail. These waivers and limitations may not be enforceable under state or federal law.

### ***10.9–Payment of Fees is an Independent Covenant***

You agree that you will not withhold payments of Royalties, Advertising Fees, regional advertising contributions, or any other amounts of money owed to us for any reason, even including a claim by you of the alleged nonperformance by us of any obligation hereunder. All such claims by you shall, if not otherwise resolved by us, be resolved as permitted in this Agreement. You agree that each covenant found herein is independent of any other covenant.

### ***10.10–Action Against the Franchisor***

Subject to the limitations of actions as found in this Article that require you to take any action before the expiration of the time limit found therein, prior to starting any arbitration against us or any of our officers, agents or employees, you agree to first give us or our officers, agents or employees, 60 days prior written notice and an opportunity to cure any alleged act or omission within that time period. If such act or omission cannot be cured within such 60-day period, and we, or our officers, agents or employees, are diligently continuing efforts to cure such alleged act or omission, you will give us, or our officers, agents or employees, such additional time as is reasonably necessary to cure which time shall not exceed an additional 30 days. If we fail to complete such cure in a timely fashion, then you have such rights as are permitted by law.

## ARTICLE 11

### Obligations of Franchisee Upon Termination or Expiration

#### *11.1–Obligations upon Termination or Expiration*

Upon termination or expiration of this Franchise Agreement for any reason, you shall cease to be a licensed franchisee of Franchisor and shall:

- a. Immediately pay for all product purchases, Royalties, Advertising Fees, and any other charges and fees owed or accrued to us;
- b. Refrain from holding yourself out as a Franchisee and immediately cease to advertise or in any way use the System, the Marks, any Proprietary Information, any designs, logos, methods, procedures, processes, and other commercial property and symbols or promotional materials provided by or licensed to you by us or in any way connected with the Business;
- c. Immediately take all necessary steps to disassociate yourself from the System and the Business, including, but not limited to, the removal of signs, destruction of letterhead, changing of telephone listings, telephone numbers, internet sites and web pages and the like and if requested by us, assign and transfer pre-existing telephone listings, telephone numbers and home web pages to us. In order to complete the latter, you agree that you will sign the agreement that is attached to this Franchise Agreement as Exhibit 5;

If you fail or refuse to do so, the telephone company and other listing agencies may accept this Franchise Agreement as evidence of our exclusive rights in and to such telephone number(s) and listings and its authority to direct their transfer. You appoint us as your attorney-in-fact for the above transfers;

- d. Take such action as shall be necessary to amend or cancel any assumed name, fictitious name or business name or equivalent registration which contains any trade name or mark of ours or in any way identifies you as being affiliated with the System, or if requested by us, assign and/or transfer same to us;
- e. Immediately notify all suppliers, utilities, creditors and concerned others that you are no longer affiliated with us, the System or the Franchise, and provide proof to us of such notification. You covenant not to use any part of the System or any part of our trade secret or confidential or proprietary information or materials following the termination of this Franchise Agreement and not to identify any present or future business owned or operated by you as having been in any way associated with us or the System;
- f. Within seven (7) calendar days, return to us by first class prepaid certified, return receipt requested, United States Mail, (including originals and any copies) all Manuals, all training, advertising and promotional aids, materials, and all other printed materials pertaining to the operation of the Business;
- g. You will, at your expense, alter, modify, and change both the exterior and interior appearance of the former Business so that it will be easily distinguished from the standard or common appearance of other Businesses in the System and will cease using the signs, displays, advertisements, promotional materials, ingredient lists and the like that are unique or distinctive to the System;
- h. Unless an earlier time is called for, in which case the earlier time prevails, furnish evidence satisfactory to us of compliance with this Article within sixty (60) calendar days after the termination, expiration or non-renewal of this Agreement;

- i. Cease using or availing yourself of any of our software, hardware or other proprietary technology.

### **11.2–Additional Matters**

Further, upon termination, expiration, or non-renewal of this Franchise Agreement for any reason:

- a. No payment will be due to you from any source on account of any goodwill or other equity claimed by you as arising from your operation or ownership of the Business or this Franchise Agreement;
- b. No fees, charges, Royalties, Advertising Fees, or other payments of any kind from you to us will be refundable in whole or in part; and,
- c. You will have no equity or other continuing interest in this Franchise Agreement.

## **ARTICLE 12**

### **Right to Purchase**

- a. Except as otherwise provided in Article 9, which shall prevail in the instance of a Transfer, upon expiration or earlier termination of this Franchise Agreement you hereby grant to us the right to acquire, in our sole discretion, all or any part of your inventory, equipment, signs and accessories, and other personal property relating to the Business or the Franchise Agreement at the then-existing Fair Market Value of such furniture, fixture, equipment, or item as of the date of expiration or termination of this Franchise Agreement.
- b. We must exercise this option within 30 days of such expiration or termination by giving written notice to you of our intent to exercise our option to purchase. Unless otherwise agreed by you, the purchase price as determined hereunder shall be paid in cash within the option period.
- c. If we have not notified you of our election to exercise this option within the aforesaid 30-day period, it shall be conclusively presumed that we have elected not to exercise our option, and you are then free to sell or transfer such assets to any person or entity on such terms as you may so choose.

## **ARTICLE 13**

### **Relationship Between the Parties**

#### **13.1–Independent Contractor**

- a. In all matters between us, or between you and the public, you are an independent contractor. Nothing in this Franchise Agreement or in the franchise relationship constitutes a partnership, agency, joint venture or other arrangement between us.
- b. Neither party is liable for the debts, liabilities, taxes, duties, obligations, defaults, compliance, intentional acts, wages, negligence, errors, or omissions of the other.
- c. You are responsible for the management and control of the Business and its operation under this Franchise Agreement, including without limitation, its daily operations, management, employee direction, and paying all costs and expenses of your Business.
- d. The Parties agree not to hold themselves out by action or inaction, contrary to the foregoing.
- e. None of your employees shall be deemed an employee of Franchisor, and each employee shall be so notified.

### **13.2–No Fiduciary Relationship**

It is understood and agreed between us that this Franchise Agreement does not establish a fiduciary relationship between us, and that nothing in this Franchise Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of the other for any purpose whatsoever.

### **13.3–Posting of Signs**

You agree to post promptly and maintain any signs or notices specified by us or by applicable law indicating the status of the parties as described above.

## **ARTICLE 14 Indemnification**

- a. You agree to, and will indemnify, defend, and hold us (Indemnified Parties) harmless from , and you will reimburse us for all “Claims” (as defined below), arising directly or indirectly out of your operation of the Business, your unauthorized use of the Marks, the Proprietary Information, System, or as a result of your performance under this Franchise Agreement.
- b. “Claims” include but are not limited to any claim, cause of action, damage, award, judgment, cost (including reasonable attorneys’ fees, court costs, and expert witness fees), expenditure of funds, or loss suffered by us or brought against us and arising out of: your performance or failure to perform under this Franchise Agreement; a claim for breach of contract; premises liability; your operation of the Franchised Business; employment matters; your performance under the System; your use of the Franchisee Manuals and Proprietary Information; your use of the Marks; as well as any other damages, causes of action, tort claims, or any other claim in law or equity against an Indemnified Party which may arise as a result of your breach of any term, covenant, or condition of this Franchise Agreement and operation of the Franchised Business.
- c. Included in indemnification shall be the reimbursement or direct payment by you of any award, damage, consequential damages, and costs reasonably incurred in the defense of any claim against the Indemnified Parties, including, without limitation, reasonable accountants’, attorneys’ and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses.
- d. We have the absolute right to defend any such Claim, and shall have the right to have counsel of our own choosing, the reasonable cost of which shall be borne by the Franchisee.
- e. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Franchise Agreement and shall continue for any applicable limitation of actions statute

## **ARTICLE 15 Restrictive Covenants**

### **15.1–In-Term Covenant Not to Compete**

- a. You and we share a common interest in avoiding situations where persons or companies who are or have been franchisees within the System operate or otherwise become involved with a similar competing

business either during or after the termination of this Agreement for any reason. In fact, the Franchisor would not have disclosed its System or the Proprietary Information, and would not have permitted the Franchisee to use the Marks if the Franchisee were then permitted to compete against the Franchisor or the system in a “Competing Business” (as that term is defined below).

- b. Therefore, the Franchisee and each Franchisee Party will refrain from: owning; operating; leasing; franchising; consulting with; engaging in; having any interest in; assisting any person or entity engaged in for its own account; acting as an employee, consultant, partner, officer, director or shareholder of any other person, firm, entity, partnership or corporation engaged in any business that is a Competitive Business, except with our prior written consent which consent may be granted or withheld for any reason or for no reason at all.

### **15.2–Post-Term Covenant Not to Compete**

- a. Upon termination or expiration of this Franchise Agreement for any reason, or upon the occurrence of any Transfer, Assignment, repurchase, or termination of your rights hereunder, and for a period of two years thereafter, you agree that you and any of the Franchisee Parties, will refrain from: owning; operating; leasing; franchising; consulting with; engaging in; having any interest in; assisting any person or entity engaged in; or acting as an employee, consultant, partner, officer, director or shareholder of any other person, firm, entity, partnership or corporation that is engaged in any Competitive Business which is within 15 miles of the Franchised Location, and within 15 miles of any other franchisee, Franchisor- or Affiliate-owned Business.

### **15.3–No Disclosure**

The Franchisee Parties and you agree that during the term of this Franchise Agreement, during any Successor Franchise Term, or at any other time after the termination of this Franchise Agreement (or any franchise agreement signed pursuant to the Successor Franchise term) for any reason, each will refrain from making any unauthorized disclosure or use of the Marks, any component of the System, or any portion of the Proprietary Information.

### **15.4–Other Protection**

During the term of this Agreement, for a period of two (2) years following the expiration or termination of this Agreement for any reason, and in the area described in paragraph 15.2 above, Franchisee and the Franchisee Parties covenant they will not, either directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any person or legal entity:

- a. Divert or attempt to divert to any competitor of the Business (by direct or indirect inducement or otherwise) any business or customers of the Business.
- b. Do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks, the System or both; and/or
- c. Induce, directly or indirectly, any person who is at that time employed by Franchisor or by any other franchisee to leave his or her employment.

**15.5–Survival**

The foregoing restrictive covenants shall survive the termination or expiration of this Agreement and shall apply regardless of whether this Franchise Agreement was terminated by lapse of time, by default of either party or for any other reason.

**15.6–Reasonable Restriction and Savings Clause**

- a. The covenants found in this Article are intended to be a reasonable restriction on Franchisee and those others identified above. The Franchisor and Franchisee agree that the purpose of these restrictions is to protect the entire franchise system from unfair competition and to protect the goodwill, and time and effort spent by Franchisor in creating the Marks, the Proprietary Information, and the System. In fact, the Franchisor would not have shared such information with the Franchisee unless the Franchisee agreed to be bound by the terms of this Article 15.
- b. Franchisee and the Franchisee Parties further agree that each has skills of a general and specific nature and has other opportunities, or will have other opportunities, to use such skills, and that the enforcement of these covenants will not unduly deprive the Franchisee of the opportunity to earn a living.
- c. For purposes of interpretation of the covenants found in this Article, every location of a Business, every month of time, each mile of distance, or any other restriction shall be considered severable. In the event an arbitrator or court of competent jurisdiction interprets a spatial, temporal, or other limitation to be overly broad, then the arbitrator or court shall adjust the offending limitation, in the most limited manner possible, so as to fashion a reasonably enforceable covenant which upholds the restrictive nature of this Article to the fullest extent of the law.
- d. Franchisee and the Franchisee Parties expressly agree that the existence of any claim it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants of this Article. Franchisee further agrees that Franchisor shall be entitled to set off any amounts owed by Franchisor to Franchisee against any loss or damage to Franchisor resulting from Franchisee's breach of this section.

**15.7–Franchisor Is Entitled to Injunctive Relief**

Franchisee acknowledges that any failure to comply with the requirements of this Article will cause Franchisor irreparable injury for which no adequate remedy at law may be available, and Franchisee hereby accordingly consents to the issuance by a court of competent jurisdiction of an injunction prohibiting any conduct by Franchisee in violation of the terms of this section, and waives any requirement for the posting of any bond(s) relating thereto. Franchisor may further avail itself of any legal or equitable rights and remedies which it may have under the Agreement or otherwise.

## **ARTICLE 16**

### **Dispute Resolution**

**16.1–Resolution before Arbitration**

You, the Franchisee Parties and we believe that it is important to resolve any disputes amicably, quickly, cost effectively, and professionally and to return to business as soon as possible. We agree that the provisions of this Article support these mutual, practical business objectives, and, therefore, agree as follows:



- a. all provisions of this Franchise Agreement (including the language of this Article) will be fully enforced, including, but not limited to, those relating to arbitration, waiver of jury trial, limitation of damages, venue, choice of laws, and shortened periods in which to bring claims;
- b. the Parties rely on the federal preemption of state laws under the Federal Arbitration Act (9 U.S.C. § 1 et seq.) (FAA) with the understanding that the FAA and not state law will control any matters pertaining to mediation and arbitration and, as a result, the provisions of this Franchise Agreement will be enforced only according to its terms and through the alternative dispute mechanism found in this Article. The Parties further agree that each Party intends that any state law attempting to prohibit arbitration or void out-of-state forums for arbitration are preempted by the Federal Arbitration Act and that arbitration shall be held as provided in this Article;
- c. except as expressly provided in this Franchise Agreement, EACH PARTY KNOWINGLY WAIVES ALL RIGHTS TO A COURT OR JURY TRIAL AND, INSTEAD, SELECTS FACE-TO-FACE MEETINGS, MEDIATION AND FINALLY BINDING ARBITRATION AS THE SOLE MEANS TO RESOLVE DISPUTES UNDERSTANDING THAT FACE-TO-FACE MEETINGS, MEDIATION AND ARBITRATION MAY BE LESS FORMAL THAN A COURT OR JURY TRIAL, MAY USE DIFFERENT RULES OF PROCEDURE AND EVIDENCE, THAT AN APPEAL PROCESS IS GENERALLY LESS AVAILABLE, AND THAT THE FEES AND COSTS ASSOCIATED WITH MEDIATION AND/OR ARBITRATION MAY BE SUBSTANTIALLY GREATER THAN IN CIVIL LITIGATION;

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 Initials of Franchisee

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 Initials of Franchisee

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 Initials of Franchisor

- d. the terms of this Franchise Agreement (including but not limited to this Article) will control with respect to any matters of jurisdiction, venue, and choice of law; and,
- e. notwithstanding the fact that a Party is or may become a party to a court action or special proceeding with a third party or otherwise, and whether or not such pending court action or special proceeding: (i) may include issues of law, fact, or otherwise that arise out of the same transaction (or series of related transactions) as any arbitrable matter between or involving the Parties; (ii) involves a possibility of conflicting rulings on issues of law, fact, or otherwise; and (iii) such pending court action or special proceeding may involve a third party who cannot be compelled to arbitrate the terms, covenants, and conditions of this Franchise Agreement, the Parties still agree any dispute between the Parties to this Franchise Agreement will be enforced according to the terms found herein, including the obligation to perform under this Article.
- f. Prior to arbitration, each Party agrees to adhere to the following procedure:
  - i. First, in the event of a complaint between them, the Parties agree to meet face-to-face within 30 days after any Party gives written notice to the other;

- ii. Second, if the issues between the Parties cannot be so resolved, then the disagreement must be submitted to non-binding mediation before: (1) FDRS, Inc., (doing business as Franchise Arbitration and Mediation, Inc: “FAM”) or its successor (or an organization designated by FAM or its successor); or (2) any other mediation organization approved by all Parties. If the Parties cannot agree upon a mediation service then such mediation shall be held by Judicial Arbitration and Mediation Service (JAMS) or its successor (or an organization designated by JAMS or its successor), if FAM cannot conduct such mediation and the Parties cannot agree on a mediation organization. If all of the organizations specified are unable or unwilling to conduct such proceeding(s), and the Parties to the dispute cannot agree on an appropriate organization or person to conduct such proceedings(s), then the mediation shall be heard by the American Arbitration Association.
  - A. The Parties shall agree upon a single mediator. If the Parties cannot agree upon the mediator then the senior most officer, director, or manager of the association under which the mediation is to take place shall choose a neutral and disinterested mediator and such choice will be final and binding upon the Parties.
  - B. Any mediation will be conducted by a mediator experienced in franchising. Any Party may be represented by counsel and may, with permission of the mediator, bring persons appropriate to the proceeding.
- iii. If the mediation does not resolve the matter, then the Parties agree that the disagreement will be submitted to and finally resolved by binding arbitration.

### ***16.2–Resolution Under Arbitration***

- a. Arbitration will be held before, and in accordance with the arbitration rules of, FAM or its successor (or an organization designated by FAM or its successor). provided that if such arbitration cannot be heard by any such organizations, then the arbitration will be conducted before and in accordance with the arbitration rules of JAMS or its successor (or an organization designated by JAMS or its successor). If all of the organizations specified are unable or unwilling to conduct such proceeding(s), and the parties to the dispute cannot agree on an appropriate organization or person to conduct such proceedings(s), then the arbitration will be heard by a single arbitrator from the American Arbitration Association. Any arbitrator must be experienced in franchising. If the Parties cannot agree upon the arbitrator then the senior most officer, director or manager of the association under which the arbitration is to take place shall choose a neutral and disinterested arbitrator and such choice shall be final and binding upon the Parties.
- b. Any Party may be represented by counsel and may, with permission of the arbitrator, bring persons appropriate to the proceeding.
- c. The judgment of the arbitrator on any preliminary or final arbitration award will be final and binding and may be entered in any court having jurisdiction.
- d. The arbitrator’s award will be in writing. On request by any party to the arbitration, the arbitrator will provide to all disputants a reasoned opinion with findings of fact and conclusions of law, and the Party so requesting will pay the arbitrator’s fees and costs connected therewith.
- e. There will be no right to appeal the final award.

**16.3–Confidentiality**

- a. Any meeting/mediation/arbitration will be conducted exclusively at a neutral location within 15 miles of our then-current headquarters without regard to conflict of law provisions or forum non-conveniens demand to the contrary.
- b. The arbitrator in any proceeding under this Article will apply all applicable laws and equity permitted under the laws of the state in which the headquarters of the Franchisor is then located without regard to conflicts of law provisions.
- c. The Parties have negotiated regarding the terms of this Section (including the jurisdiction, venue, forum, and choice of law) in which to resolve their disputes and have agreed to the terms of this Article generally and to this Section specifically.

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 Initials of Franchisee

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 Initials of Franchisee

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 Initials of Franchisor

**16.4–Discovery, other Procedural Matters, Fees, and Costs**

- a. The arbitrator will decide any factual, procedural, or legal questions relating in any way to the dispute between the Parties, including, but not limited to: any decision as to whether this Article is applicable and enforceable; subject matter; timeliness; scope; remedies; unconscionability; and any alleged fraud in the inducement.
- b. The Parties to the dispute have the same discovery rights as are available under the rules of the arbitration association hosting the arbitration.
- c. Each participant must submit or file any claim which would constitute a “compulsory counter-claim” (as defined by the applicable rule under the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such compulsory counter-claim that is not submitted or filed in such proceeding will be forever barred.
- d. The arbitrator may issue summary orders disposing of all or part of a claim and provide for temporary restraining orders, preliminary injunctions, injunctions, attachments, claim and delivery proceedings, temporary protective orders, receiverships, and other equitable and/or interim/final relief.
- e. Each Party consents to the enforcement of such orders, injunctions, etc., by any court having jurisdiction.
- f. The arbitrator will have subpoena powers limited only by the laws of the state in which our headquarters is then located
- g. In addition to any other remedy, the arbitrator has the right to award the “Prevailing Party” his, her, or its costs, fees, reasonable attorney’s fees, expert witness fees, and the like which that Party expended in the preparation for and the prosecution of the case at arbitration. For the purposes of this Franchise

Agreement in general and this Article specifically, the “Prevailing Party” shall be deemed to be that Party which has obtained the greatest net judgment in terms of money or money equivalent. If money or money equivalent has not been awarded, then the Prevailing Party shall be that Party that has prevailed on a majority of the material issues decided. The “net judgment” is determined by subtracting the smallest award of money or money equivalent from the largest award. If there is a mixed decision involving an award of money or money equivalent and equitable relief, the arbitrator shall award the above fees to the Party that it deems has prevailed over the other Party using reasonable business and arbitrator’s judgment.

### ***16.5–Disputes Not Subject to the Mediation/Arbitration Process***

Claims or disputes relating primarily to the Marks, to any intellectual property licensed to you, to any matter governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.), are subject to court proceedings in a court of competent jurisdiction. Only the portion of any claim or dispute identified in this Section shall be subject to court action and only to the extent that such action is necessary in order to protect the Franchisor.

### ***16.6–Other Matters***

- a. We each understand and specifically agree that any matters concerning the relationship between us and any dispute arising as a result, will be determined on an individual basis and shall not be brought as a class action, or with multiple unrelated franchisees (whether as a result of attempted consolidation, joinder, or otherwise). This is prudent from a business standpoint because: (i) the mediation and arbitration procedures function most effectively on an individual case basis; (ii) there are significant factors present in each individual Franchisee’s situation which should be respected; and (iii) class-wide or multiple plaintiff disputes do not foster quick, amicable, and economic dispute resolutions.
- b. Each Party agrees that it has the right to seek damages that are in addition to the actual monetary loss that can be proven, which would include, but not be limited to, such damages as consequential, exemplary, and punitive damages. Being advised of the same, we each waive such damages that may be in addition to any actual monetary damages suffered; except if you are required to indemnify us under Article 14 and if as a result of the action underlying the indemnification, such damages are awarded to the injured party, then you agree that indemnification will cover such damages. If in some event such damages are awarded and if such award is not deemed to be outside the scope of what is permitted by this Article or this Franchise Agreement, then any constitutional and/or statutory limitations on punitive, exemplary, multiple, or similar damages will apply, and any award by an arbitrator or court in excess of such limitations will be in excess of legal authority and void.

### ***16.7–Survival of Obligations***

Each provision of this Article 16, will be deemed to be self-executing and continue in full force and effect subsequent to and notwithstanding the expiration, termination, rescission or finding of unenforceability of this Agreement (or any part of it) for any reason.

## ARTICLE 17 Insurance

### ***17.1–Insurance is Required; Coverage***

- a. Within the earlier of the day before you teach your first class, or 30 days after the opening the Business, you will purchase and maintain in full force and effect during the term of this Agreement at your expense, an insurance policy or policies protecting you and us, and the officers, directors, partners, and employees of both you and us against any loss, liability, personal injury, death, property damage or expense whatsoever arising or occurring upon or in connection with the operation of the Business. Franchisor and its officers, directors, partners, and employees shall be named as an additional insured on all such policies.
- b. At the time you first obtain insurance, and within 30 days of each renewal, you shall deliver to us the actual policy or policies of insurance or endorsements issued by the insurer (and not the broker) evidencing the proper coverage with limits not less than those required hereunder.
- c. All policies shall expressly provide that not less than 30 days prior written notice shall be given to us in the event of material alteration to termination, non-renewal, or cancellation of the coverage evidenced by such policies. You will obtain the following insurance with the following minimum coverages. You can elect to purchase insurance with greater coverage or limits:
  - i. Commercial General Liability Insurance, including coverage for products-completed operations, contractual liability, personal and advertising injury, product and food-service liability (to the extent that food services are offered), property, fire damage, earthquake, and similar loss all for the replacement value of the store all without co-insurance, and medical expenses, having a combined single limit for bodily injury of \$2,000,000 per occurrence and \$3,000,000 in the aggregate; plus,
  - ii. Excess liability umbrella coverage for general liability coverage in an amount of not less than \$1,000,000 per occurrence and 2,000,000 in the aggregate. All such coverages shall be on an occurrence basis and shall provide for waivers of subrogation; plus,
  - iii. Employer’s liability and worker’s compensation Insurance, as required by state law in the state in which the Franchised Location is found; plus,
  - iv. Business interruption insurance of not less than Fifty Thousand Dollars (\$50,000.00) per month for loss of income and other expenses with a limit of not less than nine (9) months of coverage with the understanding that Royalties will be paid from any proceeds issued under such policy.
- d. All such policy or policies shall be written by an insurance company rated A-minus or better, in Class 10 or higher, by Best Insurance Ratings Service and satisfactory to us in accordance with standards and specifications set forth in the Manuals or otherwise in writing, from time to time, and shall include, at a minimum (except as additional coverages and higher policy limits may be specified by us from time to time) the coverage found above.

### ***17.2–No Limitations on Coverage***

Your obligation to obtain and maintain, or cause to be obtained and maintained, the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by us, nor shall your performance of these obligations relieve you of liability under the indemnity provisions set forth herein.

**17.3–Franchisor May Procure Insurance Coverage**

Should you, for any reason, fail to procure or maintain the insurance required by this Agreement, as described from time to time by the Manuals or otherwise in writing, we shall have the right and authority (but no obligation) to procure such insurance and to charge the same to you which charges, together with a reasonable fee for our expenses in so acting, shall be immediately payable to us by you.

**17.4–Destruction of Premises**

In the event the building in which the Business is located is damaged or destroyed by fire or other casualty, and it can be repaired or reconstructed within 180 days, Franchisee shall commence the required repair or reconstruction as soon as is practicable and shall complete all required repair or reconstruction as soon as possible thereafter but in no event later than one hundred eighty (180) days from the date of such casualty. The minimum acceptable appearance for the restored building will be that which existed just prior to the casualty; however, every effort should be made to have the restored building include the then-current image, design, and specifications of new Business. If the building is substantially destroyed by fire or other casualty, and the repairs cannot be made within the 180 days, and if the landlord (or mortgagee if applicable) will permit the Franchisee to terminate the lease (or satisfy the mortgage without rebuilding), Franchisee may apply to us for the right to terminate the Agreement. If we agree to grant the termination, after using our good faith Reasonable Business Judgment, and upon payment to us of an amount equal to twenty five percent (25%) of all insurance proceeds available because of such casualty, this Agreement will terminate. Nothing herein will be deemed to be a guarantee that the Franchisor, or any landlord or mortgagee will permit any termination, and the grant of termination by one such entity will not guarantee the termination of this Agreement, a lease or mortgage by any other entity.

## **ARTICLE 18**

### **Miscellaneous**

**18.1–Entire Agreement—Merger**

- a. This Franchise Agreement, including all exhibits and addenda, contains the entire agreement between the parties and supersedes any and all prior oral, written, express, or implied agreements, statements or understandings concerning the subject matter hereof; except that nothing in this or in any related agreement is intended to disclaim the representations Franchisor made in the Franchise Disclosure Document that Franchisor furnished to Franchisee.
- b. The Franchisee agrees and understands that Franchisor will not be liable or obligated for any oral representations or commitments made prior to the execution hereof or for claims of negligent or fraudulent misrepresentation based on any such oral representations or commitments and that no modifications of this Agreement shall be effective except those in writing and signed by both parties.
- c. We do not authorize and will not be bound by any representation of any nature other than those expressed in this Agreement. The Franchisee further acknowledges that no representations have been made to Franchisee by us regarding projected sales volumes, market potential, revenues, profits of

the Franchisee's Business, or operational assistance other than as stated in this Agreement or in any disclosure document provided to its representatives or us.

- d. Nothing in this franchise agreement, or in any related agreement that you sign with us is intended to disclaim any representations in the franchise disclosure document.

### **18.2–Modification**

- a. This Agreement may only be modified in a written agreement that is signed by all parties to this Franchise Agreement.
- b. You acknowledge however, that we may modify our standards, specifications and operating and marketing procedures including those set forth in the Franchisee Manuals, any component of the System, the Marks, and any copyrighted or Proprietary Information, unilaterally, under any conditions and to the extent to which we, in our sole discretion, deem necessary to protect, promote or improve the Marks and the quality of the System in general.

### **18.3–Delegation**

From time to time, we shall have the right to and will delegate the performance of any portion or all of our obligations and duties hereunder to a third party who is approved by us to deliver such services and perform such duties, whether the same are agents of ours or independent contractors which we have contracted with to provide such services. The Franchisee agrees in advance to any such delegation by us of any portion or all of its obligations and duties hereunder.

### **18.4–Review of Agreement**

You acknowledge that you had a copy of this Agreement in your possession for a period of time not less than fourteen (14) calendar days during which time you had the opportunity to submit same for professional review and advice by one or more professionals of the Franchisee's choosing prior to freely executing this Agreement.

### **18.5–No Waiver**

No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by either of us shall be considered to imply or constitute a further waiver by either of us of the same or any other condition, covenant, right or remedy.

### **18.6.–No Right to Set Off or Third Party Beneficiaries**

- a. You shall not be allowed to set off amounts owed to us for Royalties, Advertising Fees, or other amounts due hereunder, against any monies owed to you, nor shall you, in any event, withhold such amounts due to any alleged nonperformance by us hereunder, which right of set off is hereby expressly waived by you.
- b. All obligations of the Franchisor under this Agreement are solely and exclusively for the benefit of the Franchisee, and no other party is entitled to rely on, enforce, benefit from, be deemed to be a third-party beneficiary, or otherwise obtain relief either directly or by subrogation.

**18.7–Invalidity**

If any provision of this Agreement is held invalid by any tribunal in a final decision from which no appeal is or can be taken, such provision shall be deemed modified to the least extent possible so as to eliminate the invalid element and, as so modified, such provision shall be deemed a part of this Agreement as though originally included. The remaining provisions of this Agreement shall not be affected by such modification.

**18.8–Notices**

Except as otherwise stated in this Franchise Agreement (including Article 10), all notices required to be given under this Franchise Agreement shall be given in writing, by certified mail, return receipt requested, or by an overnight delivery service providing documentation of receipt, at the address set forth in the first Article of this Agreement, or at such other addresses as either of us may designate from time to time, and shall be effectively given when received for, when refused, or when received or refused via overnight delivery, as may be applicable.

**18.9–Time is of the Essence and Construction**

- a. In all matters pertaining to this Franchise Agreement, time is of the essence.
- b. The headings are for the convenience only of the reader and are not intended to be inclusive or exclusive of any term, covenant, or condition.
- c. In reading this Agreement, the singular shall include the plural and the reference to one gender shall include reference to the other gender and to the neutral gender.
- d. The word “including” shall mean “including, but not limited to...”
- e. Unless otherwise stated, a reference to days shall be calendar days. The counting of days shall include weekends and all state and national holidays. If a notice is to be delivered which notice requires the counting of days, such counting shall begin on the first calendar day following the day that the notice was received, refused, or deemed to have been delivered pursuant to the terms of this Agreement. Unless otherwise stated, the last day of any counted time period or the last day of the termination or the expiration of this Franchise Agreement will be 5:00 P.M. local time of our then-current headquarters.

**18.10–Survival of Provisions and Independent Covenants**

- a. Any provisions that by their terms extend beyond termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding the termination or expiration of this Agreement.
- b. The Parties further agree that each covenant herein shall be construed to be independent of any other covenant or provision of this Agreement.

**18.11–Force Majeure**

Except for monetary obligations hereunder which are due regardless of the language of this Section, and unless otherwise specifically provided in this Franchise Agreement, Force Majeure shall apply.



**18.12-Guaranty**

If you take ownership in the franchise in other than your personal name at any time during the Initial Term or any renewal or extension thereof, you and all shareholders, Members of a limited liability business entity, partners, or other owners of an equity interest in the Franchise the Franchisee shall be required to sign the Guaranty, which is attached as Exhibit 8. The Guarantors shall be bound by all restrictive covenants found herein, including, but not limited to, all covenants in Articles 6 and 15.

**18.13-Acknowledgment**

BEFORE SIGNING THIS FRANCHISE AGREEMENT, THE FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. THE FRANCHISEE ACKNOWLEDGES THAT:

- a. THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED HEREIN INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON THE FRANCHISEE'S ABILITY AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS, AND
- b. NO ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN GIVEN AS TO THE POTENTIAL SUCCESS OF SUCH BUSINESS VENTURE OR THE EARNINGS LIKELY TO BE ACHIEVED, AND
- c. NO STATEMENT, REPRESENTATION, OR OTHER ACT, EVENT, OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS DOCUMENT AND IN ANY OFFERING CIRCULAR SUPPLIED TO THE FRANCHISEE, IS BINDING ON US IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.
- d. YOU UNDERSTAND THAT IF YOU ARE NEVER ABLE TO OPERATE THE BUSINESS PROFITABLY, YOU COULD LOSE PART OR ALL OF YOUR INVESTMENT, PLUS ANY ADDITIONAL FUNDS THAT YOU CONTRIBUTE TO THE BUSINESS.

**18.14-Recitals, State Specific Amendment, Closing Acknowledgement, Statement of Understanding, and Signatures**

- a. The Recitals are made part of this Franchise Agreement.
- b. Further, the Franchisee shall review and sign the "Closing Acknowledgment" that is attached at Exhibit \_\_\_\_.
- c. In some cases, the state in which you are located requires that this Franchise Agreement be amended. Please see Exhibit \_\_ to learn if there is an amendment that affects your state.
- d. You and we will complete the Statement of Understanding found at Exhibit 10 at the time you sign this Franchise Agreement.
- e. This Franchise Agreement may be signed in any number of counterparts all of which taken together form one original document. Signatures may be done electronically or manually. Facsimile or electronically signed and delivered documents shall be as effective as an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above set forth.

**FRANCHISOR**

**FRANCHISEE**

**NOAH'S ARK FRANCHISING INC.**

\_\_\_\_\_

by: \_\_\_\_\_

by: \_\_\_\_\_

print name: \_\_\_\_\_

print name: \_\_\_\_\_

its: Managing Member

its: \_\_\_\_\_

**INDIVIDUAL FRANCHISEES**

\_\_\_\_\_

Individually

\_\_\_\_\_

Print name

\_\_\_\_\_

Individually

\_\_\_\_\_

Print name

**EXHIBIT 1**  
**Statement of Ownership**

**Franchisee:** \_\_\_\_\_

**Trade Name** (if different from above): \_\_\_\_\_

**Form of Ownership**

(Check One)

<input type="checkbox"/> Individual	<input type="checkbox"/> Partnership	<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Business Entity
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If a partnership, provide name and address of each partner showing percentage owned, whether active in management or not, and indicate the state in which the partnership was formed.

If a limited liability business entity, provide the name and address of each equity-interest holder (Members and Managing Members), show the percentage owned, and indicate the state in which and the date the limited liability business entity was formed.

If a corporation, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Franchisee acknowledges that this Statement of Ownership applies to the Business authorized under this Franchise Agreement.

Use additional sheets if necessary. Any and all changes to the above information must be reported to the Franchisor in writing.

**FRANCHISOR**

**NOAH'S ARK FRANCHISING INC.**

by: \_\_\_\_\_

print name: \_\_\_\_\_

its: Managing Member

**FRANCHISEE**

\_\_\_\_\_

by: \_\_\_\_\_

print name: \_\_\_\_\_

its: \_\_\_\_\_

**INDIVIDUAL FRANCHISEES**

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

**EXHIBIT 2**  
**Designated Area, Franchised**

**LOCATION, and EXCLUSIVE TERRITORY**

The Designated Area is:

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The Franchised Location is:

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The Exclusive Territory is:

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**EXHIBIT 3**  
**Guarantee**

***Guarantee of Franchisee’s Obligations***

This Guarantee of Franchisee’s Obligations (Guarantee) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between, Noah’s Ark Franchising Inc., (Franchisor), \_\_\_\_\_ (Franchisee) and \_\_\_\_\_, whose address is \_\_\_\_\_ and \_\_\_\_\_, whose address is \_\_\_\_\_ (herein jointly and severally known as Guarantor(s)).

***Recitals***

WHEREAS, Franchisee signed a franchise agreement with Franchisor on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (Franchise Agreement);

WHEREAS, as an inducement to the Franchisor for granting the Franchise Agreement, the Guarantor(s) agreed to fully guaranty the performance of Franchisee under the Franchise Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants found herein and for other good and valuable consideration, which consideration is deemed to be adequate by all parties, each of the undersigned hereby personally and unconditionally agree to the following:

### **Covenants**

1. Guarantor(s) guarantee to Franchisor and its successors and assigns, for the term of the Franchise Agreement, including any amendments thereto or renewals thereof, that the Franchisee shall timely pay any amount required by the Franchise Agreement, the promissory note, if Franchisor provided financing to the Franchisee under Article 3 of the Franchise Agreement, and shall perform each and every undertaking, agreement, and covenant set forth in the Franchise Agreement and any addenda or Exhibits attached thereto as each may be amended or renewed.
2. Guarantor(s) further agrees to be personally bound by each and every term of the Franchise Agreement, as amended or renewed, and agrees to be personally liable for the breach of, and, if permitted, the cure of each and every breach of any term, covenant, or condition of the Franchise Agreement. Guarantor(s) agree that this Guaranty is one of payment and performance and not one of just collection.
3. By signing this Guaranty, each Guarantor further agrees that each shall also be subject to all restrictive covenants in the Franchise Agreement, including, but not limited to all covenants of Article 6, any in-term or post-term covenants not to compete, found at Article 15, and all indemnification provisions of the Franchise Agreement.
4. As part of the inducement given to Franchisor by the Guarantor(s) to permit the Franchisee to enter into the Franchise Agreement, the Guarantor(s) further agree to waive the following:
  - a. acceptance and notice of acceptance of the foregoing undertaking;
  - b. notice of demand for payment of any indebtedness or notice of any nonperformance of any obligations hereby guaranteed;
  - c. protest and notice of default with respect to the indebtedness or nonperformance of any obligations hereby guaranteed;
  - d. any right Guarantor may have to require that any action be first brought against Franchisee or any other person or entity as a condition of liability; and
  - e. any and all other notices and legal or equitable defenses to which Guarantor may be entitled.
5. Guarantor(s) further consent and agrees that:
  - a. Guarantor is directly and immediately liable under this Guaranty, and if signed by more than one Person, such liability is joint and several;
  - b. Guarantor(s) shall render any payment or performance required under the Franchise Agreement upon demand of Franchisor if Franchisee fails or refuses punctually to do so;
  - c. Guarantor(s) performance shall not be contingent or conditioned upon pursuit of any remedies against Franchisee or any other person;
  - d. Guarantor(s) liability shall not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims which Franchisor may from time to time grant to Franchisee or to any other person, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of the Franchise Agreement, including renewals thereof;

- e. this Guaranty will be continuing and irrevocable during the term of the Franchise Agreement, including renewals thereof; and,
  - g. Franchisor's rights under this Guaranty will not be exhausted by any action of Franchisor until all of the terms, covenants, and conditions of the Franchise Agreement have been met.
6. Guarantor waives all of the following, whether created or imposed by or under statute, common law, or otherwise:
- a. any right to require Franchisor to proceed against Franchisee or any other person or any security now or hereafter held by Franchisor or to pursue any other remedy whatsoever;
  - b. any defense based upon any legal disability of Franchisee or any Guarantor, or any discharge or limitation of the liability of Franchisee or any Guarantor to Franchisor, or any restraint or stay applicable to actions against Franchisee or any other Guarantor, whether such disability, discharge, limitation, restraint or stay is consensual, or by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, receivership, bankruptcy, insolvency or debtor-relief proceeding, or from any other cause;
  - c. all setoffs, counterclaims, presentment, demand, protest or notice of any kind, except for any notice which may be expressly required by the provisions of this Guaranty.
  - d. any defense based upon the modification, renewal, extension or other alteration of the obligations under the Franchise Agreement, or of the documents executed in connection therewith;
  - e. any defense based upon the negligence of Franchisor, including, without limitation, the failure to file a claim in any bankruptcy of the Franchisee or any guarantor;
  - f. all rights of subrogation, reimbursement, and, indemnity;
  - g. any defense based upon or related to Guarantor's lack of knowledge as to Franchisee's financial condition;
  - h. any and all rights to revoke this Guaranty in whole or in part;
  - i. any defense based upon any action taken or omitted by Franchisor in any bankruptcy or other insolvency proceeding involving Franchisee; and,
  - j. all rights and defenses arising out of an election of remedies by Franchisor, even though that election of remedies impairs or destroys Guarantor's right of subrogation and/or reimbursement against Franchisee.
7. Guarantor agrees to pay upon Franchisor's demand, Franchisor's reasonable out-of-pocket costs and expenses, including but not limited to attorneys' fees, costs and disbursements, incurred in any effort to collect or enforce any of the terms, covenants or conditions of the Franchise Agreement, or this Guaranty, regardless whether any lawsuit is filed.
8. Guarantor, and each of the persons or entities executing this Guaranty as Guarantor individually, makes the following representations and warranties, which are deemed to be continuing representations and warranties until payment and performance in full of terms, covenants, and conditions of the Franchise Agreement:
- a. Guarantor has all the requisite power and authority to execute, deliver and be legally bound by this Guaranty on the terms and conditions herein stated;
  - b. this Guaranty constitutes the legal, valid and binding obligations of Guarantor enforceable against Guarantor in accordance with its terms;
  - c. the execution and delivery of this Guaranty and the consummation of the transaction contemplated hereby will not, with or without notice and/or lapse of time: (i) constitute a breach of any of the

terms and provisions of any note, contract, document, agreement or undertaking, whether written or oral, to which Guarantor is a party or to which Guarantor's property is subject; (ii) accelerate or constitute any event entitling the holder of any indebtedness of Guarantor to accelerate the maturity of any such indebtedness; (iii) conflict with or result in a breach of any writ, order, injunction or decree against Guarantor of any court or governmental agency or instrumentality; or (iv) conflict with or be prohibited by any federal, state, local or other governmental law, statute, rule or regulation;

- d. No consent of any other person is required in connection with the valid execution, delivery or performance by Guarantor of this Guaranty; and,
  - e. this Guaranty and any other statement furnished by Guarantor to Franchisor contain no untrue statements of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein true and not misleading.
9. Each Guarantor understands and agrees that each is bound by the Dispute Resolution covenants of the Franchise Agreement found at Article 16 which are incorporated herein by this reference as if fully set forth here.

IN WITNESS WHEREOF, each of the undersigned has affixed his, her, or its signature as of the date first found above.

**FRANCHISOR**

**FRANCHISEE**

**NOAH'S ARK FRANCHISING INC.**

\_\_\_\_\_

by: \_\_\_\_\_

by: \_\_\_\_\_

print name: \_\_\_\_\_

print name: \_\_\_\_\_

its: Managing Member

its: \_\_\_\_\_

**INDIVIDUAL FRANCHISEES**

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name



**EXHIBIT 4**  
**Collateral Assignment of Lease Agreement**

**NOAH'S ARK FRANCHISING INC.**  
**COLLATERAL ASSIGNMENT OF LEASE AGREEMENT**

THIS COLLATERAL ASSIGNMENT OF LEASE AGREEMENT (Assignment) is made this \_\_\_\_ day of \_\_\_\_, 20\_\_, by and between Noah's Ark Franchising Inc. (Franchisor) and \_\_\_\_\_ (Franchisee) and \_\_\_\_\_ (Landlord), involving the franchised business (Business) located at \_\_\_\_\_ (Franchised Location).

***Recitals***

WHEREAS, on \_\_\_\_\_, 20\_\_, Franchisee and Landlord entered into a Lease Agreement (hereinafter called "Lease"), a fully executed copy of which is attached hereto as Exhibit A, pursuant to the terms of which Franchisee leased Franchised Location from Landlord to operate the Business thereon.

WHEREAS, on \_\_\_\_\_, 20\_\_, Franchisor and Franchisee executed a Franchise Agreement pursuant to the terms of which Franchisee obtained a franchise from Franchisor to operate a Business at the Franchised Location.

WHEREAS, Franchisor, Franchisee, and Landlord desire to enter into this Agreement to define the rights of Franchisor in and to the Franchise Location and to protect the interests of Franchisor in the continued operation of the Business at the Franchised Location during the entire term of the Lease, and any and all renewals and extensions thereof, and Landlord desires to consent to this assignment on the terms and conditions set forth herein.

***Now, Therefore, It Is Agreed:***

1. Franchisee hereby assigns, transfers, and conveys to Franchisor all of Franchisee's right, title, and interest in and to the Lease; however, this assignment is for collateral purposes and shall become effective only upon Franchisor's exercise of the option granted to Franchisor in Paragraph 3 herein subsequent to the occurrence of any of the following events:
  - a. If Franchisee shall be in default in the performance of any of the terms of the Lease, unless such default is cured within the period required in the Lease or within thirty (30) days following the written demand given Franchisor, whichever is sooner.
  - b. If Franchisee shall be in default in the performance of any of the terms of the Franchise Agreement, or upon the occurrence of any acts that would result in termination of the Franchise Agreement as specified in the Franchise Agreement.
  - c. If Franchisee shall have failed or elected not to exercise an option to renew or extend the Lease within the time specified in the Lease for such renewal or extension, after having been directed in writing by Franchisor to do so. Upon failure of Franchisee to so elect to extend or renew the Lease as aforesaid, Franchisee hereby irrevocably appoints Franchisor as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and stead of Franchisee for the sole purpose of effecting such extension or renewal.
  - d. Upon Franchisee's sale of: a substantial portion of its assets of the business the result of which will make the operation of the business by Franchisee in the normal course impractical or impossible;

the transfer or sale of 20 percent or more of the capital stock, Memberships, or other equity or capital interest in any Franchisee business entity; or any other transfer, sale, or disposition the result of which is to divest the Franchisee of direction or control over the franchise.

e. If Franchisee fails to exercise an option to renew the Franchise Agreement.

Except as specified herein, Franchisor shall have no liability or obligation of any kind whatsoever arising in connection with this agreement or the Lease unless Franchisor shall take possession of the Franchise Location pursuant to the terms hereof and shall expressly agree in writing to assume the obligations of Franchisee thereunder.

2. Landlord hereby consents to this Assignment, which consent shall remain in effect during the entire term of the Lease and any and all renewals or extensions thereof, and agrees that the Lease shall not be amended, modified, assigned, extended, surrendered, terminated or renewed, nor shall the Franchise Location be sublet by Franchisee, without the prior written consent of Franchisor. Landlord agrees to provide Franchisor with copies of any notice of Franchisee's default.
3. Landlord further agrees that it will provide written notice to us (at the same time it gives such notice to the Tenant) of any default by you under the Lease. Such notice must be provide us with an additional thirty (30) days after your period of cure has run within which to cure, at our sole option, any such default and, upon the curing of such default, we must be given the right to enter upon the leased premises and assume your rights under the lease as if the lease had been assigned by you to us.
4. Franchisor may exercise the option granted herein, and thereby make this assignment unconditional, by giving written notice to Franchisee and Landlord of its exercise of said option in the manner specified in Paragraph 7 hereof and by thereafter delivering to Landlord, within ten (10) business days after Landlord requests the same, a written assumption of the obligations of the Lease.

Franchisor shall have the right, concurrently with, or subsequent to Franchisor's exercise of the option granted herein, to assign and transfer its rights under this Agreement to a new Franchisee selected by Franchisor to operate the Business, with prior written consent of Landlord, which shall not be unreasonably withheld, provided that such new Franchisee shall have a credit rating and a net worth adequate for the operation of the Business. In such event, such new Franchisee shall obtain the assignment of the Lease and shall assume the obligations of the Lease in place and instead of Franchisor and Franchisor shall be released from liability under the Lease from and after the date such new Franchisee assumes the Lease.

5. Upon the exercise of the option granted to Franchisor herein, Franchisee shall no longer be entitled to the use or occupancy of the Franchise Location; all of the Franchisee's prior rights in and to the Lease will have been, in all respects, assigned to Franchisor, or its assignee; and Franchisee shall immediately vacate the Franchise Location. If Franchisee shall fail or refuse to take any of these actions, Franchisor shall have the right to expel Franchisee from the Franchise Location and to enter the Franchise Location and take possession of the Franchise Location; all without being deemed to have elected any remedies to the exclusion of any other remedies.
6. Franchisee hereby agrees to indemnify and hold Landlord and Franchisor harmless from and against any and all loss, costs, expenses (including attorneys fees), damages, claims and liabilities, however caused, resulting directly or indirectly from, arising from, or pertaining to the exercise by Franchisor and/or Landlord of the rights and remedies granted under this Agreement.

7. The remedies granted pursuant to this Agreement are cumulative and in addition to and not in substitution of any or all other remedies available under the Franchise Agreement, any other contracts by and between Franchisor and Franchisee, or at law or in equity to Franchisor; and Franchisee agrees that the Franchisor's exercise of the option granted herein shall not divest it of any other rights or remedies it may have.
8. All notices, requests, demands, payments, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given three (3) days after being sent by registered or certified United States mail, postage prepaid, to addresses supplied by each party from time to time.

Any party may change its address by giving written notice of such change of address to the other parties. Mailed notices shall be deemed communicated within three (3) days from the time of mailing if mailed as provided in this Agreement.

9. Miscellaneous

- a. Franchisee and Landlord recognize the unique value and secondary meaning attached to Noah's Ark Franchising Inc., its trademark, trade names, service marks, insignia and logo designs, and the Franchise Location displaying same, and agrees that any non-compliance with the terms of this Agreement will cause irreparable damage to Franchisor and its Franchisees. Franchisee and Landlord therefore agree that in the event of any non-compliance with the terms of this Agreement, Franchisor shall be entitled to seek injunctive relief from any court of competent jurisdiction in addition to any other remedies prescribed by law.
- b. The parties agree to execute such other documents and perform such further acts, as may be necessary or desirable to carry out the purposes of this Agreement.
- c. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors, and assigns.
- d. This Agreement represents the entire understanding between the parties as to the subject matter herein, and supersedes all other negotiations, agreements, representations, and covenants, oral or written, only in reference thereto. This Agreement may only be modified in writing.
- e. Failure by any party to enforce any rights under this Agreement shall not be construed as a waiver of such rights. Any waiver, including waiver of default, in any one instance shall not constitute a continuing waiver or a waiver in any other instance.
- f. As used herein, reference to one gender shall include the other and neuter genders; the singular shall include the plural, and the plural, the singular.
- g. This Agreement shall not be binding on Franchisor unless and until it shall have been accepted and signed by an authorized officer of Franchisor.
- h. If any Party commences an action against any other Party arising out of or in connection with this Agreement, the "Prevailing Party" shall be entitled to have and receive from the other party its reasonable attorney's fees and costs of suit. For the purposes of this Agreement, the "Prevailing Party" shall be deemed that Party that has prevailed on a majority of the material issues brought before the court (or which has received the greatest monetary award or judgment).
- i. This Agreement (but not the Franchise Agreement) shall be governed by and construed in accordance with the internal laws of the state in which the real property is located.

- j. Any provision of this Agreement that may be determined by competent authority to be prohibited or unenforceable in that jurisdiction shall, as to that jurisdiction only, be ineffective to the extent of the prohibition of unenforceability without invalidating the remaining provisions of this Agreement. Any prohibition against or unenforceability of any provisions of this Agreement in any jurisdiction, including the state whose laws govern this Agreement, shall not invalidate the provision or render it unenforceable in any other jurisdiction.

To the extent permitted by applicable law, Franchisee and Landlord waive any provision of law that renders any provision of this Agreement prohibited or unenforceable in any respect.

Done as of the date first found above.

**FRANCHISOR**

**FRANCHISEE**

**NOAH'S ARK FRANCHISING INC.**

\_\_\_\_\_

by: \_\_\_\_\_

by: \_\_\_\_\_

print name: \_\_\_\_\_

print name: \_\_\_\_\_

its: Managing Member

its: \_\_\_\_\_

**INDIVIDUAL FRANCHISEES**

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

**LANDLORD**

by: \_\_\_\_\_

its: \_\_\_\_\_

**EXHIBIT A**  
**Lease**

Copy of lease should be inserted here as "Exhibit A."

**EXHIBIT 5**  
**Collateral Assignment of Contact and Electronic Information**

***Collateral Assignment of Contact and Electronic Information***

This Collateral Assignment of Contact and Electronic Information (Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Noah’s Ark Franchising Inc. (Franchisor) and \_\_\_\_\_ (Franchisee).

***Recitals***

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_, Franchisor and Franchisee executed a “Franchise Agreement” pursuant to the terms of which Franchisee obtained a franchise from Franchisor to operate a Business at the Franchised Location.

WHEREAS, as part of the Franchise Agreement, the Franchisee agreed that upon termination of the Franchise Agreement, that the Franchisor would have the right, title and interest in and to all contact and electronic information relating to the Franchisee’s Business;

WHEREAS, in order to ensure that the Franchisor will have such rights, the parties have agreed to enter into this Agreement;

WHEREAS, any capitalized term not defined herein will have the meaning set forth in the Franchise Agreement;

NOW THEREFORE, for and in consideration of the covenants found in the Franchise Agreement and for other good and valuable consideration the adequacy of which is admitted by all parties hereto, it is agreed as follows:

***Covenants***

1. Franchisee acknowledges that, as between Franchisee and Noah’s Ark Franchising Inc., the Franchisor has the sole rights to and interest in all telephone, telecopy or facsimile machine numbers, directory listings, URLs, web page identifiers, email addresses, social network addresses (including Twitter and Face Book) that are associated with any Mark.
2. Franchisee authorizes Franchisor, and hereby appoints Franchisor and any of its officers as Franchisee’s attorney-in-fact, to direct the telephone company, all telephone directory publishers, any electronic transfer agency, any URL or webpage host, and any other electronic business, company, transfer agent, host, webmaster, and the like to transfer to the Franchisor all telephone, facsimile machine numbers, and directory listings, and all electronic listings, web pages, social network pages or identities (including twitter and Face Book), URLs, email addresses and the like that relate to the Franchised Business. Should Franchisee fail or refuse to do so, any party named herein may accept such direction under this Agreement as conclusive of Franchisor’s exclusive rights in and to such information, site, URL, electronic media, telephone numbers, directory listings and the like and Franchisor’s authority to direct their transfer.
3. This Agreement is only effective at such time as the Franchise Agreement is terminated for any reason and then only if the Franchisee fails or refuses to make the necessary assignments as contemplated by this Agreement.

4. The Recitals are incorporated into this Agreement by this reference.

In Witness Whereof, the parties hereto have executed and delivered this Agreement as of the day and year first written above.

**FRANCHISOR**

**FRANCHISEE**

**NOAH'S ARK FRANCHISING INC.**

\_\_\_\_\_

by: \_\_\_\_\_

by: \_\_\_\_\_

print name: \_\_\_\_\_

print name: \_\_\_\_\_

its: Managing Member

its: \_\_\_\_\_

**INDIVIDUAL FRANCHISEES**

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

## EXHIBIT 6 General Release

### **General Release**

This General Release (Release) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Noah's Ark Franchising Inc., (Franchisor), \_\_\_\_\_ (Franchisee) and the Franchisee on behalf of the Franchisee Parties.

### **Recitals**

WHEREAS, Franchisor and Franchisee entered into that certain franchise agreement dated \_\_\_\_\_ (Franchise Agreement);

WHEREAS, pursuant to the Agreement, Franchisee was permitted to open and operate a Franchised Location at \_\_\_\_\_ (hereinafter the "Business");

WHEREAS, Franchisee desires to have the Franchisor \_\_\_\_\_

WHEREAS, as a material inducement to the Franchisor approving the same and taking such action, the Franchisee has agreed to provide this Release;

WHEREAS, all capitalized terms not defined herein has the meaning set forth in the Franchise Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants found herein, for that consideration stated below, and for other good and valuable consideration the adequacy of which is admitted by all parties hereto, it is agreed as follows:

### **Covenants**

1. The Recitals are incorporated herein by this reference.
2. Franchisee, for and on behalf of itself, its officers, directors, shareholders, and employees, and on behalf of any parent corporation or subsidiary, business entity, successor, assignee, and their officers, directors, shareholders, and employees, and for and in consideration of: the Franchisor granting to the Franchisee the right to do the following; \_\_\_\_\_; and for other good and valuable consideration, all of which is deemed adequate by all parties hereto, does hereby release, indemnify, and forever forgive and discharge Franchisor, its officers, directors, shareholders, and employees, from any: equitable or legal claim; cause of action; complaint; direct, indirect, or consequential damages; judgment; award; injury, or any other right or action which relates in any way to: (i) the delivery of the Franchise Disclosure Document (FDD) to Franchisee; (ii) the performance or failure of performance of Franchisor under the Franchise Agreement; and (iii) the performance or the failure to perform of Franchisor under any other agreement, covenant, or document by and between the parties from the beginning of time to the date of this Release.
3. The Release shall be interpreted in accordance with the laws of the state in which the offices of the Franchisor are found as of the date that this General Release was signed and shall be enforceable in accordance with the requirements found in the applicable sections of the Agreement that are incorporated herein as if fully set forth.
4. Franchisee delivers this Release with the intent that Franchisor rely upon the same. Should any condition, covenant, or clause herein be considered to be unenforceable, any tribunal of competent



jurisdiction shall be permitted to amend the Release or to excise the offending clause, covenant, or condition so as to form an enforceable Release, which shall be binding upon the Franchisee to the fullest extent permissible.

5. If any mandatory provisions of the governing state law limit or prohibit the use of this Release, or which in any manner impose different rights or obligations as are found herein, then such mandatory provisions of state law shall be deemed incorporated in the Franchise Agreement and this Release by reference and shall prevail over any inconsistent terms in this Release. If no such law exists, or if such law exists but permits the Franchisee to agree to abide by the terms of this Release, then the Franchisee shall agree to abide by the terms of this Release. Notwithstanding the foregoing, excluded from this release are claims arising from representations in the FDD.

6. Notwithstanding anything herein to the contrary:

- a. *Release of Unknown Claims and Waiver of California Law.* The Franchisee, Franchisee Parties, and Guarantors acknowledge that they are aware and informed that the laws of California may purport to limit or reduce the effect of a general release with respect to claims not known or suspected by them at the time of execution of the release, such as Section 1542 of the Civil Code of the State of California which provides that:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his or her settlement with the debtor.”

Franchisee, Franchisee Parties, and each Guarantor waives and relinquishes every right or benefit which they have, or may have, under Section 1542 of the Civil Code of the State of California and under any similar provisions of any other law (as may be applicable to this Release), to the fullest extent that the Franchisee, Franchisee Parties, and Guarantors, may lawfully waive such right or benefit pertaining to the subject matter of this Release. In connection with such waiver and relinquishment, with respect to the Released Claims, the Franchisee, Franchisee Parties, and Guarantors each acknowledge that they are aware and informed that they may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this Release, but that it is the Franchisee’s, Franchisee Party’s, and Guarantor’s intention to settle and release fully, finally and forever, all claims, disputes and differences, known or unknown, suspected or unsuspected, which now exist, may exist or heretofore existed, and in furtherance of such intention, the release given herein shall be and remain in effect as a full and complete release, notwithstanding the discovery or existence of any such additional or different facts that would have affected the release of all Released Claims. Franchisee, and each Franchise Party and Guarantor agree to defend, indemnify and hold harmless Franchisor from any and all claims arising out of, directly or indirectly, the assertion by Franchisee, each Franchisee Party, and each Guarantor, (or any person or entity by, through, or on their behalf) of any Released Claims, positions, defenses, or arguments contrary to this Section 6(a) above.

- b. *Release of Unknown Claims and Waiver of South Dakota Law.* The Franchisee and each Franchisee Party and Guarantor acknowledges that each is aware and informed that the laws of South Dakota may purport to limit or reduce the effect of a general release with respect to claims not known or suspected by them at the time of execution of the release, such as South Dakota Codified Laws§ 20-7-11, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Franchisee and each Franchisee Party and Guarantor, waive and relinquish every right or benefit which they have, or may have, under § 20-7-11 of the South Dakota Codified Laws, and under any similar provisions of any other law (as may be applicable to this Release), to the fullest extent that they may lawfully waive such right or benefit pertaining to the subject matter of this Release. In connection with such waiver and relinquishment, with respect to the Released Claims, Franchisee and each Franchisee Party and Guarantor acknowledge that they are aware and informed that they may hereafter discover facts in addition to or different from those that Franchisee and each Franchisee Party and Guarantor now know or believe to be true with respect to the subject matter of this Release, but that it is their intention to settle and release fully, and finally and forever, all Released Claims, disputes and differences, known or unknown, suspected or unsuspected, which now exist, may exist or heretofore existed, and in furtherance of such intention, the release given herein shall be and remain in effect as a full and complete release, notwithstanding the discovery or existence of any such additional or different facts that would have affected the release of all Released Claims. Franchisee and each Franchisee Party and Guarantor agree to defend, indemnify and hold harmless the Franchisor and the Franchisor Affiliates from any and all Released Claims arising out of, directly or indirectly, the assertion by the Franchisee and the Franchisee Affiliates (or any person or entity by, through, or on behalf of Releasor) of any Released Claims, positions, defenses, or arguments contrary to this Section 1.(b) of this Release.

**DONE AS OF THE EFFECTIVE DATE**

**FRANCHISOR**

**FRANCHISEE**

**NOAH’S ARK FRANCHISING INC.** \_\_\_\_\_

by: \_\_\_\_\_

by: \_\_\_\_\_

print name: \_\_\_\_\_

print name: \_\_\_\_\_

its: Managing Member \_\_\_\_\_

its: \_\_\_\_\_

**INDIVIDUAL FRANCHISEES**

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Individually

\_\_\_\_\_  
Print name

**EXHIBIT 7**  
**Closing Acknowledgment**

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Today's Date: \_\_\_\_\_

**A. General Questions**

- 1. Yes \_\_\_\_\_ No \_\_\_\_\_ I had a face-to-face meeting with a franchise marketing representative. If yes, the date of said meeting was: \_\_\_\_\_
- 2. The date which I received the Franchise Disclosure Document (FDD) from Franchisor. \_\_\_\_\_
- 3. The earliest date on which I signed the Franchise Agreement or any other binding document (not including the Receipt). \_\_\_\_\_
- 4. The earliest date on which I delivered cash, check, or consideration to the franchise marketing representative or any other person. \_\_\_\_\_
- 5. Did you initiate negotiations about the Franchise Agreement with the Franchisor? The date that I initiated negotiations with the Franchisor? If yes, what was that date? \_\_\_\_\_

**B. Representations**

PLEASE RESPOND TO EACH PARAGRAPH. IN RESPONDING, PLEASE STATE WHETHER THE STATEMENT IS TRUE OR FALSE AND PROVIDE ANY OTHER INFORMATION THAT YOU IS IMPORTANT TO YOU

- 1. I had an opportunity to review the FDD and other agreements attached to the disclosure document and understand the terms, conditions, and obligations of these agreements.  
 Yes     No  
\_\_\_\_\_ initials
- 2. I had an opportunity to seek professional advice regarding the FDD, the Franchise Agreement and all matters concerning the purchase of my franchise.  
 Yes     No  
\_\_\_\_\_ initials

3. Except as specifically written in the Franchise Agreement, no promises, agreements, contracts, commitments, representations, understandings, “side deals” or otherwise have been made to or with me with respect to any matter, including, but not limited to, any representations or promises regarding advertising (television or otherwise), marketing, site location, operational assistance or other services.

Agree     Disagree

\_\_\_\_\_ initials

4. Even if promises, agreements, contracts, commitments, representations, understandings, “side deals” or otherwise have been made to or with me with respect to any matter, including, but not limited to, any representations or promises regarding advertising (television or otherwise), marketing, site location, operational assistance or other services, I have not relied in any way on any such promises, agreements, contracts, commitments, representations, understanding or “side deals” when making my decision to purchase this franchise.

Agree     Disagree

\_\_\_\_\_ initials

5. No oral, written or visual claim or representation, promise, agreement, contract, commitment, representation, understanding or otherwise which contradicted or was inconsistent with the disclosure document or the Franchise or Regional Developer Agreement was made to me.

Agree     Disagree

\_\_\_\_\_ initials

6. Even if an oral written or visual claim or representation, promise, agreement, contract, commitment, representation, understanding or otherwise which contradicted or was inconsistent with the disclosure document or the Franchise or Regional Developer Agreement was made to me, I have not relied in any way on any such matter the contradicts or is inconsistent with the disclosure document when making the decision to purchase this business.

Agree     Disagree

\_\_\_\_\_ initials

7. Except as specifically stated in Item 19 of the disclosure document, no oral, written, visual, or other claim or representations were made which stated or suggested any sales, income, expense, profits, cash flow, tax effects or otherwise was made to me by any person or entity representing the Franchisor; or if made, I did not rely on the same when making my decision to purchase this business.

Agree     Disagree

\_\_\_\_\_ initials

8. I have made my own independent determination that I have adequate working capital to develop, open, and operate my Franchised or RD Business.

Agree     Disagree

\_\_\_\_\_

initials

9. I understand that my investment in this business contains substantial business risks and that there is no guarantee that it will be profitable.

Agree     Disagree

\_\_\_\_\_

initials

10. I acknowledge that the success of my business depends in large part upon my ability as an independent business person and my active participation in the day to day operation of the business.

Agree     Disagree

\_\_\_\_\_

initials

### ***C. Statements of the Franchisor***

THE PARAGRAPHS BELOW ARE POLICIES OF THE FRANCHISOR. IF ANY IS UNTRUE OR IS CONTRADICTED BY YOUR EXPERIENCE, PLEASE PROVIDE AN EXPLANATION.

1. The Franchisor does not permit any employee, salesperson, officer, director or other individual to make or endorse any representations, warranties, projections or disclosures of any type relating to the financial success of the franchise business and, except as specifically stated in Item 19, or by you at the line below, no information as to sales, income, expenses, profits, cash flows, tax consequences or otherwise have been given to the Franchisee. If any such representations have been made to you by any person in the Franchisor's employ, please state so below and immediately inform the Manager of the Franchisor.

\_\_\_\_\_

initials

2. The Franchisor does not permit any employee, salesperson, officer, director, franchisee, or other individual to project any results that a Franchisee can expect in the operation of the business. If any such representations have been made to you by any person, please state so below and immediately inform the Manager of the Franchisor.

\_\_\_\_\_

initials

3. The Franchisor does not permit any promises, agreements, contracts, commitments, representations, understandings, "side deals" or variations or changes in or supplements to the Franchise Agreement except by means of a written addendum thereto signed by you and the Franchisor. If any such deals or changes have been made or promised, please state so below and immediately inform the Manager of the Franchisor.

\_\_\_\_\_ initials

I have completed this Closing Acknowledgement and have disclosed any information that is contrary to any printed statement or have provided any other information that I deem to be important.

Done this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**FRANCHISOR**

**FRANCHISEE**

**NOAH'S ARK FRANCHISING INC.**

\_\_\_\_\_

by: \_\_\_\_\_

by: \_\_\_\_\_

print name: \_\_\_\_\_

print name: \_\_\_\_\_

its: Managing Member

its: \_\_\_\_\_

**INDIVIDUAL FRANCHISEES**

\_\_\_\_\_ Individually

\_\_\_\_\_ Print name

\_\_\_\_\_ Individually

\_\_\_\_\_ Print name

**EXHIBIT 8**  
**State Specific Addendum**

(State specific addenda will go here)