

**EXHIBIT A**

## FRANCHISE AGREEMENT

This Franchise Agreement is made and entered into \_\_\_\_\_, 2003, between Pick-Em Up Truck Store Franchising Corporation, a California Corporation, \_\_\_\_\_

### RECITALS:

To simplify the language in this Franchise Agreement, "we" or "us" or "our" or "the franchisor" means Pick-Em Up Truck Store Franchising Corporation; "you" or "the franchisee" means the person who buys the franchise.

We own a trade name, logo/symbol and a motto, including but not limited to the phrase "Pick-Em Up Truck Store" and "The Pickup Truck Accessory People" and the logo/symbol at the top of this page (hereinafter collectively called "franchise marks").

We have developed a system for the effective operation, promotion and assistance of retail stores involved in selling pickup truck accessories (hereinafter collectively called "our system").

You desire to enter into the business of operating a Pick-Em Up Truck Store under our system and wish to buy a franchise from us for that purpose.

You understand and acknowledge the importance of our high standards of quality, cleanliness, appearance, and service and the necessity of operating any franchise you receive from us in conformity with our standards and specifications.

THEREFORE, THE PARTIES TO THIS FRANCHISE AGREEMENT DO HEREBY AGREE AS FOLLOWS:

#### Section 1. Grant of Franchise

We hereby grant to you subject to the terms and conditions of this franchise agreement, the right, license, and privilege to

operate a retail store selling pickup truck accessories (hereinafter referred to as the "franchise business"), using our franchise marks and our system solely in connection with the franchise business and only at the location we approve for you as specified in this Franchise Agreement.

You shall lease or acquire, as you choose, on your own account a location for the franchise business, subject to our prior written approval both of the location and of the lease or purchase agreement before you commit yourself. We will advise you about various sites you identify. You shall not relocate the franchise business without our prior written consent.

During the term of this Franchise Agreement, we will not establish nor license another to establish a Pick-Em Up Truck Store at any location within a five mile radius of the location you obtain upon our approval thereof.

### Section 2. Term and Renewal

Except as otherwise provided herein, the term of this Franchise Agreement shall expire 10 years from the date at which you and we have both signed it.

You may, at your option, at the end of a term, renew this Franchise Agreement for one additional consecutive term of 10 years, subject to the following conditions that must be met prior to renewal:

- a. You must not be in default of any of the terms of this Franchise Agreement.
- b. You must give us written notice of your election to renew not less than 180 days prior to the expiration date nor more than 210 days prior to the end of the initial term and pay the \$5,000.00 renewal fee with your notice.
- c. You must execute a new Franchise Agreement, which shall be in the form that we are then offering franchisees, which may contain materially different terms from the terms in this Franchise Agreement, except: (1) in lieu an initial franchise fee, you shall pay the renewal fee of \$5,000.00, and shall pay this fee not less than 30 days prior to the expiration date, (2) the renewal term shall be 10 years, and (3) there may be no provision for further renewal.
- d. You shall make or provide for, in a manner satisfactory to us, such renovation and modernization of the franchise business premises as we may reasonably require, including without limitation, renovation of signs, furnishings, fixtures and decor to reflect the then current standards and image of our system.

- e. You shall present satisfactory evidence that you have the right to remain in possession of the approved location for the duration of the renewal term of the Franchise Agreement, or, in the alternative, shall obtain our advance approval of a new location for the franchise business.
- f. The protected territory shall remain the same radius.
- g. You and we shall execute a mutual general release in a form prescribed by us.
- h. If we determine that we will not renew your franchise business term because you will not accept the new Franchise Agreement, we must give you at least 180 days notice of that intention, to allow you to sell the franchise business during that period to someone meeting our then current standards for a new franchise or for renewal if we are not then granting new franchises.

Your continued operation of the franchise business after the end of any term hereof, without exercising an option to renew, shall not constitute an implied renewal or extension of the term of this Franchise Agreement.

### Section 3. Duties of Franchisor

We will provide you with an orientation and training program, lasting for two weeks, at one of our company stores, designated by us. You and one other person you designate may attend free of any charge by us. This program will train you about our system for operating successful Pick-Em Up Truck Stores. You must pay for your own living and travel expenses in attending the program. Moreover, you and your head manager, if any must attend this program prior to opening your franchise business. We may also make available other training programs as we deem that appropriate.

We will consult with you regarding store construction or remodeling and your acquisition of equipment and supplies from independent third parties. You will pay for all construction and remodeling of your location and for acquisition of all equipment and supplies.

We shall provide you with 2 days of supervision and assistance prior to opening and 5 days of supervision and assistance after opening your franchise business.

Each week for the first 90 days after you open your store, we will telephone you to discuss your operational problems. As we deem it advisable, we will maintain staff to advise you in the general operation of your franchise business.

We will hold annual conferences, lasting no longer than four days, to discuss sales techniques, personnel training, bookkeeping, accounting, inventory control, performance

standards, advertising programs and merchandising procedures. There is no conference fee, but you must pay all your travel and living expenses. We will select the site for these annual conferences, for which it is mandatory that either you or your head manager attend.

From time to time, we will identify and develop new products and services for you to provide in your franchise business and provide you with the necessary information about those new products and services.

As we develop operations manuals for operation of your franchise business, we will loan you copies of them. However, any and all such manuals remain our property and are confidential and constitute trade secrets belonging to us, alone. While these manuals may be modified, any such modifications will not alter your status and rights under this Franchise Agreement.

When we assess an advertising fee, we will expend the advertising fee received from you on developing marketing and advertising programs and on obtaining advertising in national and regional television, radio and print media. We will allocate the funds received from you among these levels and types of media as we, in our absolute discretion, deem appropriate. You are not allowed to engage in any other advertising campaigns developed and/or funded by you without our prior written consent.

We will seek to maintain high standards of quality, appearance, and service throughout our Pick-Em Up Truck Store system, conduct inspections of your franchise business and others, and evaluate the products sold and services rendered therein--all as we deem advisable.

Both prior to the opening of your franchise business and throughout its operation, we will direct and require your purchase of levels and types of inventory as we in our absolute discretion determine necessary and proper.

We may, but are not obligated to provide you any other supervision, assistance or services prior to the opening of your franchise business or throughout the term of your Franchise Agreement.

All our obligations under this Franchise Agreement are to you, the franchisee, specifically, and to no one else, without our prior written approval.

We reserve the right to allow Pick-Em Up Truck Store franchises to be placed with other related existing businesses when we conclude in our absolute discretion that the association will be beneficial to us.

#### 4. Franchisee's Fees

You shall pay us a nonrefundable \$15,000.00 lump sum franchise fee when you sign this Franchise Agreement, in order to be entitled to open a Pick-em Up Truck Store franchise. There are no refunds on this initial fee. We reserve the right to alter this fee, if a potential franchisee commits to opening more than one franchise store.

Throughout the term of this Franchise Agreement, you will pay us a monthly royalty fee in an amount to equal 6% of the gross retail sales plus 3% of any gross wholesale sales from your franchise business; in months when total sales exceed \$100,000.00, the royalty will be 4% of gross sales. These monthly royalty fees are fully earned by us and are for the use of our system and our franchise marks. Gross sales includes all revenue from the sale of products and the performance of services by your franchise business, whether for cash or for credit and regardless of collection in the case of credit, and income of every kind and nature related to your franchise business, excepting only sales and use taxes collected by you for transmittal to a government taxing authority. In computing gross sales, you will be permitted to deduct the amount of cash refunds to, and coupons used by customers, provided such amounts have been included in sales. Wholesale sales include any products sold or services performed by you on which sales taxes are not assessed.

When we in our discretion decide to do so, we will begin to assess you an advertising fee. When that fee begins, it will be monthly in an amount equal to 3 percent of the gross retail sales from your franchise business. This advertising fee will be expended by us and may be increased by us as provided in Section 8 of this Franchise Agreement up to a maximum of 5 percent.

All monthly fees must be received by us no later than the 10th day of the following month for the preceding month and shall be submitted to us together with the monthly reports and statements required by this Franchise Agreement. Any monthly payment or monthly report not actually received by us on or before its date shall be deemed overdue. If any payment is overdue, you shall pay us in addition to the overdue amount, interest on such amount from the date it was due until paid at the rate of 1 and 1/2 percent per month, or the maximum rate allowed, whichever is less.

You will pay us a \$10,000.00 transfer fee prior to consummation of any transfer by you of ownership of your franchise business to a third person. We retain an absolute right of first refusal on the terms you negotiate with the third person and the absolute discretion to prevent the transfer by not granting you permission in writing to sell to the third person. There will be no charge if you transfer your franchise business to a corporation you control, so long as you retain majority control of that corporation; once you seek to transfer majority control to a third person, this transfer fee and our absolute right of first refusal and to deny permission for the transfer are applicable.

Upon deciding to renew your franchise business as provided in Section 2 of this Franchise Agreement, you must pay us \$5,000.00 as a renewal fee.

At our absolute discretion, we reserve the right to waive a transfer fee or a renewal fee in specific circumstances.

There are additional fees that you must also pay to us for computer software to operate your franchise business. These fees

include a one time \$5,000.00 fee for our point-of-sale software, training and support therewith; a one time \$2,500.00 fee for our accounting package option; monthly data base updating charges, presently \$99.00; and \$399.00 annual software licensing fees for software that we provide to you, of which the monthly and annual charges may vary over time.

If you wish to send any other employee to our training program after you and your head manager have attended, you must pay us \$1,000.00 two weeks prior to the commencement of the training.

Within 30 days after you are billed, you must pay us the entire cost of the any audit we make of your franchise business, if you understated the gross sales for any month by 2% or more.

All of the fees imposed on you by this section are payable to us and are nonrefundable.

#### Section 5. Some of Your Additional Duties

Duties, obligations, promises and warranties you make to us in addition to those stated elsewhere this agreement are as follows:

You understand, acknowledge and accept that every detail of the franchise business is important to you, to us and to other franchisees in order to maintain high uniform operating standards, to increase demand for the goods and services sold by all our franchisees, and to protect our reputation and goodwill.

You shall operate the business in conformity with such methods, standards and specifications as we may from time to time prescribe in writing to insure that the highest degree of quality and service is uniformly maintained.

You shall send up to two individuals free of charge by us to the initial training and orientation session after you enter into this Franchise Agreement. You must send to the session at least one person who signs this agreement as a principal of the franchisee. You must commence that session at the location we designate within 30 days of the date this Franchise Agreement is signed, and each of the two individuals you send must complete it to our satisfaction.

At our discretion, we may subsequently require other persons employed by you in management to also attend and complete to our satisfaction the initial training program. We will charge you, as specified in Section 4, for those additional trainees.

You and your employees shall also attend such refresher courses, seminars, and other training programs as we may reasonably require from time to time. We will provide instructors and training materials for all required training programs. You or your employees are responsible for all other expenses you or your employees incur in connection with any such training programs, including, without limitation, the costs of transportation, lodging, meals, and wages.

You must use the franchise business premises only for the purposes of this Franchise Agreement; no products or services may

be sold or offered from there without our prior written approval. From time to time, as available, and as we deem advantageous, we may make a bulk purchase of products which we will make available to you at competitive prices. We will disclose to you what our profit margin will be on any such transaction before you and we make it.

You must keep the business open and in normal operation for such minimum hours and days as we may from time to time specify in writing.

Before commencing any remodeling, renovation or construction of your franchise business site, you must, at your expense, comply to our satisfaction with all the following requirements:

- a. You must submit to us, for our approval, detailed plans and specifications, adapting our then current standard plans and specifications to your location and to local and state laws, regulations, and ordinances. When approved by us, such plans and specifications shall thereafter not be materially changed or modified without our prior written consent.
- b. You must use a qualified general contractor or construction supervisor to oversee construction, renovation, remodeling or modification of the franchise business facility and completion of all improvements.
- c. You must obtain all permits and certifications required for lawful construction and operation of the franchise business facility, including, without limitation, any zoning, access, sign and fire requirements and must certify in writing to us that you have obtained all such permits and certifications.
- d. You must provide us written notice of the date remodeling, renovation or construction of your site will begin, within ten days after you sign your lease. You must maintain continuous construction of your franchise business premises to complete the construction work in accordance with the approved detailed plans and specifications, at your expense, within sixty days after the date construction commences.

At our direction, and not more often than once every 5 years, you shall refurbish the franchise business premises at your expense, to conform to the building design, trade dress, color scheme and presentation of franchise marks consistent with our then current standards for our Pick-Em Up Truck Store system, including, without limitation, redecoration, remodeling and modifications to existing improvements. You have four months from our direction in which to complete the refurbishment.

You expressly grant us and our agents the right to enter the franchise business premises at any reasonable time, with or without notice, to inspect, photograph or videotape the franchise business premises, equipment, operations and records. You agree to cooperate with our representatives in such inspections by



rendering such assistance as they may reasonably request, and, upon reasonable notice from us or our agents, to take such steps as they direct to immediately correct the deficiencies detected during any such inspection.

You must not sell any product or provide any service in your franchise business without our prior written approval. You must purchase your products only from vendors we specify in writing. At our discretion, we reserve the right to require that equipment, fixtures, furnishings, signs and supplies required for the operation of the franchise business be purchased solely from suppliers (including manufacturers, distributors and other sources), who demonstrate, to our continuing reasonable satisfaction, the ability to meet our then current standards and specifications for such items.

You understand that we have special arrangements with some manufacturers, which arrangements will provide that you receive certain products at a special price. These manufacturers also supply suggested retail prices and advertise suggested retail prices. These manufacturers have announced that they will cease to do business with those who don't comply with their suggested retail price. You understand that your failure to comply with these suggested retail prices may result in the manufacturer refusing to supply their product to you.

#### Section 6. Franchise Marks

We own franchise marks that you acknowledge have value.

We grant you the right to use our franchise marks only during the term of this Franchise Agreement and only according to the following terms and conditions:

- a. You shall use only the name, mottos and logos/symbols that we designate and license to you in the operation of the franchise business, and you shall use them only in the manner we authorize and permit. Any unauthorized use thereof shall constitute an infringement on our rights.
- b. You shall execute any documents we deem necessary to obtain or maintain protection of our marks or to maintain their continued validity and enforceability.
- c. You shall not directly or indirectly contest the validity of our ownership of the franchise marks.
- d. You must immediately notify us of any use of or claim of right by any third party to any of our franchise marks or to any such mark that is confusingly similar to any of the franchise marks licensed to you. You must not communicate with anyone else other than us, or our counsel in connection with any such challenge or claim.
- e. In the event that litigation involving our franchise marks is instituted against you, you

- must promptly notify us and shall cooperate fully with us in defending or settling such litigation.
- f. We have sole discretion to take such action as we deem appropriate, and we have the sole right to exclusively control any litigation or other proceeding arising out of any litigation or other proceeding arising out of any infringement, challenge or other claim or otherwise relating to any of our franchise marks.
  - g. While we are not required to defend you against a claim regarding your use of any of our franchise marks, we will reimburse you for any liability and reasonable attorney's fees and costs you incur in connection with making your defense, if we choose not to participate. To receive such reimbursement, you must have notified us immediately when you learned about the challenge.

You understand and acknowledge that:

- h. Your use of the franchise marks pursuant to this Franchise Agreement does not give you any ownership interest or other interest in or to those franchise marks, except the license granted here. Upon expiration or termination of this Franchise Agreement and the license granted here, no monetary amount will be assigned as attributable to any goodwill associated with your use of our system or our franchise marks.
- i. The right and license of the franchise marks granted here to you is not exclusive, and we retain the rights, among others:
  - 1. To use the franchise marks in connection with selling products and services;
  - 2. To grant other licenses for the use of the franchise marks, in addition to those licenses already granted to existing franchisees.
- j. We reserve the right to substitute different franchise marks for use in identifying our system and the businesses operating thereunder, if our currently owned franchise marks no longer can be used, or we, in our sole discretion, determine substitution of different franchise marks would be beneficial to the system. If we deem such changes necessary, we will reimburse you for the reasonable tangible costs (i.e. changing signs) required in making such changes.

#### Section 7. Your Accounting and Recordkeeping Duties

During the term of this Franchise Agreement and any necessary time period afterwards, you shall maintain and preserve for at least 4 years from their preparation date, full, complete, and accurate books, records and accounts in accordance with

generally accepted accounting principals, which shall also be in the form and manner we prescribe from time to time in writing.

Once you open your franchise business and for the rest of the term of this Franchise Agreement, you shall submit to us no later than the 10th day of each month a royalty report in the form we prescribe, accurately reflecting all gross sales during the preceding calendar month and such other data and information as we may require, including, without limitation, such evidence that you have made any local advertising expenditures we have reasonably required from the advertising budget. You shall also submit to us no later than the 10th day of each month during the term of this Franchise Agreement a monthly profit and loss statement, in the form we prescribe for the preceding calendar month.

You shall, at your expense, provide to us a profit and loss statement and a balance sheet, accompanied by a review report prepared by an independent Certified Public Accountant who is satisfactory to us, within 60 days after the end of each fiscal year of the franchise business.

We or our designated agent shall have the right at all reasonable times to examine and copy, at our expense, the books, records and tax returns of the franchise business. We shall also have the right, at any time, to have an independent audit made of the books of your franchise business. If an inspection should reveal that any payments have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount understated upon demand, in addition to interest on such amount from the date such amount was due until paid, at the rate which is 1 & 1/2 % per month, or the maximum rate permitted by law, whichever is less, calculated on a daily basis. Moreover if an inspection or audit discloses an understatement of any monthly payment of 2% or more, you shall, in addition, reimburse us for any and all costs and expenses connected with the inspection or audit, including, without limitation, travel, lodging and wage expenses and reasonable accounting and legal costs. The foregoing remedies shall be in addition to any other remedies we may have.

#### Section 8. Advertising

You and we recognize the importance of advertising and the importance of standardizing our advertising efforts to promote the goodwill and public image of the Pick-Em Up Truck Store system.

We will, from time to time, develop advertising and promotional plans and materials as we deem appropriate. We will provide videocassette television advertisements, script for radio advertising, ad slicks for printed advertising, art work for yellow page ads, and such other advertising material for your use as we deem appropriate. You will use no advertising materials without our approval.

You and we agree that at such time as we in our sole discretion deem it appropriate, we will assess you a monthly advertising fee as follows (We will give you at least 30 days notice, in writing, before the month in which your advertising fee is first due):

- a. Your franchise business will contribute to the advertising fund we will manage the advertising fee of three percent of your gross retail monthly sales as specified in Section 4.
- b. At any time after your franchise business has been paying the monthly advertising fee for one year or more, we may increase your advertising fee in our sole discretion to no more than five percent of your gross retail monthly sales and by no more than one percent of your gross retail monthly sales in any one year period.
- c. We will endeavor to expend your proportionate share of the advertising fund in your area, but we are not responsible or liable for deviations of less than five percent from that objective.
- d. We will expend some of the monthly advertising fee received from you on developing marketing and advertising programs and the rest of the advertising fee on obtaining advertising in national, regional, and local television, radio and print media. We will allocate the funds received from you among these levels and types of media as we, in our absolute discretion, deem appropriate. You are not allowed to engage in any other advertising campaigns developed and/or funded by you without our prior written consent.
- e. We shall endeavor to conduct all marketing, merchandising, advertising and promotion plans in a dignified manner to enhance the good will of the entire Pick-Em Up Truck Store system.
- f. You shall not expend any funds on any marketing, merchandising, advertising or promotion without our prior written consent.
- g. We shall make the same percentage contributions to the advertising fund from our company stores as we require from our franchise stores.

#### Section 9. Insurance

Throughout the term of this Franchise Agreement and any extension thereof, at your cost, you shall obtain and maintain the following policies of insurance:

- a. Comprehensive general liability insurance, including personal injury, completed operations, contractual liability, and products liability, in an amount of not less than One Million Dollars per occurrence for bodily injury and not less than Five Hundred Thousand Dollars per occurrence for property damage, and naming us as an

- additional insured in each such policy or policies.
- b. Fire, vandalism, and extended coverage insurance with primary and excess limits of not less than the full replacement value of the franchise business premises and all inventory located there, along with furniture, fixtures, and equipment.
  - c. Employer's liability, workers compensation, and such other insurance as may be required by statute or rule in the state or locality in which your franchise business is located and operated.
  - d. Prior to any construction, renovation, refurbishment, or remodeling of your franchise business site, you must require your general contractor to provide written proof of reputable comprehensive general liability insurance, including comprehensive vehicle liability coverage, builder's risk, private liability, and dependent contractors coverage, with a minimum of Five Hundred Thousand Dollar limits per occurrence, naming us and you as additional insureds; you must also require proof from your general contractor that he has whatever workers' compensation and employer's liability insurance as may be required by law.

Every policy of insurance you obtain shall be written by an insurance company satisfactory to us and shall include, at a minimum, whatever additional coverage and high policy limits as we may specify in writing from time to time.

As of the date of this Franchise Agreement and thereafter at least thirty days prior to the expiration on any such policy, you must provide us Certificates of Insurance showing the proper coverage with limits no less than those required by us and you must provide us at the same time with written evidence that you paid the premiums. All Certificates of Insurance shall state that no less than thirty days prior written notice shall be given to us before cancellation or change in the coverage, scope or amount of the policy cited.

If you, for any reason, fail to obtain or maintain any insurance as required here and including such additional requirements as we may specify from time to time in writing, we shall have the right and authority--without any obligation to do so and without waiving your breach of this Franchise Agreement by such inaction--to obtain immediately such insurance and to charge you for the costs of such insurance along with a reasonable fee for our expenses in so acting, due and payable by you immediately upon billing.

Your absolute obligation to obtain and maintain the insurance required is not altered or limited by any insurance which we may maintain, nor shall your complete performance of your duty to obtain insurance relieve you of liability under the indemnification section of this Franchise Agreement.

#### Section 10. Your Indemnification of Us

You will indemnify us against any and all liability, loss, costs, damages, attorney's fees and litigation costs which we may sustain or incur by reason of or in consequence of your conduct or your omission to act in the operation of your franchise business including but not limited to sums paid or liabilities incurred in settlement of and expenses paid or incurred by us in connection with any claims, suits or judgments brought by third parties arising out of your conduct or your omission to act in the operation of your franchise business. On our request, you must defend actions brought against us by third parties arising out of the conduct of your franchise business; however, we have the absolute right at any time to conduct our own defense at your expense, as we bill you. Any judgment for a third party against us arising out of your conduct or your omission to act in the operation of your franchise business will be conclusive as to your obligation to indemnify us for that judgment.

#### Section 11. Transfers of Interests

You understand, acknowledge and accept that the rights and duties specified in this Franchise Agreement are personal to you. We grant you this franchise in reliance on your business skill, financial capacity, and personal character. Therefore, neither you nor any successor of yours or any part of your interest in your franchise business shall sell, assign, transfer, convey, give away, pledge, mortgage, or otherwise encumber any direct, or indirect interest in your franchise business without our prior written consent; the only exception to this requirement for our prior written consent is if your franchise business becomes a publicly owned corporation, then our written consent is not required for a transfer of shares in that publicly held corporation. Any purported assignment or transfer, by operation of law or otherwise, not having our prior written consent shall be null and void and shall constitute a material breach of this Agreement.

We will not unreasonably withhold our consent to a transfer of a minority part of your interest in your franchise business; however, if a transfer, alone or together with other previous, simultaneous, or proposed transfers, would have the effect of transferring a controlling interest in the franchise business, we may, in our sole discretion, require any or all of the following conditions for our approval:

- a. The transferor must not be in default of any provision of this Franchise Agreement or any amendment or modification hereof, or any other agreement between you and us or our subsidiaries or affiliates;
- b. The transferor must sign a mutual general release with us in a form acceptable to us;
- c. The transferee must sign a Franchise Agreement with the term ending on the expiration date of your Franchise Agreement and in the form that we are then offering to

- our new franchisees, but the transferee will not be required to pay the initial franchisee fee;
- d. At his expense, the transferee shall upgrade the franchise business to conform to our current standards and specifications at the time of transfer, and shall complete any upgrading within the time we specify;
  - e. At the transferee's expense and prior to the transfer date, he and his chief manager must complete any training programs we then have in effect upon such terms and conditions as we may reasonably require;
  - f. The transferee must satisfy all of our then current standards for new franchisees; and
  - g. Except in the case of transfer to a corporation formed for the convenience of ownership, you shall pay us a nonrefundable transfer fee of \$10,000.00, due and payable prior to the date of transfer.

You must obtain our prior written approval before any assignment, transfer, pledge or hypothecation of all or any part of the assets of the franchise business to banks or other lending institutions as collateral security for loans made directly to or for the benefit of the franchise business.

Limited partnership interests in the franchise business may be sold, by private offering or otherwise, only after our prior written consent based on our absolute discretion.

We have an absolute right of first refusal on any transfer of any interest in the franchise business. Any person holding any interest in the franchise business who desires to accept any bona fide offer from a third party to purchase such interest must notify us in writing of each such offer, and must provide such information and documentation relating to the offer as we may require. We have the right and the option, exercisable within thirty days after receipt of such written notification, to send written notice to the seller that we intend to purchase the seller's interest on the same terms and conditions offered or accepted by the third party. In the event that we elect to purchase the seller's interest, closing on such purchases must occur within thirty days from the date of notice to the seller of our election to purchase or the transfer date agreed to by the seller and the third person, whichever is later. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same rights of first refusal by us as in the case of an initial offer.

Upon the death or mental incompetency of any person, who alone or with a spouse or other family member within the second degree, held a majority interest in the franchise business, the surviving spouse, heirs, or estate of that person shall have an opportunity to participate in the ownership of the franchise for a reasonable period of time, which shall be no longer than nine months or the expiration date of the Franchise Agreement then in effect, whichever comes sooner. During that time period, if the ownership interest involved is a majority or controlling

interest, we may, in our absolute discretion, require that our own management be in charge of running the franchise business and may charge a reasonable fee for those management services. During that time period, the surviving spouse, heirs, or estate shall either satisfy all of our then current qualifications for a purchaser of a franchise from us or sell, transfer or assign the franchise to a person who does satisfy our then current standards for a new franchisee. We reserve our right of first refusal on any such sale, transfer or assignment.

We have the absolute right to transfer or assign all or any part of our rights or obligations under this Franchise Agreement to any person or legal entity.

#### Section 12. Default & Termination Without Chance to Cure

You shall be deemed to be in default of this Franchise Agreement, and all rights granted you herein shall automatically terminate upon immediate notice of termination without an opportunity for you to cure, if any of the following occurs:

- a. Any of the principals of the franchisee or the franchise business is declared bankrupt or judicially determined to be insolvent, or all or a substantial part of the assets thereof are assigned to or for the benefit of any creditor, or admits inability to pay debts as they come due;
- b. You abandon the franchise by failing to operate the franchise business for five consecutive days during which you are required to operate the franchise business under the terms of the Franchise Agreement, or any shorter period after which it is not unreasonable under the facts and circumstances for us to conclude that you do not intend to continue to operate the franchise business, unless such failure to operate is due to fire, flood, earthquake or other similar cases beyond your control;
- c. We and you agree in writing to terminate the franchise;
- d. You make any material misrepresentations relating to the acquisition of the franchise business or you engage in conduct which reflects materially and unfavorably upon the operation and reputation of the franchise business or our system;
- e. You fail, for a period of 10 days after notification of noncompliance, to comply with any federal, state or local law or regulation applicable to the operation of the franchise business;
- f. You, after curing any failure in accordance with Section 13, engage in the same noncompliance whether or not such noncompliance is corrected after notice;
- g. You repeatedly fail to comply with one or more requirements of the Franchise Agreement, whether or not corrected after notice;



- h. The franchise business or its business premises are seized, taken over or foreclosed by a government official in the exercise of his duties, or seized, taken over, or foreclosed by a creditor, lienholder or lessor, provided that a final judgment against the franchisee remains unsatisfied for 30 days (unless a supersedeas or other appeal bond has been filed); or a levy of execution has been made upon the license granted by the Franchise Agreement or upon any property used in the franchise business, and it is not discharged within five days of such levy;
- i. Any principal of the franchisee is convicted of a felony or any other criminal misconduct which is relevant to the operation of the franchise;
- j. You fail to pay any franchise fees or other amounts due to us or our affiliates within five days after receiving written notice that such fees are overdue; or
- k. We make a reasonable determination that continued operation of the franchise by you will result in an imminent danger to public health or safety.

#### Section 13. Default With Chance to Cure Before Termination

Besides the grounds for termination upon notice without chance to cure stated in Section 12, we may also terminate your franchise prior to the expiration of its term for good cause as defined in this section. "Good cause" shall include, but not be limited to, your failure to comply with any lawful requirement of the Franchise Agreement after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure the failure.

#### Section 14. Your Duties Upon Termination or Expiration

Upon termination or expiration of this Franchise Agreement, all rights granted hereunder to you shall forthwith terminate, and you shall immediately cease to operate the franchise business under this Franchise Agreement.

You would then immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with our system and the franchise marks and distinctive forms, slogans, signs, symbols, and devices associated with our system; provided, however, that this section shall not apply to the operation of any other franchise business under our system which may be granted by us to you.

You shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the franchise mark or any other service mark or trade mark of ours.

You shall, at our option, assign to us any interest which you have in any lease or sublease for the premises of the franchise business. In the event we do not elect to exercise our option to acquire the lease or sublease for the premises of the

franchise business, you shall make such modifications or alterations to the premises operated hereunder (including, without limitation, the changing of all the interior wallpaper, the perimeter design lighting, any and all awnings, and the telephone number) immediately upon termination or expiration of the Franchise Agreement as may be necessary to distinguish the appearance of the premises from that of other retail stores under our system, and shall make such specific additional changes thereto as we may reasonably request for that purpose. In the event you fail or refuse to comply with the requirements of this section, we shall have the right to enter upon the premises where your franchise business was conducted without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at your expense, which expense you hereby agree to pay upon demand.

You shall promptly pay all sums owing to us and our subsidiaries and affiliates.

You shall immediately deliver to us all writings, records, files, instructions, correspondence, and all materials relating to the operation of the franchise business.

We shall have the option, to be exercised within ten days after termination or expiration, to purchase from you any or all of your franchise business inventory and any and all other items bearing any of our franchise names at the lower of the fair wholesale market value or the price paid by you, and your equipment, furniture and fixtures on the franchise business premises, which are wholly owned by you, on the basis of your cost or fair market value, whichever is less.

#### Section 15. Your Management Obligations

During the term of this Franchise Agreement and any extension thereof, either you will devote your full-time energy and best efforts to the management and operation of the franchise business or you will designate an "on premises" manager who will devote his full-time energy and best efforts to the management and operation of the franchise business. Before any such "on premises" manager may assume any duties on your behalf, he must complete the training program we offer and then you must receive our approval of him in writing.

#### Section 16. Taxes, Permits and Indebtedness

You shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, unsecured property taxes and all accounts and other indebtedness of every kind incurred by you in the conduct of the franchise business. You shall pay to us an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on us with respect to any payments we must make under this Franchise Agreement, unless the tax is credited against income tax otherwise payable by us.

You shall comply with all federal, state, and local laws, all government rules and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the franchise business, including, without limitation, licenses to do business, fictitious name registrations, sales tax, permits, health and sanitation permits and ratings, and fire clearance.

You shall notify us in writing within five days of commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency or other government entity, which may adversely affect the operation or financial condition of the franchise business.

#### Section 17. Covenant Not to Compete

You acknowledge, understand and accept that by entering into this Franchise Agreement you will come into possession of valuable trade secrets that belong to us. These trade secrets--our corporate philosophy, pricing and inventory strategy, our system, including but not limited to systems for operation and any manuals for operation that we may prepare and provide to you through the term of this Franchise Agreement, which summarize aspects of our proprietary information and know-how--each and all of which are essential to our continuing success as a corporation of retail stores selling pickup truck accessories. You also acknowledge, understand and accept that your entire knowledge of our processes, services and products, all proprietary formulations, technology, know-how and the operation of this franchise business is derived by you from the information we disclose to you and that such information is proprietary and confidential and a trade secret of ours. You agree to strictly adhere to and abide by all procedures we establish to maintain the secrecy of all such trade secrets.

It would be extremely harmful to our competitive position in the industry, if any of our trade secrets were ever divulged to any of our competitors, directly or indirectly.

You therefore promise, agree, covenant and warrant that during the entire term of this Franchise Agreement and for any extension thereof and for three years after the termination of this Franchise Agreement for any reason or for no reason whatsoever, you will not, directly or indirectly, carry on or engage in or assist as an owner, shareholder, partner, limited partner, manager, operator, employee, servant, salesman, agent, broker, consultant or through agents, representatives, corporations, partnerships, or other entities, participate in, assist or aid in any way any person or entity involved in the sale, development or manufacture of pickup truck accessories of any kind.

You furthermore promise, agree, covenant and warrant that neither you nor any of your agents, servants, employees, individuals who leave your employment during the term of the

Franchise Agreement, associates or relations of any type or kind, will in any way divert or attempt to divert any business customer of any Pick-Em Up Truck Store retail store, whether company owned or franchised, to any competitor that is not a Pick-Em Up Truck Store, 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 our franchise marks and our system.

Your covenant not to compete shall be in full force and effect in all states within the United States of America in which any Pick-Em Up Truck Store, whether company owned or franchised, is located at any time during the period in which this covenant not to compete is in force.

You agree that the remedy at law for any breach by you, your agents, servants, employees, individuals who leave your employment during the term of the Franchise Agreement, associates or relations of any type or kind of this covenant not to compete will be inadequate and that, in addition to any other remedies we may have, and without prejudice to those remedies, we shall be entitled to temporary and permanent injunctive relief for any breach of this covenant not to compete without the necessity of proving actual damage to us.

#### Section 18. Covenant to Protect Confidential Information

You promise, agree, covenant and warrant that neither you nor any of your agents, servants, employees, individuals who leave your employment during the term of the Franchise Agreement, associates or relations of any type or kind shall, during the term of this Franchise Agreement and any extension thereof and thereafter, communicate or divulge to any third person, for any reason or for no reason whatsoever, any trade secret, confidential information, knowledge, proprietary information, corporate philosophy, pricing and inventory strategy, our know-how, our system concerning the methods of operation of the franchise business or of any other aspect of our system, which you learn by virtue of entering into this Franchise Agreement.

You agree that the remedy at law for any breach by you or any of your agents, servants, employees, individuals who leave your employment during the term of the Franchise Agreement, associates or relations of any type or kind of this covenant to protect confidential information will be inadequate and that, in addition to any other remedies we may have, and without prejudice to those remedies, we shall be entitled to temporary and permanent injunctive relief for any breach of this covenant not to compete without the necessity of proving actual damage to us.

#### Section 19. Your Status as an Independent Contractor

You understand and agree this Franchise Agreement does not create a fiduciary relationship between us and you and that you are an independent contractor under this Franchise Agreement.

During the term of this Franchise Agreement and any extension thereof, you shall hold yourself out to the public as an independent contractor operating the franchise business pursuant to a franchise from us. You agree to take any and all such action as may be necessary and proper to do so, including, without limitation, exhibiting a notice of your status as an independent contractor in a conspicuous place in the franchise business premises, the content and form of which we reserve the right to specify.

It is understood and agreed that nothing in this Franchise Agreement authorizes you to make any contract, agreement, warranty, or representation on our behalf, or to incur any debt or other obligation in our name.

Section 20. Form for Approvals

Whenever this Franchise Agreement requires approval by us of any action that you want to take, you must obtain our approval in advance and in writing for it to be effective. No waiver by us is effective unless you disclose the breach before seeking a waiver from us, and our waiver is in writing.

Section 21. Notices

Any notice required to be given under this Franchise Agreement may be given by personal delivery in writing or by certified or registered mail, postage prepaid, return receipt requested. Notice shall be deemed communicated as of actual receipt. Mailed notices shall be addressed as set forth below, but each party may change his address by written notice in accordance with this section.

To Us:

Gary L. Owens, President  
Pick-Em Up Truck Store  
Franchising Corporation  
720 East Center Street  
P.O. Box 1287  
Visalia, CA 93279

To You:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 22. No Waiver Is Continuous

You and we agree that time is of the essence in this Franchise Agreement, and any waiver by us of the prompt and punctual performance of any term, condition or covenant hereof shall not be construed to be a waiver of the prompt and punctual performance of the same or any other term, condition or covenant subsequently when due.

Section 23. Acknowledgements & Representations By You

You acknowledge that you have conducted an independent investigation of this franchise business opportunity and recognize that the business venture contemplated by this Franchise Agreement involves substantial business risks and that your success will be largely dependent upon your ability as an independent businessperson. We expressly disclaim making, and you acknowledge that you have not received, any warranty or guarantee, express or implied, as to the potential volume, profit or success of the franchise business contemplated by this Franchise Agreement.

You acknowledge that you received a complete copy of this Franchise Agreement and our Offering Circular on the franchise business at least ten business days before the date on which this Franchise Agreement is signed.

You acknowledge that you have read and understood this Agreement and the Offering Circular we provided you. You also acknowledge that we have allowed you ample time and opportunity to consult with attorneys, accountants and business advisors of your own choosing about the potential, serious risks of pursuing your franchise business. You acknowledge that we have urged you to seek legal advice before signing this Franchise Agreement.

You represent that any financial statement you gave us showing you have sufficient assets to meet our estimated initial required investment, exclusive of equity in your residence, is accurate as of the date you sign this Franchise Agreement.

Section 24. Joint and Several Liability

All of the terms of this Franchise Agreement, including all covenants, conditions, promises, commitments, obligations and acknowledgments herein accepted, made, entered into or undertaken by you, the franchisee, are deemed joint and several liabilities of each of those signing this Franchise Agreement on behalf of you, the franchisee.

Section 25. Force Majeure

If we are prevented or hindered from performing any of our obligations or undertakings under this Franchise Agreement through interruption or delay by any occurrence not occasioned by the conduct of either party to this Franchise Agreement, whether that occurrence is an act of God or public enemy, or whether that

occurrence is caused by war, riot, storm, earthquake, or other natural forces, or by the acts of anyone not party to this agreement, including accidents, act of government, its agencies or officers, strikes or shortages in inventory any of our approved vendors are to provide you, however caused, or any other legitimate cause beyond the control of the parties, then we shall be excused from any further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence.

#### Section 26. Severability of Agreement

If any part of this Franchise Agreement is held in a final judgment to be void, unenforceable or invalid for any reason, that ruling shall not affect the validity of the rest of this Franchise Agreement. The other parts of this Franchise Agreement shall remain in effect as if this Franchise Agreement had been executed without the unlawful part. The parties hereby declare that they intend and desire that the remaining parts of this Franchise Agreement continue to be effective without any part or parts that have been declared unlawful.

#### Section 27. Governing Law

This Franchise Agreement shall be deemed to have been entered into in the State of California, County of Tulare, and all questions of the validity, interpretation, or performance of any of its terms or of any rights or obligations of the parties to this Franchise Agreement shall be governed by California law.

#### Section 28. Arbitration

All questions and disputes with respect to rights and obligations and alleged breaches of the parties arising under the terms of this Franchise Agreement must be resolved by binding arbitration. Any such issue shall be submitted to binding arbitration upon the written request of one party after service of that request on the other party. The cost of the arbitration shall be borne by the losing party. The parties agree that any arbitration between them shall involve their individual claims only and that any claims subject to arbitration shall not be arbitrated on a class action basis. Any arbitration pursuant to this Section shall take place in Tulare County, California. If the parties cannot agree on the arbitrator, then the arbitrator will be appointed by the Presiding Judge of the Tulare County Superior Court, upon petition by either party to this Franchise Agreement. Other than as specifically provided in this Franchise Agreement, the provisions of the California Arbitration Act shall control the arbitration proceedings (California Code of Civil Procedure, Sections 1280 - 1294.2). You do hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this section.

Section 29. Attorney's Fees and Costs

If any party to this agreement resorts to a legal action, which is limited by Section 28 of this Franchise Agreement to arbitration, to enforce any provision of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred in such litigation in addition to any other relief to which he may be entitled. This provision applies to the entire agreement.

Section 30. Construction of Agreement

As used in this Franchise Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates. Captions for sections in this Franchise Agreement are for convenience and reference only and in no way explain, modify, amplify, or interpret this agreement.

Section 31. Entire Agreement

This Franchise Agreement is prepared in two counterparts, each of which serves as an original, and the parties each acknowledge receipt of one counterpart.

Section 32. Two Counterparts

This Franchise Agreement, consisting of 23 pages, including this page, is the entire contract between you and us concerning your franchise business. Any amendment or modification to this Franchise Agreement must be in writing to be effective. No other agreement, statement or promise made by any party, its officers, agents, servants or employees to any other party or to any of its officers, agents, servants or employees shall be valid or binding.

IN WITNESS WHEREOF, the parties have signed this Franchise Agreement as of the date set forth below.

DATED: \_\_\_\_\_

Franchisor  
Pick-Em Up Truck Store,  
Franchising Corporation,  
a California Corporation

Franchisee  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Gary L. Owens, President

\_\_\_\_\_