

**Information & Instructions: Forms for forming a franchise business**

# PREVIEW

1. Among the basic legal documents required to establish a franchise are the franchise agreement, an authorization for credit history, a personal information statement, a franchise lease agreement, and a release.
2. A disclosure statement may be required by the Federal Trade Commission. The disclosure statement gives a prospective franchisee information about the proposed investment.
3. The following forms include very specialized agreements. The attorney should review the forms in their entirety, since they are not readily adaptable as fill-in-the-blank forms.

**Information & Instructions: Franchise Agreement**

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FRANCHISE AGREEMENT

1. The following form is a complex franchise agreement written for the benefit of the franchiser.
2. It is written for the establishment of a franchise in a retail consumer environment involving memberships, but it can be modified as needed.

**Form: Franchise agreement**

# FRANCHISE AGREEMENT

# THIS DOCUMENT

This agreement made on \_\_\_\_\_ in the City of [City of Agreement], County of [County], State of Texas, by and between [Franchiser], a Texas Corporation ("Franchiser"), and [Name of Franchisee] and [Name of Franchisee] ("Franchisees").

The Franchiser has expended considerable time, effort and money in the creation and development of the franchised business under the trade name of [Trade Name], owned and registered by Franchiser.

The Franchiser has developed and innovated unique methods of operation, merchandising, promotion, production and quality control of [Type of Franchise] for the operation of the franchised business.

# THANK YOU

It is acknowledged by Franchisees that such methods provide a firm foundation for such franchise operation consisting of the highest standards of training, management, supervision, and quality of products; and

It is desired by the Franchisees to become a licensed franchisee of the Franchiser, thus obtaining the benefits of the unique form of operation developed by Franchiser and the right to engage in and do business under the name of [Trade Name], and

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The Franchiser is willing and agrees to grant the Franchisees such license under the terms and conditions hereafter set forth.

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In consideration of the mutual covenants contained in this agreement and other consideration, acknowledged by the parties to be of substantial value, it is mutually agreed as follows.

### 1. GRANT OF FRANCHISE

1. Franchiser grants to Franchisees, the non-exclusive, nontransferable and personal license to the use of the name [Trade Name] in the operation of the franchised business to be located in [City Where Franchise is to be located], [County of Franchise] County, Texas, in a location to be described in the contemplated Franchise Agreement, upon the terms and conditions in this agreement set forth.

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### 2. THE SYSTEM

2. The "System" is [Franchise System]. The foundation of the System, and the essence of the franchise granted in this agreement, is the adherence by Franchisees to standards and policies of Franchiser providing for the uniform operation of the franchised business, emphasizing this unique system in a pleasant atmosphere administered by courteous, professional service to all members.

### 3. NATURE OF FRANCHISE

3. a. The franchise granted is a franchise to utilize franchiser's unique business techniques, trade name and copyrighted material. Nothing in this agreement shall be construed so as to authorize or permit the use by Franchisees of such trade name and marks, good will, standard operating policies and procedures, or trade secrets at any other location or for any other purpose. Nothing in this agreement shall be construed to require Franchiser to divulge any secrets or processes to anyone. It is agreed that the ownership of all rights, title, and interest in and to Franchiser's trade name and marks, good will, standard operating policies and procedures, and trade secrets is and shall remain solely in Franchiser.

b. Franchisees and persons controlling, controlled by or under common control with Franchisees, will not, without Franchiser's written consent, at any time during the initial, or any renewal, term of this Agreement or thereafter, use any of the licensed rights or any other names, marks, systems, insignia or symbols provided by Franchiser to Franchisees pursuant to this Agreement.

**THANK YOU**

c. Franchisees, and persons controlling, controlled by or under common control with Franchisees, shall at all times treat as confidential all operations manuals and materials designed by Franchiser for use with the System and such other information as Franchiser may designate from time to time for confidential use with the System, and shall use all reasonable efforts to keep such information confidential. All operations manuals, any other manuals or materials designated for use with the System, and all confidential information shall at all times be deemed to be, and shall remain the sole property of Franchiser and Franchisees shall acquire no right, title or interest therein by virtue of its authorization pursuant to this Agreement to possess and use the same.

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4. Franchisees shall have the exclusive right to establish and conduct the franchised business granted in this agreement at the premises known and described as [Franchise Business Address], and only at this location, and no other.

## 5. TERM OF FRANCHISE AGREEMENT

5. a. TERM: The term of this Agreement shall commence on the date of execution of this Agreement by Franchiser at [City of Agreement], Texas, and shall expire 10 years from the date the franchised business opens unless sooner terminated under the terms of this agreement.

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RENEWAL OPTION: Franchisees, at option, may renew the franchise for 10-year terms, provided that prior to the expiration of the initial or renewal term, whichever applies,

(i) Written notice of election is given by Franchisees to Franchiser written notice of its election to renew not less than 10 months, nor more than 10 months, prior to the end of the then current term;

(ii) Franchisees, when notice is given and at the time of renewal, there is not a default of any provision of this Agreement, any amendment hereof, or any other agreement between Franchisees and Franchiser and there is substantial compliance with the terms and conditions of all such agreements during the initial, and any renewal, term of this Agreement;

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(iii) All monetary obligations owed by Franchisees to Franchiser have been satisfied prior to renewal and paid when due throughout the initial and any renewal term of this Agreement;

(iv) Franchiser's then-current standard form of franchise agreement being executed by other franchisees on the renewal date is executed by Franchisees. Franchiser agrees to waive the initial franchise fee provided for in the new agreement executed by Franchisees;

(v) a general release under seal is given by Franchisees, in a form satisfactory to Franchiser, of any and all claims it may have against Franchiser and its officers, directors, shareholders, agents and employees, in their corporate and individual capacities including, without limitation, all claims arising under any federal, state or local law, rule or ordinance;

**THANK YOU**  
(vi) Franchiser is furnished by Franchisees with a copy of the new lease (if the premises have been leased by Franchisees) for the premises or documentary evidence that the term of the original lease has been extended by Franchisees to comply with the renewal term;

(vii) Such remodeling, repairs, replacements and redecoration is completed by Franchisees as Franchiser may require to cause the equipment, fixtures, furnishings and furniture to conform to the plans and specifications to be used on the renewal term.

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(viii) There is attendance and satisfactory completion by Franchisees or a representative approved by Franchiser of maintaining or refreshing training program that Franchiser may require, in its sole discretion, and

(ix) a renewal fee is paid by Franchisees to Franchiser in the amount of \$\_\_\_\_\_.

**6. FRANCHISE, ROYALTY AND OTHER FEES**

6. a. FRANCHISE FEE. Franchisees shall pay Franchiser a franchise fee of \$\_\_\_\_\_. This fee is due in \_\_\_\_\_ installments of \$\_\_\_\_\_ each, with the first installment being due upon the execution of this Franchise Agreement and the balance due upon the completion of the building premises, which in no event shall be later than

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b. ROYALTY FEE. Commencing upon the date business is opened by Franchisees, a monthly royalty fee will be paid by Franchisees to Franchiser in the amount of 100% of the gross monthly sales of Franchisees. Such royalty will be due on a monthly basis on or before the 10th day of the next succeeding month for the previous month; such royalty shall be in the minimum amount of \$\_\_\_\_\_ per quarter. This minimum quarterly royalty shall be in effect for a period of \_\_\_\_\_ years from the date of this Agreement or until this Agreement is terminated as provided in this agreement, whichever first occurs.

c. ADVERTISING FEE. In addition to the royalty defined above, Franchisees shall pay Franchiser an additional 100% percent of gross from new and renewal memberships which shall be added to an advertising fund of Franchiser for the development, promotion and marketing of the franchised business and be designed to benefit the Franchiser and Franchisees. Franchiser shall furnish to Franchisees, upon written request, a quarterly report of all advertising expenditures made from the contributions by Franchisees to the advertising budget.

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**7. ADDITIONAL OBLIGATIONS**

7. [Additional Needs of Franchise].

**8. OBLIGATIONS OF FRANCHISOR**

8. a. Franchiser will furnish to Franchisees the following:

**THANK YOU**

Items Furnished	Item Remains Franchiser Property
[Item Furnished to Franchisee]	
[2d Item]	

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Of the above items, the items so marked shall remain the sole property of the Franchiser and shall be leased to Franchisees in accordance with the Lease Agreement, a copy of which is attached to

this agreement as Exhibit a. All other property listed above shall be the sole property of Franchisees.

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b. Franchiser, at the option of Franchisees, shall lease to Franchisees a standard sign face for the exterior of the establishment.

c. Franchiser shall perform a cosmetic and mechanical update on all equipment in the System leased from the Franchiser every 10 days, with the first such inspection being no less than 10 days after the opening for business by Franchisees.

## 9. OBLIGATIONS OF FRANCHISEES

9. Upon execution of this Agreement by Franchiser, Franchisees agree to perform the following, in addition to its obligations as set forth elsewhere in this Agreement.

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a. Franchisees acknowledge and recognize Franchiser's interest in an exclusive right to the System and its distinguishing characteristics, including the name and style of the franchised business, the unique decor of the business, stylized literature, display and promotional materials, marketing methods, operating procedures and training programs. Unless Franchisees have the written consent of Franchiser, Franchisees agree neither to infringe upon, use, or imitate Franchiser's System or any of its distinguishing characteristics, nor to cause or allow any other person to infringe upon, use, or imitate Franchiser's System or any of its distinguishing characteristics. Franchisees accept the franchise granted in this agreement subject to the covenants, terms and conditions set forth in this Agreement, and agrees to conduct the franchised business only at the location designated in this agreement and in accordance with Franchiser's System, [Trade Name]. Franchisees agree further to operate the business under the name of [Trade Name], or such other name as Franchiser, in its discretion, designates.

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b. Within 10 days of the date of execution of this Agreement by Franchiser, Franchisees, in accordance with Franchiser's specifications, shall totally equip and ready the leased premises for occupancy, and commence business operations.

c. Franchisees shall prominently display and maintain in first-class appearance and condition, at the expense of Franchisees expense, on the land and building comprising the franchise in this agreement, all signs of such nature, form, color, number, illumination and size, and containing such legends and symbols as Franchiser shall require. Franchisees may not display any signs to which Franchiser objects.

**THANK YOU**

(d) Franchisees Agree agrees to maintain a sufficient working capital to cover sales tax deposits, prepaid insurance, utility deposits, business license fees, etc., as well as to cover normal operating expenses and needs.

(e) Consistent with paragraph 9b. , Franchisees, at the expense of Franchisees, shall lease, purchase or otherwise acquire all fixtures, equipment, supplies and materials designated by Franchiser that are required for the operation of the franchise.

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(f) At the option of Franchisees, Franchisees may lease from Franchiser a standard sign face for the exterior of the leased premises under a lease agreement that shall be attached to this Agreement as Exhibit B and incorporated in this agreement.

(g) Each party shall notify the other party in writing within 10 days of the commencement of any action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the financial condition of Franchisees or the ability of Franchisees to meet obligations hereunder.

(h) Franchisees shall at all times during the initial, and any renewal, term of this franchise, at the sole expense of Franchisees maintain the interior and exterior of the premises, including all equipment, signs and fixtures, in good, clean, attractive, and safe condition and repair, and will replace, repair and refurbish the same in necessary. During the initial, and any renewal, term of this franchise, Franchisees shall, upon Franchiser's request and at Franchiser's direction, refurbish the premises to comply with current standards as prescribed by Franchiser.

(i) Franchisees shall conspicuously post at the franchise location a notice to the effect that the business is a franchised business operated independently of the franchiser.

(j) Franchisees, at the sole expense Franchisees, shall comply with all federal, state, and local laws, ordinances, and regulations affecting the business.

(k) Franchisees shall diligently and fully devote best efforts to the business.

(l) Franchisees shall allow Franchiser or its authorized agent to enter the premises at reasonable times to examine and inspect the fixtures, furnishings, equipment, products, and supplies contained therein, to determine whether Franchisees are operating in compliance with the standards and policies of the System. If Franchisees should fail to operate the business in accordance with any of the standards and requirements prescribed by Franchiser, Franchiser may, at its option and at the expense of Franchisees, and in addition to any other remedies of Franchiser hereunder or at law, place a representative of Franchiser on the premises until Franchiser determines that there is compliance.

(m) Franchisees shall procure and maintain in full force and effect an insurance policy or policies protecting Franchiser and Franchisees and the officers and employees of Franchisees against any loss, liability or expense from personal injury, death, property damage or other event arising or occurring upon or in connection with the premises or by reason of operation by Franchisees upon or occupancy of the premises, whether the same occurs or the cause arises on or off the premises. Such policy or policies shall be written by a responsible insurance company or company satisfactory to Franchiser and shall include the following:

General liability including products, bodily injury in the amount of \$\_\_\_\_\_ for each person and \$\_\_\_\_\_ for each accident;

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General liability including products, property damage in the amount of \$ \_\_\_\_\_ for each accident and \$ \_\_\_\_\_ in the aggregate.

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Franchisees shall furnish to Franchiser a certificate of insurance within 10 days from the date of this Franchise Agreement.

(n) Franchisees agree to protect, defend and indemnify Franchiser, Franchiser's subsidiaries, affiliates and designees, and hold them harmless from and against any and all costs, expenses, attorney fees, court costs, losses, liabilities, damages, claims and demands of every kind or nature, arising in any way out of the occupation, use or operation of the franchised business or any fixtures, equipment, goods, merchandise or products used or sold in or at the franchised business.

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(o) Franchisees shall execute and submit a monthly written report on Franchiser's prescribed form, of its gross sales from the reported month's operation and any additional information which Franchiser may reasonably request. This report must be mailed to Franchiser together with payment of the monthly royalty fees described in paragraph 6b. in this agreement on or before the 10th day of the next succeeding month. If requested by Franchiser, Franchisees will furnish more frequent reports of gross sales, by telephone or as otherwise specified by Franchiser.

(p) Franchisees shall keep books of account in accordance with good accounting practice which accurately show the gross sales of the business and shall, at its expense, deliver to Franchiser, within 10 days after the end of each fiscal year of the business, reports of gross sales from the year's operation and amounts expended on advertising, certified by an independent certified public accountant selected by Franchisees and approved by Franchiser. Franchisees will permit Franchiser or its authorized agents to inspect and examine the books and records of Franchisees at reasonable times. If any audit discloses that reported gross sales of Franchisee have been understated, Franchisees shall immediately pay to Franchiser the amount due, together with interest as prescribed in paragraph 6b. of this agreement. In addition, if such audit discloses that the reported gross sales of Franchisees have been understated to the extent of 100% percent or more, Franchisees shall reimburse Franchiser for any and all expenses connected with the audit.

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## 10. NON-COMPETITION

10. a. Except as otherwise authorized in writing by Franchiser, as long as this Agreement shall be in effect, and for a period of 10 years thereafter, where Franchiser has terminated this Agreement for cause, where Franchisees have terminated this Agreement without cause, or where this Agreement, the franchise, or any other interest hereunder has been sold, assigned, or transferred by Franchisees, Franchisees may not in any capacity directly or indirectly engage in, either as principal, agent, employee, officer, or director, or be financially interested or associated with, any business substantially similar to the franchised business within a radius of 10 miles of the franchised location.

b. Covenants contained in this paragraph 10 shall be construed as severable and independent and shall be interpreted in a public consistent with the requirements of reasonableness and equity. Any judicial reformation of these covenants consistent with this interpretation shall be

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enforceable as though contained in this agreement and shall not affect any other provisions or terms of this Agreement.

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## 11. TRANSFER AND ASSIGNMENT

11. a. Franchisees may neither sell, assign, transfer, nor encumber this Agreement, the franchise, or any other interest hereunder, nor suffer or permit any such assignment, transfer, or encumbrance to occur by operation of law or otherwise, without the prior written consent of Franchiser.

b. In the event of the death, disability or permanent incapacity of Franchisees, Franchiser shall not unreasonably withhold its consent to the transfer of all the interest of Franchisees to any spouse, heirs, or relatives, by blood or marriage, or legal representative of Franchisees, whether such transfer is made by will or operation of law, if the requirements of paragraph 11(e) hereof have been met and the written consent of Franchiser has been obtained. If the consent of Franchiser is not obtained, Franchisees, or, where applicable, heirs or legal representative, shall have a reasonable period of time to dispose of the interests of Franchisees hereunder, which disposition shall be subject to all the terms and conditions for transfers under this Agreement. If interests of Franchisees are not disposed of within 10 days, the franchise shall automatically terminate.

c. If Franchisees or the successor of Franchisees is a corporation or partnership or similar entity, it is agreed as follows:

(i) The Articles of Incorporation and by-laws or the Partnership Agreement shall reflect that the issuance and transfer of voting stock, or other ownership interest, is restricted by the terms of this Agreement. Franchisees shall furnish Franchiser at the time of the execution of this Agreement or assignment to the corporation or partnership, an agreement executed by all stockholders or partners of Franchisees, stating that no stockholder or partner will sell, assign or transfer voluntarily or by operation of law any security of Franchisees, or other ownership interest in the franchised business to any person or entity other than existing stockholders or partners, to the extent permitted hereunder, without the prior written consent of Franchiser. All securities issued by Franchisees will bear the following legend, which shall be printed legibly and conspicuously on each stock certificate or other evidence of ownership interest: "The transfer of these securities is subject to the terms and conditions of a Franchise Agreement with [Franchiser], dated \_\_\_\_\_ . Reference is made to this Agreement and to the restrictive provisions of the Articles and by-laws of this corporation."

(ii) If Franchisees or successor are organized as a corporation the capital stock thereof shall not be sold, assigned, pledged, mortgaged, or transferred without the prior written consent of Franchiser.

(d) If there is desire by Franchisees to form a closely held corporation for the purpose of acting as a Franchisee under this Agreement, the following terms and conditions must be complied with, in addition to the conditions imposed under paragraph 11(c) above.

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(i) Franchisees must be the owner of the controlling stock interest in the corporation and the principal executive officer thereof.

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(ii) Franchisees must comply with the provisions of paragraph 11(e);

(iii) All stockholders shall enter into an agreement under seal with Franchiser, on Franchiser's standard form, guaranteeing the full payment of the corporation's money obligations to Franchiser and agreeing to be bound individually by the non-competition obligation stated hereunder; and

(iv) Franchisees must continue to meet its obligations under the non-competition provisions of this Agreement.

(e) While Franchiser agrees not to unreasonably withhold its consent to a sale, assignment, or transfer by Franchisees, consent to such transfer may be refused unless:

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(i) all obligations of Franchisees created by this Agreement and all other related franchise documents, and the relationship created are assumed by transferee;

(ii) all ascertained or liquidated debts of Franchisees to Franchiser are paid in full to Franchiser prior to such transfer;

(iii) Franchisees are not in default under this Agreement or any other agreement with Franchiser;

(iv) transferee satisfactorily completes the training required of new franchise owners on Franchiser's then current terms prior to the date of transfer;

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(v) Franchiser is satisfied that transferee meets all the requirements of Franchiser's new franchise owners, including, but not limited to, good reputation and character, business experience, operational ability, financial strength, and other business considerations;

(vi) transferee executes or, in appropriate circumstances, causes all necessary parties to execute Franchiser's standard form of Franchise Agreement for the franchised business and such other ancillary agreements being required by Franchiser of new franchise owners on the date of transfer;

(vii) a general release under seal is executed by Franchisees, in a form satisfactory to Franchiser, of any and all claims against Franchiser; and

**THANK YOU**

(viii) a transfer fee is paid by Franchisees or transferee to Franchiser a transfer fee in an amount specified by Franchiser, sufficient to cover Franchiser's reasonable costs in effecting the transfer and in providing training and other initial assistance to transferee.

(f) If Franchisees desire to sell, assign or transfer this Agreement, the franchise, or any other interest therein, the transfer is sought to be made upon the death, disability or permanent incapacity of Franchisees, to any spouse, heirs, relatives, or legal representative of Franchisees,

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Franchisees must first receive and desire to accept a bona fide written offer from a third party to purchase the franchise of Franchisees and all rights and interests in this Agreement. Franchiser shall have the option, exercisable within 10 days after written notice and receipt of a copy of such offer and the other information set forth in this paragraph, to purchase the franchise and all rights and interests in this Agreement. In order that Franchiser have information sufficient to enable it to determine whether to exercise its option, Franchisees shall deliver to Franchiser certified financial statements as of the end of the most recent fiscal year of Franchisees and such other information about the business and operation of Franchisees as Franchisees have provided the third party. If Franchiser does not exercise its option, Franchisees may, within 10 days from the expiration of the option, sell, assign or transfer the franchised business and all rights and interests under this Agreement to the third party if Franchiser has consented to such transfer as required by this paragraph 11. Any material change in the terms of the offer from the third party prior to closing of the sale to such third party shall constitute a new offer, subject to the same rights of first refusal by Franchiser as in the case of the initial offer. Failure by Franchiser to exercise the option afforded by this paragraph shall not constitute the waiver of any other provision of this Agreement, including all of the requirements of this paragraph 11 with respect to the proposed transfer.

(g) This Agreement shall inure to the benefit of Franchiser, its successors, and assigns, and Franchiser shall have the right to sell, assign, or transfer all or any part of its interests in this agreement to any person or legal entity.

## 12. OPERATION IN THE EVENT OF ABSENCE, DISABILITY, OR DEATH

12. In order to prevent any interruption in the business that would cause harm to this business and depreciate its value, Franchiser authorizes Franchiser in the event that Franchisees are absent or incapacitated by reason of illness, death, or otherwise, and is not, therefore, in the sole judgment of Franchiser, able to operate the franchised business, to operate the business for so long as Franchiser deems necessary and practical, and without waiver of any other rights or remedies Franchiser may have under this Agreement. All moneys from the operation of the business during such period of operation by Franchiser shall be kept in a separate account, and the expenses of the business of Franchisees, including reasonable compensation and expenses for Franchiser's representative, shall be charged to this account. If Franchiser, in its sole discretion, temporarily operates the business as provided in this paragraph, there is agreement by Franchisees to save harmless and fully indemnify Franchiser and any representative of Franchiser who may act hereunder.

## 13. DEFAULT AND TERMINATION

13. a. The occurrence of any of the following events shall constitute a default under this Agreement.

(i) the failure by Franchisees to open for business within 10 days from the date of this Agreement, except as provided for in paragraph 14 of this agreement;

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The use by Franchisees of the System or the names, marks, insignia, symbols or signs provided by Franchiser to Franchisees, or otherwise materially impairing the good

will associated therewith, or the use by Franchisees at the business of any names, makes, systems, insignia or symbols not authorized by Franchiser

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(iii) the failure by Franchisees to remit to Franchiser any payments when due;

(iv) the failure by Franchisees to submit to Franchiser the financial or other information required under this Agreement;

(v) the attempt by Franchisees to effect any assignment other than in accordance with paragraph eleven (11) hereof;

(vi) the default by Franchisees under any lease or sublease of the business site or loss of the right to possession thereof for any reason whatsoever;

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(vii) the making by Franchisees of any misrepresentation to Franchiser in connection with obtaining this Agreement or in conducting the business franchised and licensed hereunder;

(viii) the failure by Franchisees to obtain Franchiser's prior written consent or approval where such is expressly required by this Agreement;

(ix) the abandonment by Franchisees of the business. For purposes of this Agreement, "abandonment" shall mean failure by Franchisees, at any time during the term of this agreement, to keep the business open and operating for business during the minimum days and hours specified by Franchiser for an aggregate of 10 days in any 10-day period;

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(x) insolvency of Franchisees, or that of any person controlling, controlled by or under common control with Franchisees, by reason of inability to pay its debts as they mature; being adjudicated bankrupt; filing or having filed against it a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States; or a receiver, permanent or temporary, of the business, assets or property of Franchisees, or any such person, or any part thereof, being appointed by a court of competent authority; or Franchisees or any such person requesting the appointment of a receiver or making a general assignment for the benefit of creditors; or a final judgment against Franchisees or any such person in the amount of \$ \_\_\_\_\_ or more remaining unsatisfied of record for 10 days or longer; or the bank accounts, property or receivables of Franchisees or any such person being attached and such attachment proceedings not being dismissed within a 10 day period; or execution being levied against the business or property of Franchisees or any such person, or a suit to foreclose any lien or mortgage against the business, the premises thereof or the equipment thereon being instituted and not dismissed within 10 days;

**THANK YOU**

(xi) Conviction under any law providing for criminal penalties of Franchisees, that of any person controlling, controlled by, or under common control with Franchisees.

b. Upon the occurrence of any of the events set forth in paragraph 13a., Franchiser may, without prejudice to any other right or remedy contained in this Agreement or provided by law or equity, terminate this Agreement. Such termination shall be effective 10 days after written

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notice is given by Franchiser to Franchisees of any of the events set forth in paragraph thirteen 13a. (ii) through (viii), if such default is not cured within such 10 - day period. Termination shall be effective immediately and without prior notice, however, upon occurrence of any of the events specified in paragraph 13a. (I), (ix), (x), and (xi).

c. In the event of termination of this Agreement for any reason, or upon expiration of this Agreement, or upon the sale, assignment or transfer of this Agreement by Franchisees, the franchise, or any other interest hereunder, Franchisees shall immediately discontinue the use of all trade names, trademarks, signs, structures, and forms of advertising depicting Franchiser, its symbols, trademarks, business and products. So far as Franchisees may lawfully do so, Franchisees shall immediately effect the removal of or changes in signs, building, and structures as Franchiser shall reasonably direct so as to eliminate Franchiser's name, symbols, and trademarks from the business, and to effectively distinguish the business from its former appearance and from any other franchise in Franchiser's system. If Franchisees shall ever request, fail or omit to make, or cause such changes to be made, then Franchiser shall have the right to enter upon the business premises, by reasonable force if necessary, without being guilty of trespass or any other tort, and without prejudice to Franchiser's other rights and remedies, for the purpose of making or causing to be made such changes at the expense of Franchisees and/or for the purpose of taking possession of and removing Franchiser's symbols and trademarks, without legal process. Franchisees shall at the option of Franchiser also remove and deliver to Franchiser at the depreciated value on the books of Franchisees all or any part of the paper products and other articles bearing Franchiser's name. The value of any article to be taken, which is annexed to the premises held by Franchisees, shall be at its depreciated value on the books of Franchisees.

(d) Termination and/or expiration of this Agreement shall not affect the rights of Franchisees to operate a franchise business in accordance with the terms and conditions of any other Franchise Agreement(s) to which Franchisees are a party.

#### 14. UNAVOIDABLE DELAYS

14. Delays in the performance of any duties hereunder which are not the fault of, and not within the reasonable preventive control of, the party due to perform, including but not limited to fire, flood, labor disputes, natural disasters, acts of God, civil disorders, riots, insurrections, work stoppages, slowdowns or disputes, or other similar events, shall not constitute a default in the party's performance, but the parties shall extend the time of performance for a period of time equivalent to the length of delay, or for such other reasonable period of time as agreed to between the parties.

#### 15. SUCCESSORS AND ASSIGNS

## THANK YOU

15. Franchiser's rights under this Agreement shall inure to the benefit of its successors and assigns.

#### 16. INVALID OR UNENFORCEABLE PROVISIONS

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16. If any provision of this Agreement, or its application to any person or circumstance, is invalid or unenforceable, then the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected.

## 17. RELATIONSHIP BETWEEN PARTIES

17. The relationship between the parties is that of independent contractors. No partnership, joint venture, or relationship of principal and agent is intended. Franchisees may not pledge Franchiser's credit or bind it to any obligation, and Franchisees shall indemnify and hold Franchiser harmless from and against all claims, demands, costs, and expenses in connection with the business.

## 18. WAIVER

18. The failure of Franchiser to exercise any power given to it under this agreement, or to insist on strict compliance by Franchisees with any obligation or condition, and no custom or practice of the parties at variance with the terms of this agreement, shall constitute a waiver of Franchiser's right to demand exact compliance with its terms. Waiver by Franchiser of any particular default by Franchisees shall not affect or impair Franchiser's rights with respect to any subsequent default of the same or of a different nature; nor shall any delay or omission of Franchiser to exercise any rights arising from a default affect or impair Franchiser's rights as to this default or any subsequent default.

## 19. NOTICES

19. All notices shall be hand-delivered or sent by registered or certified mail to Franchiser at [Address1], [City], TX, Zip Code, and to Franchisees at the business location specified in this agreement, unless Franchiser and/or Franchisees may from time to time send to the other written notice of change of address.

## 20. APPLICABLE LAW

20. This Agreement shall be governed in all respects and aspects by the laws of the State of Texas, and the parties agree that any legal action concerning this Agreement shall be brought in a court of competent jurisdiction, in the County of [County], State of Texas.

## 21. TERMINOLOGY

21. All terms and words used in this agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this agreement or any section, paragraph, or clause in it may require, as if such work had been fully and properly written in the appropriate number and gender.

## 22. ACCEPTANCE

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22. This Agreement shall not be binding until it is executed by Franchiser at Franchiser's principal place of business.

**PREVIEW**

### 23. STATUS OF AGREEMENT

23. a. This Agreement and the exhibits attached to this agreement and incorporated in this agreement, if any, contain the entire agreement of the parties and there are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties to this agreement other than those set forth and duly executed in writing. No agreement of any kind shall be binding upon either party unless and until it has been made in writing and duly executed by both parties.

b. Upon execution of this Agreement by Franchiser, all previous agreement contracts, arrangements or undertakings of any kind relative to the franchise granted in this agreement are canceled, and all claims and demands are fully satisfied.

**PLEASE DO NOT COPY**

### 24. AMENDMENT OF AGREEMENT

24. This Agreement may not be modified or amended except by written agreement executed by both parties.

### 25. COSTS AND EXPENSES OF ENFORCEMENT

25. The prevailing party shall recover the reasonable costs and expenses, including reasonable attorney fees, incurred by such party in connection with any legal proceeding involving the enforcement of any of the provisions of this Agreement.

**THIS DOCUMENT**

### 26. CAPTIONS

26. The paragraph headings throughout this Agreement are for convenience and reference only, and the words contained in this agreement shall not be held to expand, modify, amplify, or aid in the interpretation, construction or meaning of this Agreement.

### 27. REPRESENTATIONS

27. No representation, promise, guaranty, or warranty was made to induce the execution hereof or in connection herewith that is not expressly contained in this Agreement. It is recognized by Franchisees that neither Franchiser nor any other person can guarantee the success of Franchisees in the franchised business. By the execution and acceptance of this Agreement, the parties to this Agreement acknowledge that they have read it and understand each provision. This Agreement, although drawn by Franchiser, shall be construed fairly and reasonably, and not more strictly against one party than against the other party to this agreement.

**THANK YOU**

### 28. DATE OF EFFECTIVENESS

28. This Agreement shall become effective upon execution by Franchiser.

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Signed on \_\_\_\_\_

**PREVIEW**

\_\_\_\_\_  
[Name of Franchisee]. FRANCHISEE

\_\_\_\_\_  
[Name of Franchisee]. FRANCHISEE

**PLEASE DO NOT COPY**

FRANCHISOR

\_\_\_\_\_  
[Franchiser]

By:

\_\_\_\_\_  
[Representative]

**THIS DOCUMENT**

**THANK YOU**

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