

contact will or may yield a termination of the franchise relationship or the employment of such other franchisees or employees from Franchisor.

5. Return of Materials. Franchisee will, at any time upon the request of the Franchisor, and in any event upon the termination of the Franchise Agreement, immediately return and surrender to the Franchisor originals and all copies of all records, notes, memoranda, price lists, supplier lists, drawings and other documents and other property belonging to the Franchisor, created or obtained by Franchisee as a result of or in the course of or in connection with the Franchise Agreement. Franchisee acknowledges that all such materials are, and will always remain, the exclusive property of the Franchisor.

6. Inventions and Other Matters. Franchisee agrees that all ideas, inventions, discoveries or improvements (collectively the "Inventions") which Franchisee, individually or with others, may originate or develop while operating the Franchised Business, relating to the business or products of Franchisor or the actual or demonstrably anticipated research or development of Franchisor, or which result from any work performed by Franchisee during the franchise relationship with Franchisor, shall belong to and be the sole property of Franchisor. Franchisee further agrees, without further consideration, to promptly disclose each such Invention to the Franchisor, and to such other individuals as the Franchisor may direct. Franchisee further agrees to execute and to join others in executing such applications, assignments and other documents as may be necessary or convenient to vest in the Franchisor full title to each such Invention and as may be necessary or convenient to obtain United States and foreign patent, trademark and copyright protection thereon to the extent Franchisor may so choose. Franchisee further agrees to testify in any legal proceeding relative to such invention whenever requested to do so by Franchisor.

Franchisee agrees that he will not at any time, except as authorized by Franchisor, publish or disclose any information or knowledge concerning any Inventions.

For purposes of this Agreement, an Invention shall be deemed to have been made during the period of the Franchise Agreement if during such period, the Invention was conceived, in part or in whole, or first actually reduced to practice, and the Franchisee agrees that any patent application filed within a year after termination of his Franchise Agreement shall be presumed to relate to an Invention made during the term of his Franchise Agreement unless Franchisee can provide evidence as to the contrary.

This paragraph 6 shall not apply to an Invention or property for which no equipment, supplies, facility, confidential or proprietary information or other trade secret information of the Franchisor was used and which was developed entirely on Franchisee's own time, unless (a) the invention relates (i) to the business of the Franchisor or (ii) to the actual or demonstrably anticipated research or development of Franchisor, or (b) the invention results from any work performed by the Franchisee for the benefit of his Franchise.

7. Application to Employees and Affiliates. Franchisee agrees to obtain and deliver to Franchisor an Agreement, in substance identical to this Agreement, which has been

executed by each of its Affiliates and employees within ten (10) days after each Affiliate or employee assumes that status with Franchisee.

8. Location of Franchisee. Upon the termination of the Franchise Agreement, and for two (2) years thereafter, Franchisee shall immediately notify Franchisor of each employment or agency relationship entered into by Franchisee, and each corporation, proprietorship or other entity formed or used by the Franchisee, the business of which, directly or indirectly, is similar to that of the business of the Franchisor. Each Affiliate or employee of Franchisee who executes this Agreement shall similarly keep Franchisee aware of their employment for the same two-year period following termination of their relationship with Franchisee, who will in turn notify Franchisor of the then-present employment status of each Affiliate or employee.

9. Remedies.

(a) Franchisee further acknowledges that in the event the Franchise Agreement terminates for any reason, he will be able to earn a livelihood without violating the foregoing restrictions that his ability to earn a livelihood without violating such restrictions is a material condition to his acquiring a franchise from Franchisor.

(b) Franchisee acknowledges that compliance with the restrictive covenants set forth in paragraphs 2 through 8 herein is necessary to protect the business, goodwill and Proprietary Information of Franchisor and that a breach of these restrictions will irreparably and continually damage Franchisor for which money damages may not be adequate. Consequently, Franchisee agrees that, in the event that he breaches or threatens to breach any of these covenants, Franchisor shall be entitled to both (1) a temporary, preliminary or permanent injunction to prevent the continuation of such harm and (2) money damages insofar as they can be determined. Nothing in this Agreement, however, shall be construed to prohibit Franchisor from also pursuing any other remedy, the parties having agreed that all remedies are to be cumulative. The parties expressly agree that the Franchisor may, in its sole discretion, choose to enforce the restrictive covenants in Paragraphs 2 through 8 hereof, in part, or to enforce any of said restrictive covenants to a lesser extent than that set forth herein. As money damages for the period of time during which Franchisee violates these covenants, Franchisor shall be entitled to recover the amount of fees, compensation or other remuneration earned by Franchisee as a result of any such breach.

10. Revision. In the event that any such of the provisions, covenants, warranties or agreements in this Agreement are held to be in any respect an unreasonable restriction upon or are otherwise invalid, for whatsoever cause, then the court so holding shall reduce and is so authorized to reduce, the territory to which it pertains and/or the period of time in which it operates, or the scope of activity to which it pertains or effect any other change to the extent necessary to render any of the restrictions of this Agreement enforceable.

11. Severability. Each of the terms and provisions of this Agreement is to be deemed severable in whole or in part and, if any term or provision of the application thereof in any circumstances should be invalid, illegal or unenforceable, the remaining terms and provisions or the application thereof to circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected thereby and shall remain in full force and effect.

12. Binding Agreement. This Agreement shall be binding upon the parties, their heirs, successors, personal representatives and assigns. Franchisor may assign this Agreement, or part thereof, to any successor in interest to the business of Franchisor. Franchisee may not assign any of its obligations or duties hereunder.

13. Controlling Law and Jurisdiction. This Agreement shall be governed by and interpreted and construed according to the laws of the State of Minnesota. Franchisee hereby consents to the jurisdiction of the state and federal courts in Minnesota in the event that any disputes arise under this Agreement.

14. Entire Agreement. This instrument contains the entire agreement of the parties with regard to the subject matter hereof, may not be changed orally, but only by an agreement in writing signed by the parties hereto.

15. Failure to Enforce. The failure to enforce any of the provisions of this Agreement shall not be construed as a waiver of such provisions. Further, any express waiver by any party with respect to any breach of any provision hereunder by any other party shall not constitute a waiver of such party's right to thereafter fully enforce each and every provision of the Agreement.

16. Survival. The obligations contained in this Agreement shall survive the termination, for any reason whatsoever, for cause or otherwise, of the franchise relationship between the Franchisee and the Franchisor.

17. Headings. All numbers and heading of paragraphs are for reference only and are not intended to qualify, limit or otherwise affect the meaning or interpretation of any paragraph.

18. Notices. All notices which are required, permitted or contemplated hereunder to be given or made shall be given or made in writing by certified mail (return receipt requested) to the Franchisor at 10824 Nesbitt Avenue South, Minneapolis, MN 55437 Attention: James F. Spellmire, and to the Franchisee at \_\_\_\_\_.

19. Gender. The masculine, feminine or neuter pronouns used herein shall be interpreted without regard to gender, and the use of the singular or plural shall be deemed to include the other whenever the context so requires.

20. Attorney Fees. Should any legal action be necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to collect attorney fees and costs incurred along with other recoverable damages.

21. Counterparts. This document may be executed in two or more counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[The remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year above written.

Franchisor

Franchisee

AERO-COLOURS, INC.

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

\_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

**NON-COMPETITION AGREEMENT  
AND NON-DISCLOSURE AGREEMENT**

[To be completed at time of execution of Agreement]

M1:0018011.02

## ATTACHMENT H

### PERSONAL GUARANTEE OF PERFORMANCE

**FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned unconditionally guarantees the full and prompt performance by \_\_\_\_\_ (“Franchisee”) of all of Franchisee’s obligations under the \_\_\_\_\_ Franchise Agreement with Aero-Colours, Inc. (as the same may be amended, extended, or in any manner modified from time to time) (“Franchise Agreement”) and all related obligations. Such Guarantee specifically includes, without limitation, the full and prompt payment when due of all obligations of Franchisee under the Franchise Agreement and all Promissory Notes created as a consequence of the franchise relationship.**

**Guarantor further acknowledges and agrees with Aero-Colours, Inc. that:**

**1. If Franchisee fails to make a payment when due, Aero-Colours, Inc. may deliver to Guarantor written demand that Guarantor make said payment. Guarantor shall then pay to Aero-Colours, Inc. the amount owed by Franchisee under the Franchise Agreement or Note.**

**2. Guarantor waives notice of acceptance, notice of dishonor, and any other notices which may otherwise apply to this Guarantee.**

**3. No modification, supplementation, extension, renewal, or change to the Franchise Agreement or any Note, or any waiver, forbearance, or other failure to insist on strict adherence to the terms thereof, shall operate to release Guarantor from this Guarantee even if Guarantor is not made aware of the same. It is anticipated that Guarantor will be personally involved in operating the Franchised Business. It shall be Guarantor’s obligation to obtain from Franchisee any information Guarantor deems important to the management of his/her affairs.**

**4. Aero-Colours, Inc. is not obligated to sue Franchisee or attempt to foreclose on Franchisee’s assets before seeking payment from Guarantor pursuant to this Guarantee.**

**5. Guarantor cannot assign his/her obligations under this Guarantee without the prior written consent of Aero-Colours, Inc., which consent shall not be unreasonably withheld if Guarantor is selling his/her interest in the Franchised Business to the**

**proposed assignee and the proposed assignee establishes that he/she has the financial wherewithal and desire to honor all obligations under this Guarantee.**

**6. Guarantor will pay to Aero-Colours, Inc. all costs, including reasonable attorneys' fees, incurred by Aero-Colours, Inc. in collecting what is owed under this Guarantee.**

**7. This Guarantee will be binding upon the heirs, legal representatives, successors, and permitted assigns of Guarantor, and shall inure to the benefit of the successors and assigns of Aero-Colours, Inc.**

**8. This Guarantee continues until all existing and potential obligations of Franchisee to Aero-Colours, Inc. are fully and finally satisfied. If Franchisee has asserted a claim or proceeding against Aero-Colours, Inc., this Guarantee shall continue in existence until that claim or proceeding is finally resolved and Franchisee's potential liability for costs and attorneys' fees has been determined.**

**9. This Guarantee is deemed to have been made in the State of Minnesota. The arbitration clause of the Franchise Agreement (Section 11.7) is incorporated herein by reference and Guarantor agrees to have any dispute arising under this Guarantee resolved through binding arbitration.**

**IN WITNESS WHEREOF, Guarantors have executed this Guaranty, intending to be bound hereby.**

**Dated: \_\_\_\_\_, 20\_\_**

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Guarantor