

shall upon request by Franchisor submit samples and such other information as Franchisor requires for examination and/or testing or to otherwise determine whether such product, material or supply, or such proposed vendor meets its specifications and quality standards. A charge not to exceed the reasonable cost of the inspection and evaluation and the actual cost of the test shall be paid by Franchisee or the vendor. Franchisor may also require that the vendor comply with such other requirements as Franchisor may deem appropriate, including payment to Franchisor or Franchisor's designee of reasonable continuing inspection fees and administrative costs, and license fees. Franchisor reserves the right, at its option, to reinspect from time to time the facilities and products of any such approved vendor and to revoke its approval upon the vendor's failure to continue to meet any of Franchisor's then-current criteria. Nothing in the foregoing shall be construed to require Franchisor to approve any particular vendor, nor to require Franchisor to make available to prospective vendors, standards and specifications for formulas that Franchisor, in its sole discretion, deems confidential.

- 14.2 *Conformity to Standards.* All inventory, products and materials, and other items and supplies used in the operation of the Stores which are not specifically required to be purchased in accordance with Franchisor's Approved Vendors List shall conform to the specifications and quality standards established by Franchisor from time to time. Any items bearing Proprietary Marks, likenesses, copyrighted material or other proprietary material must be licensed from the proper owner or agent. Evidence of a valid license must be available for inspection by the Franchisor.
- 14.3 *Trademarked Products.* Franchisor shall have the right, but not the obligation, to develop and offer a proprietary line of Cartridges and other proprietary products ("**Trademarked Products**"). If Franchisor develops and offers Trademarked Products, Franchisee acknowledges that it shall purchase Trademarked Products only from Franchisor or such vendor(s) that Franchisor may designate in writing. Trademarked Products shall be carried by Franchisee in the manner required of all other Cartridges and products, as set forth in Section 13.5 above.

15 **FRANCHISOR'S OPERATIONS ASSISTANCE**

- 15.1 *Guidance.* Franchisor may from time to time advise or offer guidance to Franchisee relative to prices for the sale and servicing of Cartridges and related merchandise, products and services offered for sale by the Stores that in Franchisor's judgment constitute good business practice. Such guidance will be based on the experience of Franchisor and its Franchisees in operating Stores and an analysis of the costs of such products and prices charged for competitive products. Franchisee shall not be obligated to accept any such advice or guidance and shall have the sole right to determine the prices to be charged from time to time by the Stores and no such advice or guidance shall be deemed or construed to impose upon Franchisee any obligation to charge any fixed, minimum or maximum prices for any product offered for sale by the Stores.
- 15.2 *Franchisor's Services.* Upon commencement of operation of the Store, and during the term of this Agreement, Franchisor shall do the following:

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- 15.2.1 Provide to Franchisee a comprehensive list of established sources of Cartridges and related merchandise, products, services, equipment and supplies necessary for the operation of Stores and provide specifications for such products;
 - 15.2.2 Coordinate product distribution and purchasing for local, regional and national vendors as Franchisor deems necessary; and
 - 15.2.3 Attempt to negotiate volume discounts for purchases of Cartridges and related merchandise and products made by stores within the System.
- 15.3 *Advice.* Franchisor, or its representative, may advise Franchisee of problems arising out of the operation of the Stores as disclosed by reports submitted to Franchisor, or its representative, by Franchisee or by inspections conducted by Franchisor of the Stores. Franchisor, or its representative, may furnish Franchisee with such assistance in connection with the operation of the Stores as is reasonably determined to be necessary by Franchisor from time to time. Operations assistance may consist of advice and guidance with respect to:
- 15.3.1 Proper procedures to be utilized by the Store with respect to routines regarding the sale and servicing of all Cartridges and related merchandise, products and services as approved by Franchisor;
 - 15.3.2 Additional products and services authorized for sale from the franchised Stores;
 - 15.3.3 Purchase of Cartridges and related merchandise and products, materials and supplies;
 - 15.3.4 The institution of proper administrative, bookkeeping, accounting, inventory control, supervisory and general operating procedures for the effective operation of the Stores; and
 - 15.3.5 Advertising and promotional programs.
- 15.4 *Visits.* Franchisor, or its representative, may make periodic visits to the Stores for the purposes of consultation, assistance, and guidance of Franchisee in all aspects of the operation and management of the Stores. Franchisor, or Franchisor's representatives, who visit a Store may prepare, for the benefit of both Franchisor and Franchisee, written reports with respect to such visits outlining any suggested changes or improvements in the operations of the Store and detailing any defaults in such operations which become evident as a result of any such visit.
- 15.5 *Delivery.* All of the specifications, Approved Vendors List, and Manuals to be provided by Franchisor to Franchisee pursuant to this Agreement shall be delivered to Franchisee at the initial training program described in Section 5 above.

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Franchisee	Franchisor

16 **INSURANCE**

16.1 *Insurance.* Franchisee shall procure at its expense and maintain in full force and effect during the term of this Agreement, an insurance policy or policies protecting Franchisee and Franchisor, and their officers, directors, partners and employees against any loss, liability, personal injury, death, or property damage or expense whatsoever arising or occurring upon or in connection with the Stores, as Franchisor may reasonably require for their own and Franchisee's protection. Franchisor and such of its respective affiliates shall be named additional insured in such policy or policies.

16.2 *Coverages.* Such policy or policies shall be written by an insurance company satisfactory to Franchisor in accordance with standards and specifications set forth in the Manual or otherwise in writing, and shall include, at a minimum (except as different coverages and policy limits may reasonably be specified for all Franchisees from time to time by Franchisor in the Manual or otherwise in writing) the following:

16.2.1 All risks coverage insurance on the Stores and all fixtures, equipment, supplies and other property used in the operation of the Stores, for full repair and replacement value of the equipment, improvements and betterments, without any applicable co-insurance clause, except that an appropriate deductible clause shall be permitted.

16.2.2 Worker's compensation and employer's liability insurance as well as such other insurance as may be required by statute or rule of the state in which the Store is located and operated. If Franchisee is permitted to and elects not to have worker's compensation insurance for its owners and officers, Franchisee shall have alternative coverages at all times for work-related injuries.

16.2.3 Comprehensive general liability insurance and product liability insurance with limits of at least One Million Dollars (\$1,000,000) combined single limit including the following coverages: personal injury (employee and contractual inclusion deleted); products/completed operation; and tenant's legal liability; insuring Franchisor and Franchisee against all claims, suits, obligations, liabilities and damages, including attorneys' fees, based upon or arising out of actual or alleged personal injuries or property damage resulting from, or occurring in the course of, or on or about or otherwise relating to the Stores, provided that the required amounts herein may be modified from time to time by Franchisor to reflect inflation or future experience with claims.

16.2.4 Automobile liability insurance, and property damage liability, including owned, hired and non-owned vehicle coverage, with a combined single limit of at least One Million Dollars (\$1,000,000).

16.2.5 Such insurance and types of coverage as may be required by the terms of any lease for the Store, or as may be required from time to time by Franchisor.

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16.2.6 Business interruption insurance for actual losses sustained.

- 16.3 *Certificates of Insurance.* The insurance afforded by the policy or policies respecting liability shall not be limited in any way by reason of any insurance which may be maintained by Franchisor. Within one hundred twenty (120) days of the signing of this Agreement, but in no event later than the date on which Franchisee acquires an interest in the real property on which it will develop and operate the Store, a Certificate of Insurance showing compliance with the foregoing requirements shall be furnished by Franchisee to Franchisor for approval. Such certificate shall state that said policy or policies will not be canceled or altered without at least twenty (20) days prior written notice to Franchisor and shall reflect proof of payment of premiums. Maintenance of such insurance and the performance by Franchisee of the obligations under this Paragraph shall not relieve Franchisee of liability under the indemnity provision set forth in this Agreement. Franchisee acknowledges that minimum limits as required above may be modified by Franchisor in its sole discretion from time to time, by written notice to Franchisee.
- 16.4 *Franchisor's Right to Obtain Insurance for Franchisee.* Should Franchisee, for any reason, not procure and maintain such insurance coverage as required by this Agreement, Franchisor shall have the right and authority (without, however, any obligation to do so) immediately to procure such insurance coverage and to charge same to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

17 **COVENANTS**

- 17.1 *Coverage.* Unless otherwise specified, the term "Franchisee" as used in this Section 17 shall include, collectively and individually, all officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of Franchisee, and of any corporation directly or indirectly controlling Franchisee, if Franchisee is a corporation; and the general partners and any limited partner (including any corporation and the officers, directors, and holders of a beneficial interest of five percent (5%) or more of securities, of a corporation which controls, directly or indirectly, any general or limited partner), if Franchisee is a partnership.
- 17.2 *Full Time, Energy, and Best Efforts.* Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (if Franchisee is an individual), a shareholder of a beneficial interest of ten percent (10%) or more of the securities of Franchisee (if Franchisee is a corporation), a general partner of Franchisee (if Franchisee is a partnership), or Franchisee's approved manager shall devote full time, energy, and best efforts, to the management and operation of the Stores.
- 17.3 *During the Agreement Term.* Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for himself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation:

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- 17.3.1 Divert or attempt to divert any business or customer of the Stores 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 Proprietary Marks and the System.
 - 17.3.2 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 thereat.
 - 17.3.3 Own, maintain, engage in, consult with, or have any interest in any business (including any business operated by Franchisee prior to entry into this Agreement) specializing in whole or in part, in selling, offering or providing through any channel of distribution whatsoever Cartridges and related merchandise, products, and services the same as or similar to that provided or sold through the System.
- 17.4 *During or After the Agreement, and After a Transfer.* Franchisee covenants that, except as otherwise approved in writing by Franchisor, Franchisee shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Store; and shall not for a continuous uninterrupted period of one (1) year from the date of: (a) a transfer permitted under Section 20 below; (b) expiration or termination of this Agreement (regardless of the cause for termination); or (c) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Section; either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any persons, partnership, or corporation, own, maintain, operate, engage in, or have any interest in any Competitive Business (defined below) which business is, or is intended to be, located within the greater of: (i) the Protected Territory, and (ii) a ten (10) mile radius from the location of the Store. The term "Competitive Business" is agreed to mean any business specializing in whole or in part, in selling, offering or providing through any channel of distribution whatsoever Cartridges and/or related merchandise, products, and services, and/or any other business which sells or offers to sell products or services the same as or similar to those sold in the System.
- 17.5 *Covenants as Independent Clauses.* The parties agree that each of the foregoing 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 17 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed 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 resulting covenant were separately stated in and made a part of this Section 17.
- 17.6 *Franchisor's Right to Reduce Scope of the Covenants.* Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of

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any covenant set forth in this Section 17, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 24 below.

- 17.7 *Public Entities.* Sections 17.3 and 17.4 shall not apply to ownership by Franchisee of less than five percent (5%) beneficial interest in the outstanding equity securities of any corporation which is registered under the Securities Exchange Act of 1934.
- 17.8 *Personal Covenants.* Franchisor shall have the right to require all of Franchisee's personnel performing managerial or supervisory functions and all personnel receiving training from Franchisor to execute similar covenants in a form satisfactory to Franchisor. The covenants required by this Section 17.8 shall be in the form provided in Exhibit E to this Agreement.

18 **DEFAULT AND TERMINATION**

Except as otherwise provided in Section 5.3 above, the parties agree as follows:

- 18.1 *Automatic Termination.* Franchisee shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Franchisee, if Franchisee shall become insolvent or makes a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed by Franchisee or such a petition is filed against and not opposed by Franchisee; or if Franchisee is adjudicated bankrupt or insolvent; or if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless unappealed or a supersedeas bond is filed); or if Franchisee is dissolved; or if execution is levied against Franchisee's business or property; or if suit to foreclose any lien or mortgage against the Store premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of Franchisee's Store shall be sold after levy thereupon by any sheriff, marshal, or constable.
- 18.2 *Termination Upon Notice.* Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon the delivery of written notice to Franchisee by Franchisor (in the manner set forth under Section 23 below), upon the occurrence of any of the following events:
- 18.2.1 If Franchisee fails to construct and open the Store within the time limits as provided in Section 13.3 of this Agreement, and in accordance with the requirements set forth in Section 3 of this Agreement;

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- 18.2.2 If Franchisee at any time ceases to operate for two (2) or more consecutive business days (when the mall is open, if the Approved Location is in a mall), or otherwise abandons, a Store, loses the right to possession of the premises of the Store, or otherwise forfeits the right to do or transact business in the jurisdiction where the Stores are located; provided, however, that if, through no fault of Franchisee, the premises of a Store are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within ninety (90) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the premises, which approval shall not be unreasonably withheld;
- 18.2.3 If Franchisee or any Principal is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;
- 18.2.4 If a threat or danger to public health or safety results from the construction, maintenance, or operation of Stores;
- 18.2.5 If Franchisee or any Principal purports to transfer any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of Section 20 of this Agreement;
- 18.2.6 If Franchisee fails to comply with the covenants in Section 17 hereof or fails to obtain execution of the covenants required under Section 17.8 hereof;
- 18.2.7 If, contrary to the terms of Sections 7 or 8 above, Franchisee discloses or divulges the contents of the Manual or other confidential information provided to Franchisee by Franchisor;
- 18.2.8 If an approved transfer of an interest in Franchisee is not effected within a reasonable time, as required by Section 20.3 and/or 20.4 below;
- 18.2.9 If Franchisee knowingly maintains false books or records, or submits any false reports (including, but not limited to, information provided as part of Franchisee's application for this franchise) to Franchisor;
- 18.2.10 If Franchisee submits to Franchisor on two (2) or more separate occasions at any time during the term of the franchise any reports or other data, information or supporting records which understate by more than three percent (3%) the Gross Revenues of the Stores, or the Royalty Fees due, for any period of, or periods aggregating, three (3) or more weeks, and Franchisee is unable to demonstrate that such understatements resulted from inadvertent error;
- 18.2.11 If Franchisee fails on two (2) or more separate occasions within any period of twelve (12) consecutive months to submit when due reports or other information or supporting

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records, to pay when due the Royalty Fees, Advertising Commitments, amounts due for purchases from Franchisor and its affiliates or other payments due to Franchisor and its affiliates, or otherwise fails to comply with this Agreement, whether or not such failures to comply are corrected after notice thereof is delivered to Franchisee;

18.2.12 If Franchisee, after curing a default pursuant to this Section 18, commits the same default again within a twelve (12) month period of the previous default, whether or not cured after notice;

18.2.13 If Franchisee repeatedly is in default under this Section 18 for failure substantially to comply with any of the requirements imposed by this Agreement, whether or not cured after notice; or

18.2.14 Any breach with respect to Anti-Terrorism Laws as set forth in Section 31.6 below.

18.3 *Notice and Opportunity to Cure.* Except as otherwise provided in Sections 5.3, 18.1, and 18.2 above, upon any other default by Franchisee, Franchisor may terminate this Agreement only by giving written notice of termination (in the manner set forth under Section 23 below) stating the nature of such default to Franchisee at least:

18.3.1 Ten (10) days prior to the effective date of termination if the default relates to failure to pay Franchisor monies due; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the ten-day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the ten (10) day period or such longer period as applicable law may require.

18.3.2 Except with respect to financial defaults, thirty (30) days prior to the effective date of termination; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the thirty-day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require.

18.4 *Operation During Pendency of a Default.* In addition to Franchisor's right to terminate this Agreement, and not in lieu of Franchisor's rights under this Agreement, if Franchisee shall not have cured a default under this Agreement within the thirty-day period after written notice to cure from Franchisor, Franchisor shall have the right (but not the obligation) to enter upon the premises of the Store and exercise complete authority with respect to the operation of said business until such time as Franchisor determines that Franchisee's defaults have been cured and that the Franchisee and Store comply with the requirements of this Agreement.

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18.4.1 Franchisee specifically agrees that a designated representative of Franchisor may take over, control, and operate said business, and that Franchisee shall pay Franchisor reasonable compensation and expenses for Franchisor's representative (including all travel expenses, room and board, and other expenses) reasonably incurred by such representative so long as it shall be required by the representative to enforce compliance herewith.

18.4.2 Franchisee further agrees that if, as herein provided, Franchisor temporarily operates for Franchisee the business licensed herein, Franchisee shall indemnify and hold harmless Franchisor and any representative of Franchisor who may act hereunder, respecting any and all acts and omissions which Franchisor and/or its representative may perform, or fail to perform as regards the interests of Franchisee or third parties (including without limitation negligence on the part of Franchisor and/or its representative).

18.4.3 Franchisor shall not be deemed liable if it decides not to exercise its rights under this Section 18.4.

18.5 *Default Under Other Agreements.* Default by Franchisee (or any affiliate of Franchisee) pursuant to the terms of any other agreement by and between Franchisee (or any affiliate of Franchisee) and Franchisor shall also be deemed to be a default pursuant to this Agreement. After default by Franchisee upon such other agreement and after the lapse of any applicable cure period within the applicable agreement, an uncured default by Franchisee pursuant to any such other agreement between Franchisee and Franchisor shall also constitute a default under this Agreement and Section 18.2 above shall be applicable.

19 **PARTIES' RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION.**

Upon termination or expiration, this Agreement and all rights granted hereunder to Franchisee shall immediately terminate, and:

19.1 *Stop Operating.* Franchisee shall immediately cease to operate Stores under this Agreement, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor.

19.2 *The Premises.* Franchisor shall have the right to request that Franchisee assign to Franchisor any interest which Franchisee has in the lease or sublease for the Approved Location.

19.2.1 If Franchisor does not elect or is unable to exercise its option to acquire, or to acquire the lease or sublease for the Approved Location, then Franchisee shall make such modifications or alterations to the premises operated hereunder (including, without limitation, the changing of the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of said premises from that of other Stores, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose.

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19.2.2 If Franchisee fails or refuses to comply with the requirements of this Section, Franchisor shall have the right to enter upon the premises of the Stores, 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 the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

19.3 *Stop Using the Proprietary Marks.* Upon the termination of this Agreement, for any reason, Franchisee's right, license and privilege to use the Proprietary Marks, including without limitation the Proprietary Marks, shall immediately and forever terminate. Franchisee shall immediately and permanently cease to use, by advertising or in any manner whatsoever, any confidential methods, procedures, and techniques associated with the System; the Proprietary Marks and distinctive forms, slogans, signs, symbols, logos, or devices associated with the System. In particular, Franchisee shall cease to use and return to Franchisor, without limitation, all signs, advertising materials, stationery, forms, and any other articles which display the Proprietary Marks associated with the System.

19.4 *Cancel Assumed Names.* Franchisee shall take such action as may be necessary to cancel or assign to Franchisor or Franchisor's designee, at Franchisor's option, any assumed name rights or equivalent registration filed with state, city, or county authorities which contains the name "RAPID REFILL INK®" or the other Proprietary Marks, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement.

19.5 *The Drop Boxes.* Franchisee shall immediately provide Franchisor with a list specifying (in the form (if any) reasonably requested by Franchisor) all of the Drop Boxes that Franchisee has purchased, the location of all such Drop Boxes, and such additional information as Franchisor may reasonably request in order for the Drop Box to remain in operation at such location(s) and in order for customers who left their cartridges in those Drop Boxes to receive prompt and proper service from Franchisor or Franchisor's designee.

19.6 *No Use of the Proprietary Marks in Other Businesses.* Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Proprietary Marks either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake or deception, or which is likely to dilute Franchisor's rights in and to the Proprietary Marks and further agrees not to utilize any designation of origin or description or representation which suggests or represents a past, present, or other association or connection with Franchisor, the Proprietary Marks, the System, the products or services sold under the Proprietary Marks, or otherwise.

19.7 *Pay Franchisor All Amounts Due.* Franchisee shall promptly pay all sums owing to Franchisor, including without limitation sums due for Royalty Fees, Advertising Commitments, amounts due for purchases made from Franchisor or its affiliates, and all other amounts due to Franchisor or its affiliates. If Franchisee is in default under this Agreement, then such sums shall include all

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damages, costs, and expenses (including without limitation reasonable attorneys' fees) that Franchisor incurs as a result of the default.

- 19.8 *Pay Franchisor Damages.* Franchisee shall pay to Franchisor all damages, costs and expenses (including without limitation reasonable attorneys' fees) that Franchisor incurs subsequent to the termination or expiration of the franchise granted under this Agreement in: (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including without limitation this Section 19 and/or Section 18 above); and/or (b) successfully defending a claim that Franchisor defrauded Franchisee into signing this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement do not govern the parties' relationship.
- 19.9 *Return Materials to Franchisor.* Franchisee shall immediately turn over to Franchisor (and Franchisee shall retain and provide no other party with a copy of) all written materials and manuals, including without limitation the Manual, customer lists, records, files, instructions, brochures, agreements, disclosure statements, and any and all other materials provided by Franchisor to Franchisee relating to the operation of Stores (all of which are acknowledged to be Franchisor's property).
- 19.10 *Return Signage.* Franchisor shall have the right, title and interest to any sign or sign faces bearing the Proprietary Marks. Franchisee hereby acknowledges Franchisor's right to access the premises of the Stores should Franchisor elect to take possession of any said sign or sign faces bearing the Proprietary Marks.
- 19.11 *Purchase Certain Assets.* Franchisor shall have the right (but not the duty), to be exercised by notice of intent to do so within thirty (30) days after termination or expiration, to purchase for cash any or all assets of the Stores, including leasehold improvements, equipment, supplies, and other inventory, advertising materials, and all items bearing the Proprietary Marks (together, with the Drop Boxes, the "**Business Assets**"), at Franchisee's cost or fair market value, whichever is less. If the parties cannot agree on fair market value within a reasonable time, Franchisor and Franchisee shall each designate an independent appraiser, which two (2) appraisers shall designate a third (3rd) independent appraiser, and said third independent appraiser's determination shall be binding. Franchisor shall also have the right, within thirty (30) days after termination or expiration, to assume control over any or all of Franchisee's Drop Boxes wherever they are located, and to purchase those Drop Boxes (and assume the relationship with the retailer at whose location the Drop Box is situated) at a cost of One Dollar (\$1) per Drop Box. If Franchisor elects to exercise any option to purchase any of the Business Assets as provided in this Section 19.11, Franchisor shall have the right to set off any and all amounts due from Franchisee to Franchisor as well as the cost of the appraisal, if any, against any payment therefor. For the period of time until Franchisor determines whether it will exercise its rights under this Section 19.11, and for as much time thereafter as may be necessary in order for the procedures described in this Section 19.11 to take place and for this Section 19.11 to be implemented, Franchisee agrees not to relinquish, abandon, sell, pledge as collateral, dedicate to other uses, or

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in any manner transfer (nor will Franchisee permit the dissipation or deterioration of) the Business Assets.

- 19.12 *Telephone Numbers.* Franchisee hereby acknowledges that all telephone numbers, e-mail addresses, domain names (if and as permitted), and other means of communication used in connection with operation of the Stores (collectively, the “**Contact Numbers**”) constitute assets of the Stores; and upon termination or expiration of this Agreement, Franchisee shall assign to Franchisor or its designee, all Franchisee’s right, title, and interest in and to Franchisee’s Contact Numbers and shall notify the telephone company, all listing agencies, and any other party with which a Contact Number is registered of the termination or expiration of Franchisee’s right to use any Contact Number, and shall authorize a transfer of same to, or at the written direction of, Franchisor.
- 19.13 *Comply with Covenants.* Franchisee shall comply with the covenants contained in Section 17 above.

20 TRANSFERABILITY OF INTEREST

- 20.1 *Franchisor’s Transfer.* Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment.
- 20.2 *Principals of Franchisee.* If Franchisee is a corporation or partnership, each principal of Franchisee (“**Principal**”), and the interest of each Principal in Franchisee, is identified in Exhibit D to this Agreement. Any person or entity which owns a direct or indirect interest in Franchisee may be designated as a Principal by Franchisor in its sole discretion, and Exhibit D shall be so amended automatically upon notice thereof to Franchisee. Franchisor shall have a continuing right to designate as a Principal any person or entity which owns a direct or indirect interest in Franchisee.
- 20.3 *No Transfers Without Franchisor’s Prior Written Approval.* Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee’s or Franchisee’s Principals’ business skill, financial capacity, and personal character. Accordingly:
- 20.3.1 Franchisee shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber: (a) the rights and obligations of the Franchisee under this Agreement; or (b) any material asset of Franchisee or a Store.
- 20.3.2 If Franchisee is a corporation, Franchisee shall not, without the prior written consent of Franchisor, issue any voting securities or securities convertible into voting securities, and the recipient of any such securities shall become a Principal under this Agreement, if so designated by Franchisor.

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Franchisee Franchisor

20.3.3 If Franchisee is a partnership, the partners of the partnership shall not, without the prior written consent of Franchisor, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner. Each general partner shall automatically be deemed a Principal of Franchisee.

20.3.4 A Principal shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Franchisee as shown in Exhibit D.

20.4 *Conditions on Transfers.* Franchisor shall not unreasonably withhold any consent required by Section 20.3 above; provided, if Franchisee proposes to transfer its obligations hereunder or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Franchisee, Franchisor shall have absolute discretion to require any or all of the following as conditions of its approval:

20.4.1 The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Franchisee and Franchisor or its affiliates, and federal, state, and local laws and rules;

20.4.2 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Franchisee; and, if the obligations of Franchisee were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor;

20.4.3 After the transfer, the Principals of the Franchisee shall meet Franchisor's educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the Store, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the Store;

20.4.4 If a proposed transfer would result in a change in control of Franchisee, at Franchisor's option, Franchisee shall execute, for a term ending on the expiration date of this Agreement the form of franchise agreement then being offered to new System franchisees, and such other ancillary agreements required by Franchisor for the business franchised hereunder, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher royalty and advertising fee;

20.4.5 If so requested by Franchisor, Franchisee, at its expense, shall upgrade the Stores to conform to the then-current standards and specifications of new stores then-being

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Franchisee	Franchisor

established in the System, and shall complete the upgrading and other requirements within the time specified by Franchisor;

- 20.4.6 The transferor shall remain liable for all of the obligations to Franchisor in connection with the Stores that arose prior to the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;
- 20.4.7 The transferee shall operate the Stores only in accordance with the terms and conditions of this Agreement (or, if required under Section 20.4.4, a new franchise agreement);
- 20.4.8 At Franchisee's expense, one Principal designated by Franchisor shall successfully complete all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require;
- 20.4.9 Franchisee shall pay a transfer fee in an amount equal to the greater of: (a) Seven Thousand Five Hundred Dollars (\$7,500); or (b) twenty-five percent (25%) of the initial franchise fee then being charged by Franchisor for new A-Store franchises;
- 20.4.10 Franchisee shall pay, in full, any third-party brokerage and/or referral fees relating to the transfer transaction; and
- 20.4.11 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Sections 17.3 and 17.4 above.

20.5 *Right of First Refusal.*

- 20.5.1 If Franchisee or any Principal desires to accept any *bona fide* offer from a third party to purchase Franchisee, any material assets of Franchisee, or any direct or indirect interest in Franchisee, Franchisee or such Principal shall promptly notify Franchisor of such offer and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of all such information, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest, the closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by Franchisor.
- 20.5.2 Any material change in the terms of the offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 20.5 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 20, with respect to a proposed transfer.

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Franchisee Franchisor

20.5.3 If the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they must attempt to appoint a mutually-acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Franchisee, which two (2) appraisers shall, in turn, promptly designate a third (3rd) appraiser; all three (3) appraisers shall promptly confer and reach a single determination, which determination shall be binding upon Franchisor and Franchisee. The cost of any such appraisal shall be shared equally by Franchisor and Franchisee. If Franchisor elects to exercise its right under this Section 20.5, Franchisor shall have the right to set off all amounts due from Franchisee, and one-half (1/2) of the cost of the appraisal, if any, against any payment to the seller.

20.6 *Principal's Death.* Upon the death of a Principal, the deceased's executor, administrator, or other personal representative shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the deceased's death.

20.7 *Controlling Principal's Permanent Disability.* Upon the permanent disability of any Principal with a controlling interest in Franchisee, Franchisor may, in its sole discretion, require such interest to be transferred to a third party in accordance with the conditions described in this Section 20 within six (6) months after notice to Franchisee. "**Permanent Disability**" shall mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) consecutive months from the date of determination of Permanent Disability is unlikely. Permanent Disability shall be determined by a licensed practicing physician selected by Franchisor upon examination of such person or, if such person refuses to be examined, then such person shall automatically be deemed permanently disabled for the purposes of this Section 20.7 as of the date of refusal. Franchisor shall pay the cost of the required examination.

20.8 *Operation in the Event of Permanent Disability or Death.* In order to prevent any interruption of the Stores which would cause harm to the Store and thereby depreciate the value thereof to Franchisee, if Franchisee is absent or incapacitated by reason of Permanent Disability or death, Franchisee authorizes Franchisor to operate the Store for so long as Franchisor deems necessary and practical, and without waiver of any other rights or remedies Franchisor may have under this Agreement; provided, however, that Franchisor shall have the right not to undertake these activities and shall not be obligated to operate the franchise. If Franchisor does so, then all

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Franchisee	Franchisor

monies from the operation of the business during such period of operation by Franchisor shall be kept in a separate account and the expenses of the Store, including reasonable compensation and expenses for Franchisor's representative, shall be charged to said account. If, as provided in this Section 20.8, Franchisor temporarily operates the Store, Franchisee shall indemnify and hold harmless Franchisor and any representatives of Franchisor who may act hereunder, from any and all claims arising from the operation of the Store, including, without limitation, the acts and omissions of Franchisor and its representatives.

- 20.9 *No Waiver.* Franchisor's consent to a transfer which is the subject of this Section 20 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.
- 20.10 *Bankruptcy.* If Franchisee or any person holding any interest (direct or indirect) in Franchisee becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of Franchisee, Franchisee's obligations and/or rights hereunder, any material assets of Franchisee, or any indirect or direct interest in Franchisee shall be subject to all of the terms of this Section 20, including without limitation the terms of Sections 20.3, 20.4, and 20.5.
- 20.11 *Securities Offerings.* All materials for an offering of stock or partnership interests in Franchisee or any affiliate of Franchisee which are required by federal or state law shall be submitted to Franchisor for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. No offering by Franchisee or any affiliate of Franchisee shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of the securities of Franchisee or Franchisee's affiliates. Franchisor shall review the offering materials, and Franchisor's review of any offering shall be limited solely to the relationship between Franchisor and Franchisee and any subsidiaries and affiliates, if applicable. Franchisor may, at its option, require the offering materials to contain a written statement prescribed by Franchisor concerning the limitations stated in the preceding sentence. Franchisee (and the offeror if not Franchisee), the Principals, and all other participants in the offering must fully indemnify Franchisor, its subsidiaries, affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, Franchisee shall pay Franchisor a non-refundable fee of Seven Thousand Five Hundred Dollars (\$7,500) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering. Franchisee shall give Franchisor written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 20.11 commences. Any such offering shall be subject to all of the other provisions of this Section 20, including without limitation the terms set forth in Sections 20.3, 20.4, and 20.5; and further, without limiting the foregoing, it is agreed that any such offering shall be subject to Franchisor's approval as to the structure and voting control of the offeror (and Franchisee, if Franchisee is not the offeror) after the financing is completed.

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Franchisee	Franchisor

21 **INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

- 21.1 *No Fiduciary Relationship.* This Agreement does not create a fiduciary relationship between the parties, nor does it constitute Franchisee as an agent, legal representative, joint venturer, partner, employee, or servant of Franchisor for any purpose whatsoever; and it is understood between the parties hereto that Franchisee shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of Franchisor, to incur any debt, or to create any obligation, express or implied, on behalf of Franchisor.
- 21.2 *Public Notice.* Franchisee shall prominently display, by posting of a sign within public view, on or in the premises of the franchised location, a statement that clearly indicates that the Store is independently owned and operated by Franchisee as a RAPID REFILL INK® franchisee of Franchisor and not as an agent thereof.
- 21.3 *Indemnification.* Franchisee agrees to defend at its own cost and to indemnify and hold harmless Franchisor, its shareholders, directors, officers, employees and agents, from and against any and all loss, costs, expenses (including, without limitation, reasonable accountants', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses), damages and liabilities, however caused, resulting directly or indirectly from or pertaining to the use, condition, or construction, equipping, decorating, maintenance or operation of the Store, including the sale of Cartridges and related merchandise, products and services sold from the Store. Such loss, claims, costs, expenses, damages and liabilities shall include, without limitation, those arising from latent or other defects in the Store, whether or not discoverable by Franchisor, and those arising from the death or injury to any person or arising from damage to the property of Franchisee or Franchisor, their agents or employees, or any third person, firm or corporation, whether or not such losses, claims, costs, expenses, damages, or liabilities were actually or allegedly caused wholly or in part through the active or passive negligence of Franchisor or any of its agents or employees or resulted from any strict liability imposed on Franchisor or any of its agents or employees. All such indemnification shall survive the termination of this Agreement.
- 21.4 *No Assumption of Liability.* Franchisor shall not, by virtue of any approvals, advice or services provided to Franchisee, assume responsibility or liability to Franchisee or any third parties to which Franchisor would not otherwise be subject.

22 **NON-WAIVER**

No failure of Franchisor to exercise any power reserved to it hereunder, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms hereof. Waiver by Franchisor of any particular default by Franchisee shall not be binding unless in writing and executed by the party sought to be charged and shall not affect or impair Franchisor's right with respect to any subsequent default of the same or of a different nature; nor shall any delay, waiver, forbearance, or omission of

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Franchisee	Franchisor

Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants hereof, affect or impair Franchisor's rights nor shall such constitute a waiver by Franchisor of any right hereunder or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

23 **NOTICES**

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, shall be deemed to have been given at the date and time of receipt or rejected delivery.

24 **SEVERABILITY AND CONSTRUCTION**

24.1 *Severable Parts.* Each Section, part, term and/or provision of this Agreement shall be considered severable, and if, for any reason, any paragraph, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, sections, parts, terms and/or provisions of this Agreement, and the latter will continue to be given full force and effect and bind the parties hereto; and said invalid sections, parts, terms and/or provisions shall be deemed not part of this Agreement; provided, however, that if Franchisor determines that said finding of illegality adversely affects the basic consideration of this Agreement, Franchisor may, at its option, terminate this Agreement.

24.2 *No Rights on Any Party other than Franchisor and Franchisee.* Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Franchisee and such of their respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under or by reason of this Agreement.

24.3 *Scope of Promises.* Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is contained within the terms of any provision hereof, as though it were separately stated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

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- 24.4 *Captions Only for Convenience.* All captions in this Agreement are meant only for the convenience of the parties, and no caption shall be deemed in any manner whatsoever to affect the meaning or construction of any provision of this Agreement. The singular usage includes the plural, where appropriate in the context, and the masculine and neuter usages include the other and the feminine.
- 24.5 *Costs.* Unless otherwise agreed in writing, each party shall bear all of its own costs with respect to meeting its obligations under the terms of this Agreement.
- 24.6 *Recitals.* The recitals set forth in this Agreement are specifically incorporated into the terms of this Agreement and hereby constitute a part thereof.
- 24.7 *Entire Agreement.* This Agreement, any exhibit attached hereto, and the documents referred to herein, shall be construed together and constitute the entire, full and complete agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersede all prior agreements. No other representation has induced Franchisee to execute this Agreement, and there are no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied in this Agreement that are of any force or effect with reference to this Agreement or otherwise. The parties acknowledge and agree that they are relying only on the terms of this Agreement.
- 24.8 *Amendments.* Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

25 **APPLICABLE LAW AND DISPUTE RESOLUTION**

- 25.1 *Governing Law.* This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State of Minnesota, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Minnesota choice-of-law rules); provided, however, that if the covenants in Section 17 of this Agreement would not be enforceable under the laws of Minnesota, and the Store(s) are located outside of Minnesota, then such covenants shall be interpreted and construed under the laws of the state in which the Store(s) are located. Nothing in this Section 25.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Minnesota to which this Agreement would not otherwise be subject.
- 25.2 *Litigation.* Any action brought by Franchisee against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Franchisee in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this Section 25.2 shall not be construed as preventing either party from removing an action from state to federal court; provided,

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<hr style="width: 80%; margin: 0;"/> Franchisee	<hr style="width: 80%; margin: 0;"/> Franchisor

however, that venue shall be as set forth above. Franchisee hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

- 25.3 *Non-Binding Mediation.* Before any party may bring an action in court against the other, or commence an arbitration proceeding (except as otherwise provided in Section 25.5 below), the parties must first meet to mediate the dispute. Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes.
- 25.4 *No Rights Exclusive of Other Rights.* No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.
- 25.5 *Injunctive Relief.* Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.
- 25.6 *Waiver of Jury Trial.* Franchisor and Franchisee irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding.
- 25.7 *Waiver of Punitive Damages.* Franchisor and Franchisee hereby waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.
- 25.8 *Claims Must Be Brought Within One Year.* Any and all claims and actions arising out of or relating to this Agreement, the relationship of Franchisee and Franchisor, or Franchisee's operation of the Store, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or, it is expressly acknowledged and agreed by all parties, such claim or action shall be irrevocably barred.

26 **FORCE MAJEURE**

- 26.1 *Instances of Force Majeure.* Neither party shall be responsible to the other for nonperformance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing: (a) acts of God; (b) acts of war, terrorism, or insurrection; (c) strikes, lockouts, boycotts, fires and other casualties; and/or (d) the inability of Franchisor or its affiliates to purchase, deliver, and/or manufacture any products for which it is the sole source under this Agreement.

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- 26.2 *Inability to Remit Funds.* The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of Section 26.1 above. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost; provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay; and further provided, however, that Franchisee shall remain obligated to promptly pay all fees owing and due to Franchisor hereunder, without any such delay or extension.
- 26.3 *No Extension of the Agreement.* Nothing in this Section 30 shall be construed to result in an extension of the term of this Agreement.

27 **TAXES, PERMITS, AND INDEBTEDNESS**

- 27.1 *Taxes.* Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the conduct of the business franchised under this Agreement. Franchisee shall pay Franchisor an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on Franchisor with respect to any payments to Franchisor required under this Agreement, unless the tax is credited against income tax otherwise payable by Franchisor. In the event of any bona fide dispute as to Franchisee's 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 of the Stores or the equipment used in the Business.
- 27.2 *Compliance with Laws.* Franchisee shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business franchised under this Agreement, including, without limitation, licenses to do business, sanitation permits, fictitious name registrations, sales tax permits, and fire clearances. To the extent that the requirements of said laws are in conflict with the terms of this Agreement, the Manuals, or other instructions of Franchisor, Franchisee shall: (a) comply with said laws; and (b) immediately provide written notice describing the nature of such conflict to Franchisor.
- 27.3 *Notice of Government Actions.* Franchisee shall notify Franchisor in writing within five (5) days of receipt of notice of any safety, sanitation, or other violation, the 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 governmental instrumentality, or within five (5) days occurrence of any accident or injury which may adversely affect the operation of the Stores or the financial condition of Franchisee, or give rise to liability or a claim against Franchisee or Franchisor.

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28 **ACKNOWLEDGMENTS**

- 28.1 *Franchisee's Investigation of the Business Possibilities.* Franchisee acknowledges that it has conducted an independent investigation of the business franchised hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Franchisee and if a corporation or a partnership, its owners as independent businesspersons. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.
- 28.2 *Receipt of UFOC and Complete Agreement.* Franchisee acknowledges that it received a copy of this Agreement, the exhibit(s) hereto, and agreements relating hereto, if any, with all of the blank lines therein filled in, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it received the uniform franchise offering circular required by the Federal Trade Commission Franchise Rule (the "UFOC") at least ten (10) business days prior to the date on which this Agreement was executed.
- 28.3 *Franchisee Read the Agreement and Consulted.* Franchisee acknowledges that it has read and understood the UFOC, this Agreement, and the exhibits to this Agreement, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement. Franchisee acknowledges that it has no knowledge of any representations by Franchisor, or anyone purporting to act on Franchisor's behalf, that are contrary to the statements made in the UFOC or contrary to the terms of this Agreement.
- 28.4 *No Conflicting Obligations.* Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: (a) negotiating and entering into this Agreement; (b) exercising its rights under this Agreement; and/or (c) fulfilling its responsibilities under this Agreement.
- 28.5 *Franchisee's Responsibility for the Choice of the Approved Location.* Franchisee acknowledges that it shall have sole and complete responsibility for the choice of the Approved Location; that Franchisor has not (and shall not be deemed to have, even by Franchisor's approval of the site that is the Approved Location) given any representation, promise, or guarantee of Franchisee's success at the Approved Location; and that Franchisee shall be solely responsible for its own success at the Approved Location.
- 28.6 *Anti-Terrorism Laws.*
- 28.6.1 Franchisee and Franchisee's Principals agree to comply with and/or to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws. In connection with such compliance, Franchisee and Franchisee's Principals certify, represent, and warrant that none of their property or interests is subject to being

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“blocked” under any of the Anti-Terrorism Laws and that Franchisee and Franchisee’s Principals are not otherwise in violation of any of the Anti-Terrorism Laws.

- 28.6.2 Franchisee and Franchisee’s Principals certify that none of them, their respective employees, or anyone associated with Franchisee is listed in the Annex to Executive Order 13224. Franchisee agrees not to hire (or, if already employed, retain the employment of) any individual who is listed in the Annex. (A copy of the Annex can be accessed on the internet at the following address: <http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>.)
- 28.6.3 Franchisee certifies that it has no knowledge or information that, if generally known, would result in Franchisee, Franchisee’s Principals, employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224.
- 28.6.4 Franchisee is solely responsible for ascertaining what actions it must take to comply with the Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that Franchisee’s indemnification responsibilities set forth in Section 21.3 above of this Agreement pertain to Franchisee’s obligations under this Section 28.6.
- 28.6.5 Any misrepresentation under this Section or any violation of the Anti-Terrorism Laws by Franchisee, Franchisee’s Principals, agents, or its employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee have entered with Franchisor or an affiliate of Franchisor, in accordance with Section 18.2.14 above.
- 28.7 *Franchisee’s Responsibility for Operation of Stores.* Although Franchisor retains the right to establish and periodically modify System standards, which Franchisee has agreed to maintain in the operation of Stores, Franchisee retains the right and sole responsibility for the day-to-day management and operation of the Stores and the implementation and maintenance of system standards at the Stores.
- 28.8 *Different Franchise Offerings to Others.* Franchisee acknowledges and agrees that Franchisor may modify the offer of its franchises to other franchisees in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.
- 28.9 *Success Depends on Franchisee.* Franchisee acknowledges that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon Franchisee’s ability as an independent businessperson, his/her active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as well as other factors. Franchisor does not make any representation or warranty express or implied as to the potential success of the business venture contemplated hereby.

Initials	
_____	_____
Franchisee	Franchisor

28.10 *No Guarantees.* Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received nor relied upon, any warranty or guaranty, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written.

RAPID REFILL INK INTERNATIONAL CORP.

Franchisee

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Address for Notices:

12400 Whitewater Road, Suite 150
Minnetonka, Minnesota 55343
Fax: (952) 952-1009
Attn: Dan White, President

Address for Notices:

Attn: _____
Fax: _____

Exhibits:

- A) Data Sheet
- B) Guarantee, Indemnification, and Acknowledgment
- C) Authorization Agreement For Prearranged Payments (Direct Debits)
- D) List of Principals

Initials	
_____ Franchisee	_____ Franchisor

RAPID REFILL INK INTERNATIONAL CORP.
FRANCHISE AGREEMENT
EXHIBIT A
DATA SHEET

¶	Section Cross- Reference	Item
1	1.2	<p>The Store shall be (please check only one):</p> <p><input type="checkbox"/> an <i>A-Store</i>; or</p> <p><input type="checkbox"/> a <i>B-Store</i></p>
2	1.2	<p>The approved location under this Agreement shall be: _____</p> <p>_____</p> <p>_____</p>
3	1.3	<p>The Protected Territory under this Agreement shall be a circle, having its center at the front door of the Store, with a radius of _____ miles (subject to the terms of the Agreement, including but not limited to Section 1.4 of the Agreement); provided, however, that the Protected Territory will not include: (a) any area that is cut off by a natural barrier (for example, a river, gorge, or mountain range) from the portion of the Protected Territory in which the Store is located, without navigable crossings (such as a bridge or road); (b) any area already assigned to another Store's protected territory; and (c) densely populated urban areas.</p>
4	1.7	<p>The Drop Box Territory under this Agreement shall be a circle, having its center at the front door of the Store, with a radius of _____ miles (subject to the terms of the Agreement, including but not limited to Section 1.4 of the Agreement); provided, however, that the Drop Box Territory will not include: (a) any area that is cut off by a natural barrier (for example, a river, gorge, or mountain range) from the portion of the Drop Box Territory in which the Store is located, without navigable crossings (such as a bridge or road); (b) any area already assigned to another Store's drop box territory; and (c) densely populated urban areas.</p>
5	2.1	<p>The Initial Franchise Fee shall be \$ _____.</p>

Initials	
_____	_____
Franchisor	Franchisee

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RAPID REFILL INK INTERNATIONAL CORP.
FRANCHISE AGREEMENT
EXHIBIT B
GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT

As an inducement to Rapid Refill Ink International Corp. ("**Franchisor**") to execute the Rapid Refill Ink International Corp. Franchise Agreement between Franchisor and _____ ("**Franchisee**"), dated _____, 200 _____ (the "**Agreement**"), the undersigned, jointly and severally, hereby unconditionally guarantee to Franchisor and Franchisor's successors and assigns that all of Franchisee's monetary obligations under the Agreement will be punctually paid and performed.

Upon demand by Franchisor, the undersigned will immediately make each payment required of Franchisee under the Agreement. The undersigned hereby waive any right to require Franchisor to: (a) proceed against Franchisee for any payment required under the Agreement; (b) proceed against or exhaust any security from Franchisee; or (c) pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee. Without affecting the obligations of the undersigned under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee. The undersigned waive notice of amendment of the Agreement and notice of demand for payment by Franchisee, and agree to be bound by any and all such amendments and changes to the Agreement.

The undersigned hereby agree to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney's fees, reasonable costs of investigation, court costs, and fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement, any amendment thereto, or any other agreement executed by Franchisee referred to therein.

The undersigned hereby acknowledge and agree to be individually bound by all of the covenants contained in Sections 6, 7, 8, 17, and 19 of the Agreement. The undersigned acknowledge and agree that this Guarantee does not grant the undersigned any right to use the "RAPID REFILL INK®" marks or system licensed to Franchisee under the Agreement.

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

[continued on next page]

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with Section 26 of the Agreement. This Guarantee shall be interpreted and construed under the laws of the State of Minnesota. In the event of any conflict of law, the laws of the State of Minnesota shall prevail (without regard to, and without giving effect to, the application of Minnesota conflict of law rules).

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement.

Guarantor(s)

Percentage of Ownership in Franchisee

Signed: _____ (Seal)

(In his/her individual capacity)

Printed Name: _____

Home Address: _____

Signed: _____ (Seal)

(In his/her individual capacity)

Printed Name: _____

Home Address: _____

Signed: _____ (Seal)

(In his/her individual capacity)

Printed Name: _____

Home Address: _____

Signed: _____ (Seal)

(In his/her individual capacity)

Printed Name: _____

Home Address: _____

RAPID REFILL INK INTERNATIONAL CORP.
FRANCHISE AGREEMENT
EXHIBIT C

AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS (DIRECT DEBITS)

_____ (Name of Person or Legal Entity)
_____ (ID Number)

The undersigned depositor ("**Depositor**") ("**Franchisee**") hereby authorizes Rapid Refill Ink International Corp. ("**Franchisor**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**") ("**Bank**") to debit or credit such account(s) pursuant to Franchisor's instructions.

_____	_____	_____
Depository	Branch	
_____	_____	_____
City	State	Zip Code
_____	_____	_____
Bank Transit/ABA Number	Account Number	

This authorization is to remain in full and force and effect until sixty days after Franchisor has received written notification from Franchisee of its termination.

Depositor

By: _____

Name: _____

Title: _____

Date: _____

RAPID REFILL INK INTERNATIONAL CORP.
FRANCHISE AGREEMENT
EXHIBIT D
LIST OF PRINCIPALS

Name of Principal	Home Address	Interest (%)

Initials	
_____ Franchisor	_____ Franchisee

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RAPID REFILL INK INTERNATIONAL CORP.
FRANCHISE AGREEMENT
EXHIBIT E
NON-DISCLOSURE AND NON-COMPETITION AGREEMENT
(SAMPLE FORM TO BE SIGNED BY FRANCHISEE WITH ITS PERSONNEL)

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("Agreement") is made this ____ day of _____, 200__, by and between _____ (the "Franchisee"), and _____, who is a Principal, manager, supervisor, member, partner, or a person in a managerial position with, Franchisee (the "**Member**").

RECITALS:

WHEREAS, Rapid Refill Ink International Corp. ("**RRI**") owns a unique system (the "**System**") relating to the establishment, development and operation of full-service stores that can process Cartridge refills and serve as a retail storefront, that are physically located in malls, streetfronts, and other retail establishments (an "**A-Store**"), as well as retail-service only stores (without processing capability) that are located in malls, streetfronts, and other retail establishments ("**B-Stores**"), and unattended branded drop-off boxes located within and outside retail establishments ("**Drop Boxes**"), and collection bins located in a school or for the benefit of youth groups or other organizations ("**Collection Bins**"), used for the recovery of Cartridges from customers, specializing in the sale of ink or toner cartridges for ink-jet and laser printers, copy and fax machines and all-in-one machines ("**Cartridges**"), printer and related merchandise, services, and products that RRI has authorized and approved, and which Stores utilize RRI's System and Proprietary Marks (defined below), all of which RRI may, periodically change, improve, and/or further develop;

WHEREAS, RRI and Franchisee have executed a Franchise Agreement ("**Franchise Agreement**") granting Franchisee the right to operate a Store and use the Proprietary Marks in connection therewith under the terms and conditions of the Franchise Agreement;

WHEREAS, the Member, by virtue of his or her position with Franchisee, will gain access to certain of RRI's Confidential Information, as defined herein, and must therefore be bound by the same confidentiality and non-competition agreement that Franchisee is bound by.

IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. Confidential Information. Member shall not, during the term of the Franchise Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised thereunder which may be communicated to Member or of which Member may be apprised by virtue of Franchisee's operation under the terms of the Franchise Agreement. Any and all information, knowledge, know-how, and techniques which RRI designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention before disclosure thereof by RRI; or

which, at or after the time of disclosure by RRI to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others.

2. Covenants Not to Compete.

(a) Member specifically acknowledges that, pursuant to the Franchise Agreement, and by virtue of its position with Franchisee, Member will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of RRI and the System.

(b) Member covenants and agrees that during the term of the Franchise Agreement, except as otherwise approved in writing by RRI, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

(i) Divert or attempt to divert any business or customer of the Restaurant or of any Restaurant using the System 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 RRI's Proprietary Marks and the System.

(ii) Employ or seek to employ any person who is at that time employed by RRI, Franchisee, any other franchisee, master franchisee, developer, or development agent, or otherwise directly or indirectly induce such person to leave his or her employment; or

(iii) Either directly or indirectly for him/herself or on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any business that is the same as or similar to the Store.

(c) Member covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by RRI, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, Member shall not own, maintain, operate, engage in, or have any interest in a business that is the same as or similar to the Store, which business is, or is intended to be, located within a five (5) mile radius of either the Store or any other Store operating at the time that the obligations under this commence.

(d) As used in this Agreement, the term "same as or similar to the Store" shall mean any other any business (including any business operated by Franchisee prior to entry into the Franchise Agreement) specializing in whole or in part, in selling, offering or providing through any channel of distribution whatsoever Cartridges and related merchandise, products, and services the same as or similar to that provided or sold through the System.

(e) As used in this Agreement, the term "Post-Term Period" shall mean a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 20 of the Franchise Agreement; (b) expiration or termination of the Franchise Agreement (regardless of the cause for termination); (c) termination of Member's employment with Franchisee; and/or (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Agreement;

either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity).

3. Injunctive Relief. Member acknowledges that any failure to comply with the requirements of this Agreement will cause RRI irreparable injury, and Member agrees to pay all court costs and reasonable attorney's fees incurred by RRI in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement.

4. Severability. All agreements and covenants contained herein are severable. If any of them, or any part or parts of them, shall be held invalid by any court of competent jurisdiction for any reason, then the Member agrees that the court shall have the authority to reform and modify that provision in order that the restriction shall be the maximum necessary to protect RRI's and/or Franchisee's legitimate business needs as permitted by applicable law and public policy. In so doing, the Member agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid.

5. Delay. No delay or failure by the RRI or Franchisee to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right provided herein, and no waiver of any violation of any terms and provisions of this Agreement shall be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

6. Third-Party Beneficiary. Member hereby acknowledges and agrees that RRI is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly with Franchisee.

IN WITNESS WHEREOF, the Franchisee and the Member attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on the date first written above.

FRANCHISEE

MEMBER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____
