

# EXHIBIT B

STORE # \_\_\_\_\_

LOCATION \_\_\_\_\_

FRANCHISEE \_\_\_\_\_

**FOOT SOLUTIONS, IN C.**  
**FRANCHISE AGREEMENT**



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This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between FOOT SOLUTIONS, INC., a Georgia Corporation, with its principal office at 2359 Windy Hill Road, Suite 220, Marietta, Georgia 30067, ("Franchisor"), and \_\_\_\_\_ whose principal address is \_\_\_\_\_ ("Franchisee").

## 1. RECITALS OF FACT

This Agreement is made and entered into by the Franchisor and Franchisee with reference to the following facts:

A. Franchisor, as the result of the expenditure of time, skill, effort and money, has developed and owns a unique system ("System") for businesses specializing in specialty retail health, wellness and foot care centers providing comfort shoes and accessories, foot orthotics, computerized foot scanning, and custom inserts for shoes for work, dress and play.

B. The system includes names, trademarks, service marks, logo types and symbols ("Names and Marks"), business products, a standard Store design, certain equipment and other techniques and features.

C. Certain distinguishing characteristics of the systems include special techniques for: fitting customers properly, on-site shoe and insert modification, management, promotion, operation, advertising, telephone sales, programs, methods/procedures for keeping books and records, sales and technical training and materials; all of which may be changed, improved, and further developed by Franchisor from time to time.

D. The Franchisor has experience, know-how, and the ability to provide assistance and guidance in the operation of a retail specialty foot care store, providing comfort shoes and accessories, foot orthotics, computerized foot scanning, and custom accommodative inserts for comfort, work, dress, or play shoes.

E. The Franchisor grants to qualified persons a Franchise to use the Name and Marks, and to own and operate a FOOT SOLUTIONS Store ("Store"), which offers the services authorized by the Franchisor, utilizing the business systems, formats, methods, specifications, standards, and operating procedures.

F. The Franchisee has executed a completed a FOOT SOLUTIONS questionnaire for a Franchise to own and operate a Store.

G. The Franchisor has approved Franchisee's questionnaire in reliance upon all of the representations and warranties made, and grants to Franchisee a Franchise to own and operate a Store, and to use the Names and Marks in such operation.

H. The Franchisee acknowledges he has investigated the Franchisor and the Franchise program

fully and completely, and agrees to adhere to all elements of this Franchise Agreement.



## 2. GRANT OF FRANCHISE

### A. Location of Store

Franchisor grants to Franchisee, and Franchisee accepts, a Franchise to operate the Store, utilizing the System for on-premises associated sales and services, at the location agreed upon by Franchisor and Franchisee, as described in Schedule A ("Territory"). Franchisor also grants and Franchisee accepts, a limited Franchise to the use of only such Names and Marks, and only in connection with the operation of the Store. The Franchisee may move the Store to a new location only upon prior written approval of Franchisor, approval of which will not be unreasonably withheld.

### B. Territory

The Franchisor agrees during the term of this Agreement, (provided Franchisee is in full compliance with this Agreement), that Franchisor will not operate or grant a Franchise to operate a business under the System at a location within the protected Territory, as defined in Schedule A - Description of Territory.

## 3. TERM AND RENEWAL

### A. Term

Subject to the provisions in this Agreement, the term of this Franchise shall expire twenty (20) years from the date of execution of this Agreement.

### B. Renewal

Franchisee may opt to renew this Franchise for four (4) additional periods of ten (10) years each, subject to the following conditions, which must be complied with prior to renewal:

1. Franchisee shall give Franchisor written notice of election to renew (not less than six (6) months or more than twelve (12) months), prior to the end of the then current term;
2. Franchisee shall not be in default of any provision or amendment of this Agreement, or any other agreement between Franchisor and Franchisee. Franchisee shall have substantially complied with all conditions of all agreements during the effective term.
3. Franchisee shall complete such Store maintenance and/or renovation reasonably required in writing by Franchisor.

4. Franchisee shall satisfy all monetary obligations owed by Franchisee to Franchisor, subsidiaries, and affiliates, and shall have timely met these obligations throughout the previous term;

5. Franchisee shall execute, for the renewal term, Franchisor's then current form of Franchise Agreement, which Agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement; and shall pay to Franchisor on the date of execution of the renewal Franchise Agreement, a renewal fee in the amount of ten percent (10%) of the then current franchise fee.

6. Franchisee shall comply with Franchisor's then current qualification and training requirements; and

7. Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor, subsidiaries, and affiliates, and their respective officers, directors, agents and employees.

#### 4. INITIAL FRANCHISE FEE

In consideration of the Franchise granted herein, Franchisee shall pay to Franchisor an initial franchise fee of: Twenty-Seven Thousand, Five Hundred Dollars (\$27,500.00) for the FOOT SOLUTIONS specialty retail foot care services business. Said initial franchise fee is not refundable, and is fully earned by the Franchisor upon execution by the Franchisee of the Franchise Agreement.

#### 5. ROYALTY/SERVICE FEES

Franchisee agrees to pay to Franchisor each month no later than the 15<sup>th</sup> of the month a monthly Royalty Fee of Five Percent (5%) of the "Net Sales." Franchisee agrees to report all Store sales to FOOT SOLUTIONS, INC. on a monthly basis, no later than the 5<sup>th</sup> of each month. All monthly payments required by this section and the sections relating to Franchisee's payment of National and Local Advertising Fees shall be due and payable to Franchisor by the 15<sup>th</sup> of each month with respect to Net Sales during the preceding calendar week, and shall be submitted to Franchisor together with any statements or reports regarding the basis of such payments as required by Franchisor from time to time.

In this Agreement, the term "Net Sales" shall mean the amount of all receipts from the sale of any goods or services of the Store, less returns. "Net Sales" shall not include any sales taxes or other taxes collected by Franchisee for transmittal to the appropriate taxing authority.

A. Payment Procedure. Franchisee shall execute and deliver to Franchisor appropriate pre-authorized draft forms for Franchisee's operating account, so that Franchisor may withdraw money on a timely basis to collect royalty payments national advertising fund payments, and any other charges owed by Franchisee. Franchisee shall make the funds available to Franchisor for withdrawal no later than the due date for payment. Franchisee shall report Net Sales each month by electronic mail, facsimile or other electronic means specified by Franchisor by the Fifth of each month using the format specified in the Foot Solutions Operations Manual, for the business week ended on Sunday. If Franchisee fails to report its Net Sales on a timely basis, Franchisor shall have the right to collect monthly royalty payment based on the previous four (4 months' reported sales to calculate an average monthly amount. In this event, Franchisee grants Franchisor the right to unilaterally collect this amount. Any fees collected in this manner will be reconciled and adjusted as needed when Franchisor receives actual sales reports. Franchisee shall pay to Franchisor interest on any such unpaid amount from the date on which payment was due at a rate equal to that set forth above.

B. Late Fees and Damage Provisions. In addition to its other rights and remedies, Franchisor may charge Franchisee a late fee of Twenty-Five Dollars (\$25.00) for any payment or electronic funds transfer that is not received by Franchisor or its affiliates by the due date, as well as for any report that is not received by Franchisor or its affiliates by the due date.

## 6. ADVERTISING FEES

1. The National Advertising fee is maintained and administered by the Franchisor.

2. Franchisee shall contribute (based on the monthly accounting system), Two Percent (2%) of monthly Net Sales, to the National Advertising Fund ("National Fund").

3. Franchisee agrees to make contributions to the National Fund as required under Section 6. The Franchisee agrees the National Fund shall be maintained and administered by Franchisor as follows:

(a) Franchisor shall oversee all advertising and promotional programs with sole discretion to approve or disapprove the creative concepts, materials and media, and the placement and allocation of such program. Franchisee agrees and acknowledges that the National Fund is intended to maximize general public recognition and acceptance of the Names and Marks for the benefit of the System, and that Franchisor undertakes no obligation in administering the National Fund to make expenditures for Franchisee, which are equivalent or proportionate to the contribution, or to ensure that any particular Franchisee benefits directly or pro rata from the advertising or promotion conducted under the National Fund.

(b) All contributions of the National Fund and any earnings shall be used exclusively to meet any and all costs of maintaining, administering, directing, and preparing advertising activities (including cost of preparing and conducting advertising campaigns in various media; marketing surveys and other public relations activities; employing advertising agencies; and providing promotional brochures and other marketing materials to the businesses operated under the System including 888 FitFoot to cover costs for the free locator number used for all stores in the U.S.A. All sums paid by Franchisee to the National Fund and any earnings shall be maintained in an account separate from the other monies of Franchisor, and shall not be used to defray any of Franchisor's expenses, except for such reasonable administrative costs and overhead, as Franchisor may incur in activities reasonably related to the administration or direction of the National Fund and advertising programs for Franchisees and the System. The National Fund earnings shall not otherwise inure to the benefit of Franchisor. Franchisor shall maintain separate bookkeeping accounts for the National Fund. Franchisee shall contribute to the National Fund by separate check made payable to the National Fund. For each Franchisor-owned business operating under the System, Franchisor shall make contributions to the National Fund on the same basis as the assessments required of comparable Franchised businesses within the System.

(c) It is anticipated that all contributions to and earnings of the National Fund shall be expended for the purposes described during the taxable year, within which the contributions and earnings are received. If, however, excess amounts remain in the National Fund at the end of such taxable year, all expenditures in the following taxable year(s) shall be made first out of accumulated earnings from previous years, next out of earnings in the current year, and finally from contributions.

(d) The National Fund is not and shall not be an asset of Franchisor. A statement of the operations of the National Fund as shown on the books of the National Fund shall be prepared annually by an independent certified public accountant selected by Franchisor and shall be made available to Franchisee.

(e) Although the National Fund is intended to be of perpetual duration, Franchisor maintains the right to terminate the National Fund. The National Fund shall not be terminated, however, until all monies in the National Fund have been expended for the purposes described in this section.

#### B. Grand Opening Expenditures

Franchisee shall expend, prior to the beginning of the third month of Franchisee's Store operation, a minimum of Six Thousand Dollars (\$6,000.00) for advertising and promotional items. Such advertising and promotional items must be utilized or employed prior to commencement, and during the first two (2) months of operation of the Franchisee's Store. Franchisor will coordinate, control and work with the Franchisee regarding the preparation and placement of such advertising and promotional items for the Grand Opening.

### C. Local Advertising Plan

Franchisee agrees to implement and follow the recommended advertising and marketing plan created by Franchisor for grand opening and monthly plan posted on web site. Franchisee may implement additional advertising, provided such advertising conforms to the standards and requirements of Franchisor, as set forth in the Franchisor's Manuals, or as otherwise designated by Franchisor.

Franchisee shall not advertise the Store's business in conjunction with any other business, except with Franchisor's prior written consent. Franchisee shall obtain Franchisor's prior approval of all advertising and promotional plans and materials that Franchisee desires to use, and that have not been prepared or previously approved by Franchisor within the preceding twelve (12) month period. Franchisee shall submit such unapproved plans and/or materials to Franchisor (by personal deliver or via certified mail/return receipt requested). Franchisee shall use no such plans or materials until they have been approved by Franchisor, and shall promptly discontinue use of any advertising or promotional plans or materials upon notice by Franchisor. Any plans or materials submitted by Franchisee to Franchisor which have not been approved or disapproved in writing, within fourteen(14) days of receipt by Franchisor, shall be deemed approved.

### D. Local Advertising Expenditures

Franchisee agrees to expend a minimum for local advertising, an amount equal to ten percent (10%) of monthly "Net Sales" during the preceding calendar month, during the first year of operation or a minimum of Two Thousand Dollars (\$2,000.00) per month, not counting the Six Thousand Dollars (\$6,000.00) for Grand Opening. The first year advertising is more intensive to establish the business and client base. Following the first year, the minimum for local advertising shall decrease to four percent (4%).

## 7. DUTIES OF FRANCHISOR

### A. Pre-Opening

Franchisor shall provide certain pre-opening consultation, support and assistance regarding certain matters, including site selection, lease negotiations, lease review, store design and layout, blue line drawings bank loan proposal, equipment, start up inventory, store fixtures, training, manuals, signage, and store opening support. This support includes sending an employee to assist with store set-up for three (3) days as well as an employee to assist with Grand Opening for three (3) days. Note: If required, architectural stamps and/or detailed drawings. They must be obtained locally and paid for by the Franchisee.

### B. Training

Training will consist of videos, reading materials, and web site access, as well as pre-opening training at Franchisor's facilities for a period of at least two (2) weeks. Franchisor shall also provide to Franchisee a representative at Franchisee's Store for a minimum of three (3) days for Franchisee's Store set-up and an additional three (3) days for Grand Opening. Ongoing training includes monthly calls, web based training, regional seminars, and annual meetings.

### C. On-Going Assistance

Franchisor shall provide on going seminars, consultation, advice, field visits and assistance, on a continuing basis and at Franchisee's request, as Franchisor deems advisable. For assistance required above and beyond normal on going assistance, Franchisee shall pay all reasonable expenses incurred by Franchisor and its representatives in connection with such additional assistance, including the costs of transportation, lodging, meals, and wages.

### D. Manuals

Upon signing the Franchise Agreements and payment of the full franchise fee, training videos, access to the private website (intranet) and other materials will be sent to Franchisee to begin the training program assignments.

### E. Advertising/Promotional Material

Franchisor shall make available to Franchisee, on a regular and on going basis, advertising and promotional materials for use by Franchisee in local advertising of the Franchisee's Store, and other bulletins on sales and service, marketing developments and techniques, and business and operational procedures. Computer and email is critical to accessing the advertising materials configured to be downloaded for modification for the specific store address, telephone numbers, and other information specific to the Franchisee's place of business. The Franchisor's monthly advertising and marketing plan currently in place includes window signage and advertising materials, Dr. Bill's Q. & A., and press releases. This group plan must be followed by the Franchisee for best results.

### F. Additional Consultation

Franchisor may offer to Franchisee additional training, seminars, consultation, and advice by representatives of Franchisor, to be given by telephone, website and/or by personal visits from Franchisor's representatives, from time to time and at Franchisor's discretion.

### G. Workshops/Seminars

Franchisor may conduct, on an annual or other basis, workshops or seminars for the management and operation of the Franchisee's Store, and provide up-to-date sales methods, solicitation techniques, and other items of information for the purpose of assisting Franchisee to generate increased revenues. Franchisee shall bear all costs of attendance at any such workshops, seminars, or meetings offered by Franchisor, including transportation, lodging, meals, and wages.

## 8. DUTIES OF FRANCHISEE

### A. Maintaining Operating Standards

Franchisee understands and acknowledges every detail of the Store is important to Franchisee, Franchisor, and other Franchisees, to develop and maintain high operating standards and personal customer service, in order to increase the demand for the products and services sold by all Stores under the System, and to protect Franchisor's reputation and goodwill.

### B. Corporation of Franchisee

In the event Franchisee is a corporation, the following requirements shall apply:

1. Copies of Franchisee's Articles of Incorporation or Charter, Bylaws, and other governing documents, and any Amendments, including the Resolutions of the Board of Directors authorizing entry into this Agreement, shall be promptly furnished to Franchisor.

2. Franchisee shall maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Franchisee, and shall furnish such list to Franchisor upon request.

3. Primary shareholder of Franchisee's corporation shall personally guaranty Franchisee's performance, and shall bind himself/herself to the terms of this Agreement; provided, however, the requirements of this sub-paragraph B. shall not apply to a corporation registered under the Securities Exchange Act of 1934 ("Public-Held Corporation").

### C. Execution of Lease

Franchisor will have the right to assist and participate in site evaluation, site selection, lease negotiations, and/or negotiations to purchase the location of the Store of Franchisee. Within one hundred eighty (180) days of execution of this Agreement, the Franchisee must execute a lease, or submit to Franchisor satisfactory written proof of ownership or evidence of a right to acquire ownership of the premises of the Store.

### D. Clauses in Lease

If the Store is to be leased, the Lease Agreement shall be submitted to Franchisor for written approval prior to execution, and such approval shall not be unreasonably withheld. The Lease Agreement shall give Franchisor, agents, or designees, the right to enter the premises to conduct inspections at any time during regular business hours, and the right, but not the duty, to assume the lease for all or any part of the term, if Franchisee defaults under the lease or is evicted, or if this Agreement expires or is terminated. Franchisee further agrees, during the term of this Agreement, it shall not lease or sublet all or any part of the Store to others without Franchisor's prior written consent, which shall not be unreasonably withheld.

#### E. Opening of Store

Within one hundred eighty (180) days after execution of the lease on the store space, Franchisee shall have obtained Franchisor's approval to open and shall be in the process of building the Store. Prior to opening, Franchisee shall complete to Franchisor's satisfaction, preparation of the Store, including installation of fixtures, furnishings and equipment, and acquisition of supplies and inventory. Franchisee shall install the fixtures, equipment and supplies purchased from Franchisor as required by this Agreement. NOTE: A deposit of fifty percent (50%) is required on all opening orders for fixtures, equipment and inventory. The balance due must be paid prior to items being shipped to store. Since build-out does not take very long, it is important to get store opening orders processed as early as possible to allow for the normal lead time for the opening order, which is two (2) months from receipt of the deposit.

#### F. Training of Employees

Franchisee agrees it is important to the operation of the System and the Store that Franchisee and Franchisee's employees receive such training as Franchisor may require, and agrees:

1. Franchisee and/or Franchisee's designated manager shall attend and complete, to Franchisor's satisfaction, the pre-opening training program conducted by Franchisor at Franchisor's training facilities, or at a location chosen by Franchisor, at a date or dates to be set by Franchisor. Franchisor shall provide and pay only for the training instructors, facilities and training materials in connection with Franchisee's initial training, as required by this Agreement. At Franchisor's option, any person subsequently employed as manager of the Store may be required to attend and satisfactorily complete an initial training program, in accordance with the provisions of this Agreement.

2. Franchisee shall complete, and/or shall cause its employees to complete, to Franchisor's satisfaction, such other initial or additional training as Franchisor may require from time to time, in accordance with provisions of this Agreement.

3. Franchisee and Franchisee's employees may attend such optional training programs Franchisor may from time to time offer.

4. Franchisee shall pay all expenses incurred by Franchisee and its employees in connection with all training, including the cost of transportation, lodging, meals, and wages (if any).

#### G. Operation of Store

Franchisee shall operate the Store in conformity with such standards, techniques, and procedures as Franchisor may from time to time prescribe in the Manuals, or otherwise in writing, and shall not deviate from, without Franchisor's prior written consent.



Franchisee further agrees:

1. To maintain at all times such minimum stocks of inventory and/or supplies as Franchisor may from time to time prescribe in the Manuals, or otherwise in writing.
2. To offer the customer all products and services which Franchisor may from time to time prescribe. To offer to customers only those products and services which meet Franchisor's standards of quality, and which Franchisor has expressly approved in writing to be offered in connection with the Store's operations; and to discontinue offering any products or services which Franchisor may, in its discretion, disapprove in writing at any time; and
3. To utilize only Franchisor's standard forms of agreements and contracts, except with the expressed written approval of Franchisor.
4. The Franchisee shall make a best effort to have at least one (1) person in the store operation become certified as a Pedorthist within twelve (12) months of the store opening. The Franchisor's training program provides pre-certification required to sit for the exam.
5. Franchisee shall pay promptly to Franchisor any fees or contributions required under this Agreement, as well as any additional payments, fees, or charges incurred for any equipment, products, supplies, or services to be furnished by Franchisor at Franchisee's request.
6. Terms for payment of such products, supplies and services purchased by Franchisee shall be "on demand." Any payments, which are past due, shall bear interest at the annual rate of eighteen percent (18%) per annum, unless applicable state law requires a lower maximum interest rate.

#### H. Use of Proper Equipment

In operating the Store, Franchisee shall use only Franchisor's approved equipment and supplies, which may be serviced only by Franchisor or by service representatives authorized by Franchisor, during any warranty period for such equipment. After the warranty period for such equipment expires, Franchisee is free to choose any service representative, provided that such representative is trained and qualified to perform the necessary service.

#### I. Use of Proper Supplies and Products

Franchisee shall purchase all inventory supplies and other products and materials required for the operation of the Store solely from suppliers (including manufacturers and distributors) who are approved by Franchisor and who demonstrate, to the continuing reasonable satisfaction of Franchisor, the ability to meet Franchisor's reasonable standards and specifications for such items; who possess adequate quality control and capacity to meet Franchisee's needs promptly and reliably; and who were approved in writing by Franchisor, and not subsequently disapproved. If Franchisee desires to purchase any items from an unapproved supplier, Franchisee shall submit to Franchisor a written request for such approval, or shall request the supplier to do so, which approval Franchisor shall not unreasonably withhold.

Franchisor shall have the right to require its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered at Franchisor's option, either to Franchisor or to an independent laboratory designated by Franchisor for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the testing shall be paid by Franchisee or the supplier. Franchisor reserves the right, at its option, to re-inspect the facilities and products of any such approved supplier, and to revoke approval upon the supplier's failure to continue to meet any of Franchisor's criteria for standards and specifications. Franchisor shall be entitled, upon request, to periodic inventory reports from Franchisee, including product identification and serial numbers, and Franchisee shall provide such reports in accordance with Franchisor's request.

#### J. Image of Store

Franchisee shall maintain the Store in a clean, orderly condition and in good repair. At Franchisor's request, which shall not occur more than once during the initial term of this Agreement (including any renovation in connection with renewal or transfer), Franchisee shall, at Franchisee's expense, complete all improvements and alterations that may be determined by Franchisor to be necessary so that facilities of the Store which are viewed by the public will conform to the System image as it may be prescribed by Franchisor from time to time. Franchisee shall undertake and complete such improvements and alterations within the time and under the terms and conditions reasonably specified by Franchisor.

#### K. Normal Business Hours

Except as otherwise approved in writing by Franchisor, Franchisee shall keep the Store open and in normal operation for such minimum days and hours as Franchisor may prescribe. Normal hours are described as 10:00 A.M. to 6:00 P.M. Monday through Friday, 11:00 A.M. to 5:00 P.M. on Saturday, and closed on Sunday.

#### L. Maintaining Staff

Franchisee agrees to maintain a competent, conscientious, trained staff, including at least one (1) trained, full-time Manager or Assistant in-store during operational hours, and to take such steps as are necessary to ensure employees preserve good customer relations.

#### M. Telephone Numbers of Store

Franchisee understands and agrees that the telephone number(s) for the Store constitute(s) 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 Store without prior written notice and subsequent approval of Franchisor. Franchisee shall advertise and publish the telephone number(s) for the Store in the manner prescribed by Franchisor.

#### N. Right to Enter Store

Franchisee shall permit Franchisor and its agents or representatives to enter the Store at any reasonable time for the purpose of conducting inspections; shall cooperate fully with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from Franchisor or its agents, and without limiting Franchisor's other rights under this Agreement, shall take such steps as may be deemed necessary to immediately correct any deficiencies detected during such inspections. In the event Franchisee fails or refuses to correct immediately any deficiency detected during such inspection, Franchisor shall have the right to make or cause to make such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand. The foregoing shall be in addition to any other remedies Franchisor may be granted in this Agreement.

#### O. Operate FOOT SOLUTIONS System

Franchisee shall utilize the System, Names, and Marks provided to Franchisee by Franchisor for the operation of a FOOT SOLUTIONS retail shoe store providing services in the areas of comfort shoes and accessories, foot orthotics, computerized foot scanning, and custom inserts for comfort shoes, but shall not utilize such in connection with any other line of business or any other activity. Neither the Franchisee nor any of its employees, may conduct any business at the Store other than the permitted businesses and related services, without the prior, written approval of Franchisor. Neither the Franchisee nor any of its employees, may conduct any activity at or in connection with the Store, which is illegal or which results in damage to the Names and Marks and/or reputation and goodwill of the Franchisor.

#### P. Participation in Franchisee Councils

If Franchisor establishes a local or regional council of Franchisees, the Franchisee agrees to immediately join and participate. Such council may make recommendations and suggestions concerning the expenditure of council funds available for promotional purposes in the local or regional area. Such council may adopt its own rules and procedures, but such rules and procedures shall not restrict Franchisee's rights or obligations under this Agreement. Franchisor may participate in any such council. Franchisee agrees to pay any fees or dues charged to Franchisee by such council of Franchisees. Such dues shall not exceed Two Hundred Dollars (\$200) annually.

#### Q. Compliance With Laws

Franchisee shall comply with all federal, state, and local laws and regulations, and shall obtain and at all times maintain any and all permit, certificate, or license necessary for the full and proper conduct of the Store franchised under this Agreement.

## 9. USES OF NAMES AND MARKS

### A. Franchisor - Ownership of Names and Marks

Franchisor warrants with respect to the proprietary Names and Marks that:

1. Franchisor is the owner of all right, title, and interest in and to the Names and Marks;
2. Franchisor is taking and will take such steps as are reasonably necessary to preserve and protect the ownership and validity of such Names and Marks; and
3. Franchisor will use and permit Franchisee and other Franchisees to use the Names and Marks, only in accordance with the System standards and specifications, which underlie the goodwill associated with and symbolized by the Names and Marks.

### B. Franchisee - Use of Names and Marks

With respect to Franchisee's use of the Names and Marks granted in this Agreement, Franchisee agrees:

1. Franchisee shall use only the Names and Marks as are approved in writing by Franchisor for Franchisee's use, and shall use them only in the manner authorized and permitted by Franchisor;
2. Franchisee shall use the Names and Marks only in connection with the operation of the franchised business within the Territory and in the advertising for the Store;
3. Franchisee shall use and display, as Franchisor may require in the operation of the Store, a notice in a form approved by Franchisor, indicating Franchisee is a "Franchised Operator" under the System, and that the Names and Marks are used by Franchisee under such franchise;
4. Unless otherwise authorized or required by Franchisor, Franchisee shall operate and advertise the Store under the Name and Mark "FOOT SOLUTIONS" or "FOOT SOLUTIONS HQ;"
5. Franchisee's right to use the Names and Marks is limited to such uses authorized under this Agreement, and any unauthorized use shall constitute an infringement of Franchisor's rights;
6. Franchisee shall not use the Names and Marks to incur any obligations or indebtedness on behalf of Franchisor;
7. Franchisee shall not use the Names and Marks as part of an incorporation or other legal name, in written or electronic form, including the world wide web; Franchisee may use FS and name of town or shopping center for the corporate name;

8. Franchisee shall comply with Franchisor's instructions in filing and maintaining the requisite trade name or fictitious name restrictions, and shall execute any documents deemed necessary by Franchisor or its counsel to obtain protection for the Names and Marks, or to maintain their continued validity and enforceability; and

9. In the event litigation involving the Names and Marks is instituted or threatened against Franchisee, Franchisee shall promptly notify Franchisor, and shall cooperate fully in defending such litigation. Franchisor will bear the cost of defending its name.

C. Other Covenants of Franchisee

Franchisee expressly understands and acknowledges that:

1. As between the Franchisor and Franchisee, the Franchisor is the owner of all right, title, and interest in and to the Names and Marks, and the goodwill associated with and symbolized by them;

2. The Names and Marks are valid and serve to identify the System and those franchised under the System;

3. Franchisee shall not directly or indirectly contest the validity or the ownership of the Names and Marks;

4. Franchisee's use of the Names and Marks granted in this Agreement do not give Franchisee any ownership interest or other interest in or to the Names and Marks, except the non-exclusive franchise granted;

5. Any goodwill arising from Franchisee's use of the Names and Marks in its Store under the System shall inure solely and exclusively to Franchisor's benefit; and upon expiration or termination of this Agreement and the franchise granted, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the System or the Names and Marks;

6. Except as provided in this Agreement, the right to the Names and Marks granted to Franchisee is non-exclusive, and Franchisor may:

(a) Grant other Franchisees the right to the Names and Marks, in addition to those Franchises already granted to existing Franchisees;

(b) Use the Names and Marks in connection with selling products and services;

(c) Deleted

7. Franchisor reserves the right to substitute different Names and Marks for use in identifying the System, the Store, and other Franchised business operations; and

8. Franchisee hereby agrees not to register or attempt to register such Names and Marks in Franchisee's name, or that of any other firm, person or corporation.

## 10. OPERATIONS MANUALS

In order to protect the reputation and goodwill of Franchisor, and to maintain requisite operating standards under the Names and Marks, Franchisee shall conduct business in accordance with the provisions, standards, and procedures set forth in Franchisor's Manual(s).

Franchisee agrees:

1. Franchisee shall at all times treat the Manuals, created for or approved for use in the operation of the Store, and the information contained therein, as confidential; and shall use all reasonable efforts to maintain such information as secret and confidential;

2. The Manuals shall at all times remain the sole property of Franchisor, shall be kept in a secure place in the Store, and shall be returned to Franchisor immediately upon expiration or termination of this Agreement;

3. Franchisor may from time to time, revise the contents of the Manuals, and the Franchisee expressly agrees to comply with new or modified provisions. Revisions to the contents of the Manuals shall be deemed effective seven (7) days after the date of mailing or receipt of such revisions by Franchisee, unless otherwise specified by Franchisor;

4. Franchisee shall at all times ensure copies of the Manuals are kept current and up-to-date; and in the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's corporate office shall be controlling; and

5. Franchisee shall not at any time, without Franchisor's prior written approval, copy, duplicate, record, or otherwise reproduce the Manuals in whole or in part, nor otherwise make the same available to any unauthorized person.

## 11. CONFIDENTIALITY AND TRADE SECRETS

### A. Franchisee Will Learn Proprietary Matters

Franchisee acknowledges the Franchisor will provide Franchisee with knowledge of proprietary matters, techniques, and business procedures of Franchisor necessary and essential to the operation of the Store's business. Without such information, Franchisee could not efficiently and effectively operate said business. This information includes pre-selling techniques, computer foot scanning procedures, FOOT SOLUTIONS custom shoe fitting, FOOT SOLUTIONS retail skills, and cash collection systems.

Franchisee acknowledges such proprietary information was unknown to Franchisee prior to execution of this Agreement, and the methods of Franchisor to be unique and novel to Franchisee. Franchisee will not divulge proprietary information, without the prior written consent of Franchisor; and will not sell, assign, copy, assist, or make available to anyone, any information that would enable such person to substantially duplicate the System.

**B. Injunctive Relief Available to Franchisor**

Franchisee acknowledges any failure to comply with the requirements of this paragraph will cause Franchisor irreparable injury, and Franchisee agrees to pay all court costs and reasonable attorney's fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, requirements of this paragraph.

**C. Franchisee's Employees Shall Not Disclose Trade Secrets**

Franchisee shall obtain from each employee, representative or agent, an agreement that such person shall not during the course of employment, representation, or agency with Franchisee, or at any time, use, divulge, disclose or communicate, directly or indirectly, in any form or manner, to any person, firm or corporation, any of the trade secrets of Franchisor.

**12. TRAINING OF FRANCHISEE**

**A. Initial Training**

Franchisor shall provide a training program on the operation of the Store, consisting of a two (2) week training program at FOOT SOLUTIONS Corporate Headquarters. In addition, training will take place in the Franchisee's store for three (3) days during Grand Opening and during the three (3) day store setup.

**B. Additional Training**

In the event Franchisee requests additional training beyond the provided two (2) week corporate training program, three (3) day store set-up, and the three (3) days for Grand Opening, Franchisee may request additional field training from Franchisor; but shall pay a daily training fee of Four Hundred Dollars (\$400) to Franchisor, plus all out of pocket expenses, including transportation, lodging, meals and wages (if any) connected with such additional training. If such additional requested training can be provided at a time when a regularly scheduled training class can accommodate the Franchisee's trainees, there shall be no additional charge.

C. Number of Persons to be Trained

Franchisee can select up to a maximum of four (4) persons to receive the initial training from Franchisor. Franchisee agrees to have, during the entire term of this Agreement, at least one (1) fully trained manager or assistant manager to operate the Store. If Franchisee requires more than four (4) people trained, additional trainees will have to pay One Thousand Dollars (\$1,000.00) per week.

D. Expenses Paid by Franchisee

Franchisee, and those selected by Franchisee to be trained by Franchisor, shall pay all expenses incurred in such training program, including transportation, lodging, meals, and wages (if any). In the event Franchisee or its representatives fail to complete the training program for the specific Store operation designated by this Agreement, Franchisee shall be deemed to be in violation of this Agreement.

13. ACCOUNTING AND RECORDS

A. Bookkeeping, Accounting and Records

Franchisee shall maintain during the term of this Agreement, and shall preserve for the time period specified in the Manual, full, complete and accurate books, records and accounts in accordance with the standard accounting system described by Franchisor in the Manual or otherwise in writing.

B. Payment of Monies to Franchisor

Franchisee shall submit to Franchisor, a monthly sales report no later than the Fifth of each month for the previous monthly sales during the term of this Agreement, on forms prescribed by Franchisor, accurately reflecting all net revenues during the preceding month, and such other data and information regarding the operation of the Store as Franchisor may require. This monthly report will provide the basis for the electronic funds to be transferred monthly..

C. Submission of Financial Statements

Franchisee shall, at its expense, submit to Franchisor within sixty (60) days of the end of each fiscal year of operation during the term of this Agreement, a complete financial statement for said fiscal year, including both an income statement and balance sheet, which may be un-audited, together with such information in such form as Franchisor may require. Each financial statement shall be signed by Franchisee or by Franchisee's treasurer or chief financial officer, attesting the statement is true and correct. Franchisee shall also submit to Franchisor the current financial statement and tax return filing(s), and any other forms, records, reports, information or data Franchisor may reasonably designate, in the form and at the times and places reasonably required by Franchisor, upon request, and as specified from time to time in the Manuals, or otherwise in writing. Annual financial statements are reviewed to help identify any excessive costs or other financial signals to ensure business success.



#### D. Franchisor's Right to Audit

Franchisor or its designated agents, shall have the right at all reasonable times, to examine and copy (at its expense), Franchisee's books of account. Franchisor shall also have the right at any time, to audit the books and records of Franchisee. If any audit should reveal payments due Franchisor have been understated by more than five percent (5%) in any report to Franchisor, Franchisor may at its option, charge Franchisee for any and all costs and expenses incurred in connection with such audit. Franchisee shall pay to Franchisor any amounts owing, immediately upon demand, together with interest from the date such amounts were due until paid, at the lesser of three (3) percentage points above the prime rate, on the date payment was due, as reported in the WALL STREET JOURNAL on that date, or the maximum rate permitted by law. Such remedy shall be in addition to any other remedies available to Franchisor. If Franchisor's audit reveals understated payments more than two (2) times during the term of this Agreement, Franchisor at its option, in addition to any other remedies it may have, may elect to require Franchisee's future financial statements, as required by this Agreement, be audited at Franchisee's expense.

#### 14. INSURANCE

Franchisee shall at all times and at its sole expense during the term of this Agreement, maintain in force comprehensive, public and product liability, and motor vehicle liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Store, or otherwise in conjunction with the conduct of the business of Franchisee, pursuant to this Agreement and the Franchise granted. Motor vehicle insurance is required if Franchisee's FOOT SOLUTIONS business owns a vehicle used for business purposes.

Franchisee shall maintain general casualty insurance (including fire, extended coverage, vandalism and malicious mischief) on the leasehold improvements (to the extent required by Franchisee's lease for the Store), fixtures, signs, equipment, inventory, materials and supplies of the Store, and worker's compensation insurance. Such insurance coverage shall be maintained under one or more policies of insurance containing the amounts and type of coverage of no less than \$1,000,000. All public and product liability and motor vehicle liability insurance policies shall name the Franchisor as an additional insured, and shall provide that the Franchisor shall receive ten (10) days prior written notice of termination, expiration, or cancellation of any such policy. Franchisee shall submit to the Franchisor annually a copy of the certificate of, or other evidence of, the renewal or extension of each such insurance policy. If Franchisee at any time fails or refuses to maintain any insurance coverage required by Franchisor, or to furnish satisfactory evidence, the Franchisor, at its option and in addition to any other rights and remedies available, may, but need not, obtain such insurance coverage, on behalf of Franchisee. If the Franchisor elects to obtain any such insurance on behalf of Franchisee, all costs and premiums for such shall be paid upon demand by Franchisee to Franchisor.

## 15. ASSIGNMENT

### A. By Franchisor

This Agreement is fully assignable by the Franchisor, and shall inure to the benefit of any assignee or other legal successor, to the interest of Franchisor.

### B. Franchisee May Not Assign Without Approval of Franchisor

This Franchise is personal to Franchisee, and neither the franchise (except as provided with respect to assignment to partnership or corporation), nor any part of the ownership of franchise (which shall mean and include voting stock, convertible securities, proprietorship and general partnership interests), may be voluntarily, involuntarily, directly or indirectly, assigned, subdivided, sub-franchised, or otherwise transferred by Franchisee or its owners (including by will, declaration of or transfer in trust under the laws of intestate succession), without the prior written approval of the Franchisor. Any such attempted assignment or transfer without such approval shall constitute a breach of this Agreement. The Franchisor shall not unreasonably withhold its approval of assignment or transfer to proposed assignees or transferees who:

1. Meet the then applicable standards for Franchisees;
2. Are not operating a franchised or independent store offering similar services as that offered by the Franchisor (e.g., computerized scanning for custom insoles, and selling similar lines of comfort shoes); and
3. Are willing to execute and be bound by all provisions of the Franchisor's then current form of Standard Franchise Agreement and all other agreements and legal instruments and documents then customarily used by the Franchisor in the granting of Franchises.

The Franchisor shall not charge such assignee an initial Franchise Fee for the Franchise, but will charge a transfer fee of a minimum of \$5,000 to a maximum of \$10,000, depending on the size and type of Franchise, and the amount of services required to establish a smooth transition. The terms are set forth in the ASSIGNMENT TO STANDARD FRANCHISE AGREEMENT, and include services rendered in preparation of legal documents, consultation, and required training in the operation of a FOOT SOLUTIONS Franchise. The Franchisor shall have the right to require Franchisee and its owners to execute a general release of the Franchisor in a form satisfactory to Franchisor's counsel as a condition of its approval of assignment or other transfer of the Franchise. Nothing contained herein shall limit or impose any charge upon the transfer of the Franchise rights of individuals, either by testamentary devise or by joint ownership to a surviving spouse, assignee, or other legal successor, provided that written notice is first given to the Franchisor of such transfer, and provided further that the Legatee or Devisee personally accepts the assignment, and guarantees in writing to accept the obligations and commitments set forth in this Agreement, within thirty (30) days after such demise. The Franchisor's transfer fee shall be waived in the case of a valid disability. Note: If a franchisee sells their store to a Foot Solutions lead they are responsible for paying the broker fee of \$15,000 (fifteen thousand dollars) at the time of the sale.

C. Assignment to Partnership or Corporation

This Franchise may be assigned to a partnership or corporation which conducts no business other than operating the Store, which is actively managed by Franchisee or a qualified manager, and in which Franchisee owns and controls not less than 51% of the general partnership or equity in voting stock, provided all shareholders of voting stock shall execute a Guarantee Agreement undertaking to be bound, jointly and severally, by all provisions of this Agreement and all other agreements with the Franchisor, and undertaking to guaranty, jointly and severally, the payment of all sums due or to become due to the Franchisor. All issued and outstanding stock certificates of such corporation shall bear the following legend:

TRANSFER OF THESE SHARES ARE SUBJECT TO CERTAIN RESTRICTIONS CONTAINED IN A FRANCHISE AGREEMENT BETWEEN \_\_\_\_\_ AND FOOT SOLUTIONS, INC. CORPORATION (D/B/A FOOT SOLUTIONS) \_\_\_\_\_, 20\_\_\_\_.

D. Franchisor Right of First Refusal

If the Franchisee (or its owners) desire to sell the Store or part or all of the ownership of Franchisee, then the Franchisor will reasonably assist Franchisee (or its owners) in such efforts. If Franchisee (or its owners) shall obtain a bona fide, written offer to purchase the Store or such ownership, such offer shall be submitted to the Franchisor, which shall for a period of fifteen (15) days from the date of delivery of such offer, have the right, exercisable by written notice to Franchisee (or its owners), to purchase the Store or such ownership for the price and on the terms and conditions contained in such offer; provided the Franchisor may substitute cash for any form of payment proposed for such offer. If the Franchisor does not exercise the right of first refusal, the bona fide written offer may be accepted by Franchisee or its owners, subject to the prior written approval of the Franchisor, as provided in this Agreement.

## 16. TERMINATION OF FRANCHISE

### A. By Franchisee

If Franchisee is in compliance with this Agreement, and the Franchisor breaches this Agreement and fails to cure such breach within thirty (30) days after written notice is delivered to the Franchisor, then Franchisee may terminate this Agreement and the Franchise, effective thirty (30) days after delivery to the Franchisor of proper notice. Any termination of this Agreement and the Franchise by Franchisee, without complying with these requirements, or for any reason other than breach of this Agreement by the Franchisor, and the Franchisor's failure to cure such breach within thirty (30) days after receipt of written notice, shall be deemed a termination by Franchisee without cause.

### B. By Franchisor

Franchisee acknowledges strict performance of all terms of this Agreement is necessary not only for protection of Franchisor, but also protection of Franchisee and other Franchisees of Franchisor. As a result, it is acknowledged and agreed that strict and exact performance by Franchisee of each of the covenants and conditions is a condition precedent to continuance of this Agreement. If Franchisee shall breach any provision of this Agreement, Franchisor shall notify Franchisee in writing of such breach, specifying its nature, giving Franchisee ten (10) days to remedy same. If Franchisee fails to remedy such breach, Franchisor can terminate this Agreement and the Franchise effective thirty (30) days after delivery of notice of termination to Franchisee.

### C. Termination of Franchisee Without Cure Period

If Franchisee is deemed to be in breach of this Agreement, and Franchisor at its option, may terminate all rights granted in this Agreement, without affording Franchisee any opportunity to cure the breach, effective immediately upon Franchisor notifying Franchisee in writing of such breach, if Franchisee does any of the following:

1. Abandons, surrenders, or transfers control of the operation of the Store or fails to continuously and actively operate the Store, unless precluded from doing so by damage to the premises of the Store, due to war, civil disturbance, natural disaster, labor dispute, or other events beyond Franchisee's reasonable control;
2. Submits to Franchisor on two (2) or more separate occasions at any time during the term of this Agreement, a transmittal report, financial statement, tax return or schedule, which understates the "Net Sales" of the Store for any period, by more than five percent (5%);
3. Consistently fails or refuses to submit (when due) financial statements, tax returns or schedules, or to pay (when due) the service fees, or any other payments due Franchisor or any other party related to this Franchise;
4. Operates the Store in a manner that violates any federal, state, or local law, rule, regulation, or ordinance;
5. Has made a material misrepresentation on the application to own and operate the Store;
6. Transfers, assigns, or subfranchises this Agreement, without the prior written consent of Franchisor;
7. Discloses or divulges the contents of the Manual, or any other confidential information provided to Franchisee by Franchisor;
8. Repeatedly fails to substantially comply with any of the requirements imposed by this Agreement, whether or not cured after notice;
9. Commits a breach of this Agreement or engages in any other activity, which has a material adverse effect on Franchisor and/or the Names and Marks; or
10. Fails or refuses to comply with any provision of this Agreement or any other agreement between Franchisor and Franchisee relating to the Store or the operation of the Store, and does not correct such failure or refusal within thirty (30) days after written notice of such failure or refusal to comply is delivered to Franchisee.

D. Termination of Franchisee Immediately and Without Notice

If Franchisee is deemed to be in breach of this Agreement, all rights granted in this Agreement shall automatically terminate without notice to Franchisee, if Franchisee does any of the following:

1. Makes an assignment for the benefit of creditors or admission of his inability to pay his obligations as they become due; or
2. Files a voluntary petition in bankruptcy or any pleading seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution or similar release under any law, or admitting or failing to contest the material allegations of any such pleading filed against, or is adjudicated as bankrupt or insolvent, or a receiver is appointed for a substantial part of the assets of Franchisee or the Store, or the claims of creditors of Franchisee or the Store are abated or subject to a moratorium under any laws.

17. FRANCHISEE'S OBLIGATIONS UPON TERMINATION OR EXPIRATION

A. Payment of Monies Owed to Franchisor

Franchisee agrees to pay to the Franchisor, within fifteen (15) days after the effective date of termination or expiration of this Agreement, such service fees, advertising contributions, payments for inventory, equipment or merchandise, or any of the products or services purchased by Franchisee from Franchisor, and any other sums owed to the Franchisor by Franchisee.

B. Return of Operations Manual and Other Materials

Franchisee agrees upon termination or expiration of this Agreement to immediately return to Franchisor all copies of the Manual(s), training aids, and any other materials loaned by the Franchisor.

C. Cancellation of Assumed Names/Transfer Phone Numbers

Franchisee agrees upon termination or expiration of this Agreement, to take such action that may be required to cancel all assumed names or equivalent registrations relating to use of any Names or Marks, and to notify the telephone company and listing agencies of the termination or expiration of Franchisee's right to use any telephone number in any classified ad and any other telephone directory listings associated with the Names or Marks or with the Store, and to authorize transfer of same to the Franchisor or its Franchisee. Franchisee acknowledges as between the Franchisor and Franchisee, the Franchisor has the sole rights to and interest in all telephone numbers and directory listings associated with any Names or Marks of the Store. Franchisee further authorizes the Franchisor, and hereby appoints Franchisor as his attorney in fact, to direct the telephone company and all listing agencies, to transfer same to the Franchisor or its Franchisee, should Franchisee fail or refuse to such; and the telephone company and all listing agencies may accept such direction in this Agreement as conclusive evidence of the exclusive rights of the Franchisor in such telephone numbers and directory listings and its authority to direct their transfers.

#### D. Cease Operation of Store

Franchisee agrees upon termination or expiration of this Agreement, to cease to operate the Store, and shall not thereafter, directly or indirectly, represent itself to the public or hold itself as a present or former Franchisee of Franchisor. If Franchisee does not cease operation of store, the following liquidated damages are due and payable to Franchisor:

Liquidated Damages - Should this Agreement be terminated with cause prior to its scheduled expiration date, and Franchisee continues to operate a similar business, then Franchisee shall owe to the Franchisor, as liquidated damages and not as a penalty, in addition to all sums otherwise due hereunder, the sum produced by multiplying 36 by the average actual monthly royalty for which the Franchisee was obligated during the term hereof. If less than 36 months remain in the term hereof at the time of such termination, then the number of remaining months shall be substituted for the number 36. Such sum shall be fully due and payable within 10 days of receipt of notice thereof from the Franchisor. Franchisee acknowledges the reasonableness of this liquidated damages provision as a measurement on Franchisor's lost future profits, due to the fact that much of the time and effort expended by the Franchisor on behalf of the Franchisee necessarily takes place in the early months and years of the franchise, in activities such as site selection, site preparation and training. Franchisee acknowledges that such efforts on the part of the Franchisor are made in anticipation of receiving royalties throughout the term hereof, and that the liquidated damages provision set forth above reasonably allows the Franchisor the benefit of its bargain.

#### E. Assignment of Lease

Franchisee further agrees upon termination or expiration of the Franchise, that Franchisee shall at Franchisor's option, assign to Franchisor, or to Franchisor's designee, Franchisee's interest in any lease then in effect for the premises of the Store; and Franchisor shall notify Franchisee to whom such interest may be assigned, within thirty (30) days after termination or expiration of this Agreement.

#### F. Cease Using Names and Marks

Franchisee agrees upon termination or expiration of this Agreement, Franchisee shall immediately and permanently cease to use, by advertising, or in any manner whatsoever, any confidential methods, procedures, and techniques associated with the Franchisor and the Names and Marks and any proprietary marks and distinctive forms, slogans, signs, symbols, logos, or devices associated with the System. In particular, Franchisee shall cease to use all signs, advertising materials, stationery, forms, and any other articles which display the Names and Marks.

### G. Direct or Indirect Association

In the event of a termination of a Franchise, the Franchisee shall not be directly or indirectly associated as an employee, proprietor, stockholder, partner, agent, or officer with or in the operation of a similar type of business within a radius of five (5) miles of an existing Company or Franchise unit for a period of one (1) year. This provision extends to locations in which a Franchise formerly existed within the previous year. In the event of a breach of this provision, the Franchisee shall pay to the Franchisor Twenty-Five Thousand Dollars (\$25,000) for each Store, plus five percent (5%) of the gross sales of each Store within the restricted area, during the one (1) year period. Such amounts represent a reasonable estimate of damages suffered by Franchisor in the form of lost revenues of franchise and royalty fees.

## 18. COVENANTS

### A. Full-Time Operation of Store

Franchisee covenants during the term of this Agreement, Franchisee or Franchisee's designated manager, shall devote full-time energy and best efforts to the management and operation of the Store, and will refrain from engaging in any other business, directly or indirectly, during the term of this Agreement, identical with or similar to the business reasonably contemplated by this Agreement at any place except as a duly granted Franchisee of Franchisor.

### B. Franchisee Receives Confidential Information

Franchisee specifically acknowledges, per the terms of this Agreement, Franchisee will receive valuable training and confidential information regarding promotional, operational, sales and marketing methods and techniques of Franchisor and the System.

### C. No Diversion of Business

Franchisee covenants he shall not directly or indirectly, for himself, or through, on behalf of, or in conjunction with any person or legal entity:

1. Divert or attempt to divert any business or customer of the Store to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Names and Marks and/or the System; or

2. Employ or seek to employ any person who is at that time employed by Franchisor or by any other Franchisee of Franchisor, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment.



#### D. Covenant Not To Compete

Franchisee covenants, except as otherwise approved in writing by Franchisor, Franchisee shall not, for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement, regardless of the cause for termination, and continuing for one (1) year after the violation ceases, either directly or indirectly, for himself, or on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, advise, help, invest in, make loans to, be employed by, engage in, or have any interest in any business specializing, in whole or in part, in the FOOT SOLUTIONS business, or any other product or service which Franchisee may be authorized to offer hereunder, or related products or services, which business is located:

1. Within the Territory; or

2. Within a radius of five (5) miles of the location of any other pre-existing business using the System, whether franchised or owned by Franchisor, as measured from the location of such pre-existing business.

3. In the event the Franchisee breaches this provision, he shall pay to the Company Twenty-Seven Thousand, Five Hundred Dollars (\$25,000.00) for each Store opened in violation of this paragraph, plus five percent (5%) of the gross sales of each Store in violation of this paragraph for a period of two years. Such amounts represent a reasonable estimate of damages suffered by Franchisor in the form of lost revenues of franchise and royalty fees.

#### E. Exception to Covenant Not to Compete

Section 18 (D) shall not apply to ownership by Franchisee of less than a five percent (5%) beneficial interest in the outstanding equity securities of any public-held corporation.

#### F. Covenants Are Independent

Franchisee and Franchisor agree each of the covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 18 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in any final decision to which Franchisor is a party, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulted covenant were separately stated in and made a part of this Section 18.

G. Claims Are Not Defense to Covenants

Franchisee expressly agrees the existence of any claim he may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 18.

H. Injunctive Relief Available to Franchisor

Franchisee acknowledges any failure to comply with the requirements of this Section 18 would cause Franchisor irreparable injury for which no adequate remedy at law may be available; and Franchisee accordingly consents to the issuance of an injunction prohibiting any conduct by Franchisee in violation of the terms of this Section 18. Franchisor may further avail itself of any legal or equitable rights and remedies under this Agreement or otherwise.

19. TAXES, PERMITS, AND INDEBTEDNESS

A. Franchisee Must Pay Taxes Promptly

Franchisee shall promptly pay (when due) all taxes levied or assessed, including unemployment and sales taxes, and all accounts and other indebtedness of any kind incurred by Franchisee in the conduct of the Store's business.

B. Franchisee Can Contest Tax Assessment

In the event of any bona fide dispute as to liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law. However, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises or any improvements of the Store.

### C. Franchisee Must Comply With Laws

Franchisee shall, at Franchisee's expense, comply with all federal, state, local laws, rules, regulations, and shall timely obtain, and shall keep in force as required throughout the term of this Agreement, all permits, certificates, and/or licenses necessary for the full and proper conduct of the Store's business, including any required permit, license to do business, fictitious name registration, sales tax permit, or fire inspection.

### D. Franchisee Must Notify Franchisor of Lawsuits

Franchisee shall notify Franchisor in writing within five (5) days of the events of the commencement of any action, suit, or proceeding against Franchisee; and of the issuance of any inquiry, subpoena, order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which arises out of, concerns, or may affect the operation or financial condition of the Store, including any criminal action or proceeding brought by Franchisee against employees, customers, or other persons.

## 20. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

### A. No Fiduciary Relationship

It is understood and agreed by the Franchisee and Franchisor this Agreement does not constitute a fiduciary relationship. The Franchisee shall be an independent contractor, and nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of the other for any purpose.

### B. Franchisee is an Independent Contractor

During the term of this Agreement and any renewals or extensions, Franchisee shall hold itself out to the public as an independent contractor operating its business pursuant to a Franchise from Franchisor. Franchisee agrees to take such affirmative action as may be necessary, including exhibiting a public notice of fact. The Franchisee shall conspicuously identify itself and its operational base in all dealings with its clients, contractors, suppliers, public officials, and others, as an independent Franchisee of Franchisor; and shall place such notice of independent ownership on all forms, business cards, stationery, advertising, signs, and other materials, in such fashion as Franchisor may specify and require in its confidential Manual. Except as otherwise expressly authorized by this Agreement, neither Franchisee or Franchisor will make any express or implied agreements, warranties, guarantees, or representations; or incur any debt in the name of or on behalf of the other party, or represent the relationship between Franchisor and Franchisee is other than that of Franchisor and Franchisee. Franchisor does not assume any liability, and will not be deemed liable, for any agreements, representations, or warranties made by Franchisee, which are not expressly authorized under this Agreement. Franchisor will not be obligated for any damages to any person or property, which directly or indirectly arises from or relates to the operation of the Franchised business.

### C. Franchisor Not Liable for Acts of Franchisee

It is understood and agreed nothing in this Agreement authorized Franchisee to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and that Franchisor shall in no event assume liability for or be deemed liable hereunder as a result of any such action, or by reason of any act or omission of Franchisee in its conduct of the Store's business, or any claim or judgment arising against Franchisor. Franchisee shall indemnify and hold harmless Franchisor and Franchisor's officers, directors, shareholders and employees against any acts, omissions, or claims arising directly or indirectly from, as a result of, or in connection with Franchisee's operation of the Store's business; as well as the costs, including attorneys' fees, incurred in defending same.

### 21. WAIVER

No failure of Franchisor to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Franchisee with any obligation or condition, and no custom practice of the parties at variance with the terms, shall constitute a waiver of Franchisor's right to demand exact compliance with any such terms. Waiver by Franchisor of any particular default by Franchisee shall not affect or impair Franchisor's rights with respect to any subsequent default of the same, similar, or different nature; nor shall any delay, forbearance, or omission of Franchisor to exercise any power or right arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants, affect or impair Franchisor's right to exercise same; nor shall such constitute a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants, or conditions of this Agreement.

### 22. ENFORCEMENT

#### A. Choice of Law and Venue

This Agreement shall be deemed to have been made in the State of Georgia, and shall be construed according to the laws of the State of Georgia, except to the extent that this Agreement is otherwise governed by the Trademark Act of 1946, as may be amended from time to time, (15 U.S.C. 1051, et. seq.) or the Federal Arbitration Act (9 U.S.C. 1, et. seq.), as may be amended from time to time. The Franchisee acknowledges that Franchisor operates a nationwide franchise system, with Franchisees located in numerous different states and in numerous counties and cities within such states. Accordingly, the Franchisor and Franchisee hereby agree that in view of the fact that substantially all of the books, records, and business personnel of Franchisor are located in Cobb County, Georgia, and in order to minimize disruption or interference with operation of the franchise system as a whole, Franchisee irrevocably agrees as follows:

The sole jurisdiction and venue for any and all court proceedings arising from or relating in any manner to any dispute of any kind or nature whatsoever between Franchisor and Franchisee, arising out of, relating to, concerning, or referencing this Agreement, shall be in, and only in, (i) the Superior Court of Cobb County, Georgia, or (ii) the United State District Court for the Middle District of Georgia, Atlanta Division. Franchisee specifically agrees that such courts shall have personal jurisdiction over Franchisee to enter legal, equitable and/or injunctive relief.

#### B. Judicial Enforcement, Injunction and Specific Performance

The Franchisor shall have the right to enforce by judicial process its right to terminate this Agreement for the causes enumerated in Section 16., to collect any amounts owed to the Franchisor for unpaid fees, or other unpaid charges due, arising out of the System conducted by Franchisee; and any rights it may have under any leases, subleases, sale, purchase, security agreements or other agreements with, or notes of Franchisee. The Franchisor shall be entitled without bond to the entry of temporary and permanent injunctions and orders of specific performance enforcing any of the provisions of this Agreement. If the Franchisor secures any such injunction or orders of specific performance, Franchisee agrees to pay to the Franchisor an amount equal to the aggregate of the costs of obtaining such relief, including reasonable attorneys fees, costs of investigation and proof of facts, court costs, and other litigation expenses and travel and living expenses, and any damages incurred by the Franchisor as a result of the breach of any such provision.

#### C. Arbitration

Except insofar as the Franchisor elects to enforce this Agreement by judicial process, injunction, or specific performance (as provided), all disputes and claims relating to any provision, any specification, standard or operating procedure, or any other obligation of Franchisee prescribed by the Franchisor, or any obligation of the Franchisor, or breach thereof (including any claim that this Agreement, any provision, specification, standard, or operating procedure or any other obligation of Franchisee or Franchisor, is illegal or otherwise unenforceable or voidable under any law, ordinance, or ruling), shall be settled by arbitration in Atlanta, Georgia, in accordance with the U.S. Arbitration Act, and the Rules of the American Arbitration Association (relating to the arbitration of disputes arising from Franchise and Franchise Agreements, if any, otherwise, the general rules of commercial arbitration); provided that at the option of the Franchisor or Franchisee the arbitrator shall be selected from a list of retired federal or state judges supplied by the American Arbitration Association (if obtainable, otherwise in accordance with the customary procedures for selecting an arbitrator). The arbitrator shall allow discovery in accordance with the Federal Rules of Civil Procedure and apply the sanctions relating to non-compliance with discovery orders provided. The arbitrator shall issue a written opinion explaining the reasons for his decision and award, and the arbitrator shall have the right to award or include in an award the specific performance of this Agreement. Judgment upon the award of the arbitrator will be entered in any court having jurisdiction of the Franchisor or Franchisee. During any pending arbitration proceeding, Franchisee and Franchisor shall fully perform according to the terms and conditions of this Agreement.

#### D. Severability and Substitution of Valid Provisions

All provisions of this Agreement are severable and this Agreement shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein; and partially valid and enforceable provisions shall be enforced to the extent valid and enforceable. If any applicable law or rule requires a greater prior notice of the termination of this Agreement than is required, or the taking of some other action not required, the prior notice and/or other action required by such law or rule shall be substituted for the notice of requirements in this Agreement.

#### E. Franchisee May Not Withhold Payments Due Franchisor

Franchisee agrees it will not withhold payments of any service fees or any other amounts of money owed to Franchisor for any reason, on grounds of the alleged non-performance by the Franchisor of any obligation. All such claims by Franchisee shall, if not otherwise resolved by Franchisor and Franchisee, be submitted to arbitration as provided in this Agreement.

#### F. Rights of Parties Are Cumulative

The rights of the Franchisor or Franchisee hereunder are cumulative, and no exercise or enforcement by the Franchisor or Franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by the Franchisor or Franchisee of any other right or remedy, or which Franchisor or Franchisee is entitled by law to enforce.

#### G. Binding Effect

This Agreement is binding upon the Franchisor and Franchisee and their respective heirs, assigns, and successors in interest.

#### H. Construction

The Recitals of Fact (Section 1) are a part of this Agreement, which, together with any other agreements or instruments referred to or which relate to the purchase or lease by Franchisee from the Franchisor of any fixtures, signs, equipment, or merchandise, constitutes the entire Agreement of the Franchisor and Franchisee; and there are no other oral or written understandings or agreements between the Franchisor or Franchisee relating to the subject matter of this Agreement.

The headings of these several sections and paragraphs are for convenience only and do not define, limit, or construe the contents of those sections or paragraphs. Except as expressly provided to the contrary, each section, part, term, and provision of this Franchise Agreement is considered severable. If for any reason, any section, part, term, or provision is determined to be invalid or contrary to or in conflict with any existing or future law or regulation by a court or agency having competent jurisdiction, such determination shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and provisions of this Franchise Agreement that may remain otherwise intelligible; and the latter shall continue to be given full force and effect and to bind the Franchisor and Franchisee. Any sections, parts, terms, or provisions determined to be invalid shall be deemed deleted from this Franchise Agreement.

I. Attorney Fees

In the event of any legal or administrative proceeding between the Franchisor and Franchisee arising under this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and court costs from the other.

J. Modification

This instrument contains the entire Agreement between the Franchisor and Franchisee relating to the rights granted and the obligations assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing and signed by the Franchisor and Franchisee.

23. NOTICES

All written notices permitted or required to be delivered by the provisions of this Agreement or of the Manual shall be deemed so delivered by hand three (3) days after placed in the mail (Certified Mail/Return Receipt Requested) postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has on record.

24. AUTHORITY

Except as otherwise provided, all references to Franchisee in this Agreement shall be deemed to include, personally and individually, all officers, directors and shareholders, if the Franchisee is a corporation, or all general partners, if the Franchisee is a partnership; all acknowledgments, promises, covenants, agreements, and obligations made or undertaken by the Franchisee shall be deemed jointly and severally undertaken by them and by all signatories on behalf of the Franchisee.

25. ACCEPTANCE AND CONTINGENCIES

A. Franchise Fee Paid by Franchisee

By executing this Agreement, Franchisee agrees to become a Franchisee and pay the initial franchise fee as set forth in this Agreement. Such amount is refundable only if Franchisor elects not to approve the Franchisee under subsection B below. Franchisee agrees to purchase required FOOT SOLUTIONS two (2) computer scanners and other associated equipment, plus initial start-up inventory, FS slat wall, FS wallpaper, fixtures, FS chairs and POS system through the Franchisor's equipment and/or supply division.

B. Return of Fee

Franchisor, within fifteen (15) days of the date of execution of the Agreement, will approve or disapprove the Franchisee's application for a Franchise. If Franchisee is disapproved, the fee provided in subparagraph A above will be refunded in full.

C. Location of Store by Franchisee

Within one hundred eighty (180) days after execution of this Agreement, the Franchisee must make a good faith effort to locate a Store space suitable to Franchisee and agreeable to Franchisor; and to secure a commitment for financing in an amount suitable to Franchisee and Franchisor for the equipment, inventory, and/or miscellaneous expenses involved in the opening of the Store. If Franchisee fails to make any of the payments required under any of the legal instruments executed by Franchisor and Franchisee, this Franchise Agreement and the lease agreement executed by Franchisee shall be declared in breach, and any amounts paid to date may be retained by Franchisor as further reimbursement for costs and/or expenses incurred in assisting Franchisee in locating, establishing, and providing equipment and supplies for the Store. After such termination, neither Franchisor nor Franchisee shall have any obligations to the other, except as otherwise expressed in this Agreement.

D. Cooperation Between Franchisor and Franchisee

Franchisee shall cooperate reasonably with Franchisor, and Franchisor shall cooperate reasonably with Franchisee, to ensure the various actions occur necessary to obtain approval by Franchisor of the Store location, and to obtain commitment for financing and related items. Franchisee shall furnish any information requested by Franchisor regarding Franchisee's business and finances.

26. SPECIAL REPRESENTATIONS

Franchisee (and each partner or shareholder if a partnership or corporation) represents as follows:

A. Franchisee has conducted an independent investigation of the Franchisor's business System and recognizes the business venture contemplated by this Agreement involves business risks, and its success will be largely dependent upon the ability of Franchisee as an independent businessperson. Franchisor expressly disclaims the making of, and Franchisee acknowledges it has not received, any warranty or guaranty, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

B. Franchisee acknowledges having received, read and understood this Agreement, including the Attachments; and Franchisee acknowledges Franchisor has accorded Franchisee the required time and opportunity to consult with advisors about the potential benefits and risks of entering into this Agreement.



C. Franchisee acknowledges receipt of a complete copy of this Agreement, the Attachments referred to, and agreements relating to, if any, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges it has received the disclosure document, otherwise referred to as the Uniform Franchise Offering Circular (UFOC), required by the Trade Regulation Rule of the Federal Trade Commission, entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," at least ten (10) business days prior to the date on which this Agreement was executed.

D. Franchisee affirms and agrees Franchisor may sell its assets to a third party; may go public; may engage in a private placement of some or all of its securities; may merge, acquire other corporations, or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring; and with regard to any or all of the above sales, assignments and dispositions, Franchisee expressly and specifically waives any claims, demands or damages arising from any of the above.

E. The covenants not to compete set forth in this Agreement are fair and reasonable, and will not impose any undue hardship on Franchisee, since Franchisee has other considerable skills, experience, and education which afford Franchisee the opportunity to derive income from other endeavors.

F. Franchisee affirms all information set forth in any and all applications, financial statements, and submissions to Franchisor is true, complete, and accurate in all respects, with Franchisee expressly acknowledging Franchisor is relying upon the truthfulness, completeness, and accuracy of such information.

G. This Franchise Agreement, the documents referred to, and the Exhibits attached, constitute the entire, full and complete Agreement between the Franchisor and the Franchisee. This Franchise Agreement supersedes all prior Agreements between the parties.

THE FRANCHISEE ACKNOWLEDGES THE FRANCHISEE'S SIGNATURE TO THIS FRANCHISE AGREEMENT HAS NOT BEEN INDUCED BY ANY REPRESENTATION INCONSISTENT WITH THE TERMS OF THIS FRANCHISE AGREEMENT OR INCONSISTENT WITH THE UNIFORM FRANCHISE OFFERING CIRCULAR (UFOC) GIVEN TO THE FRANCHISEE BY THE FRANCHISOR IN CONNECTION WITH THIS FRANCHISE. THIS FRANCHISE AGREEMENT MAY BE AMENDED ONLY BY WRITTEN INSTRUMENT SIGNED BY ALL PARTIES.

FRANCHISOR: **FOOT SOLUTIONS, INC.**

\_\_\_\_\_  
WITNESS

BY: \_\_\_\_\_  
RAYMOND J. MARGIANO  
PRESIDENT

\_\_\_\_\_  
WITNESS

BY: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

BY: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

BY: \_\_\_\_\_

SCHEDULE A

Description of Territory

The following is a description of the Territory within which the Franchisee shall operate the Franchised Business or Store:

THE LOCATION ADDRESS WILL BE ADDED  
ONCE THE SITE HAS BEEN SECURED.

THE PROTECTED EXCLUSIVE TERRITORY  
WILL BE DETERMINED  
ONCE THE SITE HAS BEEN FINALIZED.

FRANCHISEE NAME  
(Refer to Section 2 of the Franchise Agreement)