

EXHIBIT B

Wild Bird Center Franchise Agreement

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") made this ____ day of _____, 20__, by and between Wild Bird Centers of America, Inc., a Maryland corporation with offices at 7370 MacArthur Boulevard, Glen Echo, Maryland 20812 ("WBCA", "we" or "us") and _____ with offices at _____ ("you").

RECITALS:

We have developed and own a system (the "Wild Bird Center System") which includes proprietary rights in certain valuable trade names and trademarks, including the trade name and trademark "Wild Bird Center", marketing and product presentation techniques, distribution of the "*Wild Bird News*", our newsletter, and Wild Bird Center promotional postcards, methods of inventory and operation control, bookkeeping and accounting, and manuals covering business practices and policies; and

We hold the right to grant licenses to use of the Wild Bird Center System; and

You wish to acquire the right to adopt and use the Wild Bird Center System in a retail store in the geographic territory specified in this Agreement; and

You recognize the benefit to be derived from being identified with and licensed by us, and being able to utilize the Wild Bird Center System; and

You wish to be franchised to operate a Wild Bird Center pursuant to the provisions of this Agreement and in the exclusive geographic territory specified herein, and you have had a full and adequate opportunity to be thoroughly advised of the terms and conditions of this Agreement by counsel of your own choosing.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained in this Agreement, and of the privilege of conducting a retail business under the Wild Bird Center System, it is agreed as follows:

1. INTERPRETATION.

The Wild Bird Center System is a comprehensive system for the retailing of wild bird seed and other products of interest to wild bird enthusiasts, including bird feeders, bird-watching optical equipment, books, gifts and other items, emphasizing prompt, knowledgeable and courteous service in a friendly atmosphere. The foundation of the Wild Bird Center System is our franchisees' adherence to our standards and policies providing for

the uniform operation of all Wild Bird Centers within the Wild Bird Center System, including but not limited to: selling wild bird-related products, nature gifts and organic gardening products meeting our quality standards; strict adherence to our prescribed standards of quality and service in their retail operations; and providing educational services of interest to wild bird enthusiasts through seminars, workshops, bird-watching nature walks and the "*Wild Bird News*". Compliance by franchisees with our standards and policies in conjunction with the Wild Bird Center System trade name and trademark provides the basis for the valuable goodwill and acceptance of Wild Bird Centers.

A. You agree that your Wild Bird Center will be operated in conformity to the Wild Bird Center System through strict adherence to our standards and policies as they now exist and as they may be modified from time to time.

B. You acknowledge your understanding that we will grant licenses only to individuals who actually own the equity interest in their Wild Bird Center business and its profits. You represent, warrant and agree that you actually own the complete equity interest in the license established by this Agreement and the profits from the operation of the business and that you will maintain that interest during the term of this Agreement, except as otherwise permitted by this Agreement. You agree to furnish us with such evidence as we may request, from time to time, that you continue to own the equity interest in your Wild Bird Center business.

2. LICENSE GRANT AND TERM

A. We hereby grant you the following right, license and privilege for the term set forth in paragraph 2B ("License"):

(1) To adopt and use the Wild Bird Center System in the operation of a retail store (the "Store") located at premises we have approved in writing, within the geographic territory defined in the attached Exhibit A (the "Licensed Territory"); and

(2) To advertise to the public that you are a franchisee of WBCA;
and

(3) To adopt and use, but only in connection with the retail sale at the Store of those products which we have designated, the trade names, logos, trademarks, service marks and copyrights which we designate, from time to time, to be part of the Wild Bird Center System.

The products we have designated for sale at Wild Bird Center stores ("designated products") are wild bird seed and other products of interest to wild bird enthusiasts, including bird feeders, bird-watching optical equipment, bird baths, products relating to backyard wildlife and wildlife habitat, nature books and audiotapes, and note cards, clothing,

jewelry and other items with a wild bird or garden motif, and organic gardening products, which meet our prescribed standards of quality (if any) and which we do not specifically prohibit.

If you lease the Store premises, the lease will provide that if this Agreement expires or is terminated for any reason, either you or WBCA may enter the leased premises and remove any signs or other articles bearing any trade names, logos, trademarks or service marks that are part of the Wild Bird Center System and de-identify the leased premises as a Wild Bird Center (including, without limitation, removing any Wild Bird Center trade dress), in accordance with paragraphs 23A(9) and 23B, without legal process and without being guilty of trespass.

You may use the Wild Bird Center trade names, logos, trademarks and service marks in connection with the sale of designated products at kiosks or carts located within the Licensed Territory, provided that you obtain our prior approval of the location of each such kiosk or cart. You may also use the Wild Bird Center trade names, logos, trademarks and service marks in connection with the sale of designated products at home shows, garden shows and similar temporary events, provided that you obtain our prior approval of each such event. We may grant or deny such approval in our sole discretion.

B. The term of the License will commence on the date the Store is opened to the public and will end 20 years from the opening date.

C. Provided that you are not in default beyond any applicable cure period under this Agreement, then at the expiration of the term of the License, you will have the opportunity to remain a franchisee for additional renewal periods of 10 years with reduced services fees, provided that before such renewal period:

(1) You agree to make such capital expenditures as may be reasonably required to renovate and modernize the Store premises, signs and equipment so as to reflect the then-current operational and design standards of Wild Bird Centers.

(2) You have the right to remain in possession of the Store premises, or other premises acceptable to us, for the new term. If you elect (or are required) to relocate, then you will reimburse us for our reasonable expenses in evaluating the new premises. We will not be required to extend our credit or resources to assist you in obtaining financing for premises or equipment.

(3) You execute a new franchise agreement in the form we are using at that time, which agreement may include different or additional terms and/or increased fees; provided, however, that the amount of the service fee for the renewal period will be 3.75% of the Gross Sales of the Store.

(4) You reimburse us for the costs and other expenses (not to exceed \$5,000.00) we incur in connection with the exercise of your option, upon receipt of a detailed invoice for such costs and expenses. You will not be required to pay any license or renewal fee.

(5) You give us written notice of your desire to exercise the renewal option not less than 12 months before the expiration of the immediately preceding term of the License.

If we fail to renew the License due to your failure to satisfy any of the conditions set forth above, we will provide you with notice of our intention not to renew at least 180 days before the expiration of the then-current term. Rather than failing to renew the License due to your failure to satisfy any of those conditions, we may, at our option, renew the License but charge you a service fee of 5.5% of the Gross Sales of the Store until all of those conditions are satisfied, and a service fee of 3.75% of the Gross Sales of the Store thereafter.

D. During the term of the License, you will have the right to relocate the Store to other premises within the Licensed Territory, provided that:

(1) You obtain our written approval of the new premises before leasing or purchasing those premises;

(2) You reimburse us for any reasonable costs and expenses we incur in connection with such relocation; and

(3) The Store will not be closed for a period of more than 6 months as a result of such relocation.

We may withhold approval of proposed new premises for the Store if, in our opinion, the location of those proposed new premises would adversely affect another franchisee's sales.

E. During the term of the License, we will not operate any stores or grant any other franchises within the Licensed Territory for any business which is similar to or competitive with the Store. During the term of the License, we will not solicit orders for Wild Bird Center products in the Licensed Territory, except through an Internet store (described in paragraph 3) which provides benefits to you for any sales to customers within the Licensed Territory.

3. GENERAL SERVICES OF WBCA.

Prior to the opening of the Store to the public, we will assist you in negotiating the lease or purchase of the premises for the Store, if you request such assistance. We will provide you with the names, addresses and telephone numbers of the store design firm and

the fixture supplier used by all new Wild Bird Center franchisees, and designated and recommended suppliers of equipment and furnishings for the Store. Within 30 days after execution of this Agreement, we will provide you with information on how to purchase the computerized retail operations system required for the Store and other information to help you prepare for our training program. Within 180 days after execution of this Agreement, we will provide you with a required list of initial inventory, and advise you on planning and implementing the grand opening of the Store.

After the opening of the Store, we will advise and consult with you periodically in connection with the operation of the Store and also respond to your reasonable requests for information and advice. We will communicate to you our know-how, new developments, techniques and improvements in areas of products, marketing, management, and service which are pertinent to the operation of a store using the Wild Bird Center System. The communications will be accomplished by field visits from our employees or representatives, when appropriate in our discretion, by electronic communications, by conference calls, and by printed reports and other mailings.

From time to time, we will distribute to you information about topics relating to the operation of Wild Bird Center and Wild Bird Crossing stores, and notable advertising and promotional ideas and materials utilized by Wild Bird Center and Wild Bird Crossing franchisees.

Upon your request, if we believe that our intervention is warranted, we will intercede with suppliers which have been approved by us, to ensure that their guarantees are honored in a timely fashion and that defective products are replaced. We will make available to you all additional services, facilities, rights and privileges which we generally make available from time to time to all of our franchisees operating Wild Bird Centers.

4. MANUALS.

We will loan you a copy of the Wild Bird Center Operations Manual and other business manuals as we may prepare from time to time for use by franchisees of Wild Bird Centers (the "Manuals"). The Manuals may be in electronic format. The Manuals contain detailed information relating to the operation of the Store including (i) the foods and feeders appropriate for various species of birds; (ii) methods of inventory control; (iii) store design and layout; (iv) business practices and policies; (v) required and recommended insurance coverages; (vi) methods of conducting educational seminars and bird-watching nature walks; (vii) other management, advertising and personnel policies; and (viii) references to the specifications for and designated and approved suppliers of inventory and supplies, which are contained in computerized materials we provide to you. You agree to promptly adopt and use, exclusively, the methods and policies contained in the Manuals, as they may be modified by us from time to time. Such Manuals, as modified by us from time to time, are incorporated in this Agreement by this reference. In the event of any conflict between the

Manuals and this Agreement, this Agreement will control. The Manuals will remain our exclusive property.

5. ADVERTISING.

You must distribute our "*Wild Bird News*" newsletter or our promotional postcards to your customers and potential customers at least 6 times annually. At least 2 of those annual mailings must be the "*Wild Bird News*". We publish the "*Wild Bird News*" 6 times a year (once every other month). The standard version of the "*Wild Bird News*" is 4 pages long. At your option, we will customize any issue of the "*Wild Bird News*" for your Store by including a 2-page insert with articles written by you or your employees, or selected by you from the articles on the WBCA intranet provided by us or other sources, and promotions provided by you or by us at your request.

Two of your annual promotional postcard mailings must be for the November/December holiday period and the April/May Mother's Day period. We produce promotional postcards approximately 10 times a year (once or twice every month). Each of those postcards has an illustration on one side, which is the same for all stores. The other side of each postcard has a description of a sale or promotion, which is generally the same for all stores. On or before January 31st of each year, you must provide us with a marketing plan for that year, showing which issues of the "*Wild Bird News*" and which promotional postcards your customers and potential customers will receive that year.

You must provide us with a complete mailing list, in the form we require, of your customers and potential customers, and update that list so as to keep it current at all times.

WBCA will manage the design, printing and mailing of the "*Wild Bird News*" and the promotional postcards. We will have your Store's versions of the "*Wild Bird News*" and the promotional postcards printed, addressed, bundled by direct mail processor and delivered to the Post Office for delivery to the persons on your mailing list. You will reimburse us for our costs of printing and mailing such newsletter copies and promotional postcards within 15 days after being invoiced for those costs. If you fail to reimburse us for such costs within that 15-day period, such costs will bear simple interest at the rate of 18% per annum from the due date until paid. If, at any time, you are more than 30 days overdue in the reimbursement of such costs, we may elect not to mail the "*Wild Bird News*" and the promotional postcards to your customers and potential customers.

You will use only advertising and promotional materials and programs provided by us or approved by us in advance. Prior to disseminating any advertising materials, you will submit copies of those materials to us for review. If any proposed print, radio or television advertising materials are unacceptable to us, we will notify you that you may not use those advertising materials within 5 business days after we receive them. Our failure to respond within 5 business days of receipt of the proposed advertising materials will constitute our

approval of the proposed advertising. Neither our approval of your advertising and promotional materials, nor our providing such materials to you, directly or indirectly, will require us to pay for such advertising or promotion.

You may advertise your Store through a website on the Internet, provided that you use our website (www.wildbird.com) as the parent site for your website, i.e., your website may be accessed only through a link from our website. Your website may include directions to the Store and descriptions of products and services available at the Store, but may not include prices for any products or services. Any website, or any material change to an existing website, must be approved in writing by us before it is published on the Internet. You will use only text provided or approved by us in writing to describe any Wild Bird Center private label products, or any of our trademarked, service marked or patented products, on your website. If you display any of our trademarks or service marks on your website, those displays must conform to specifications we provide.

During each calendar year, you will expend an amount which is not less than 2% of your Gross Sales (as that term is defined in paragraph 9 hereof) for that year for advertising and promotion of the Store to the general public. Your expenditures for the "*Wild Bird News*" and promotional postcards and your cooperative marketing fee payments will not be credited against the required minimum expenditures for advertising and promotion.

We do not currently do not require our franchisees to form advertising cooperatives or councils, but we reserve the right to do so in the future. If any such cooperatives or councils are formed, we reserve the right to require them to be changed, merged or dissolved.

6. COOPERATIVE MARKETING FEE.

You will pay us a cooperative marketing fee in the initial amount of \$2,700.00 per year. The cooperative marketing fee may be increased by us from time to time but in no event by more than 10% per year. We will give you not less than 30 days written notice of any increase in the cooperative marketing fee. The cooperative marketing fee will be paid in equal monthly installments, on or before the 10th day of each month. Delinquent cooperative marketing fees will bear simple interest at the rate of 18% per annum from the due date until paid. Cooperative marketing fee payments we receive will be used solely to pay for editorial services for the "*Wild Bird News*" and promotional postcards and for marketing services, public relations and consulting services for the benefit of all Wild Bird Centers and Wild Bird Crossings.

7. COMPUTER AND COMPUTER SUPPORT FEES.

You will purchase the computerized retail operations system required for operation of the Store from a vendor designated by us. You will enter into a contract with that vendor and/or another vendor designated by us for computer support, and you will pay that vendor

the fees it charges for such support. Those fee may be increased from time to time, and may vary with the level of support you elect to receive from the designated vendor.

8. TRAINING AND TRAINING FEES.

You acknowledge the importance of quality of business operation by all stores in the Wild Bird Center System and agree, for yourself and, at your option, your designated Store manager or employee, to participate in a 6-day training program at our Glen Echo, Maryland headquarters or hotel or other conference facilities in the Washington, D.C. metropolitan area prior to the opening of your Store. Training will include instruction in the following areas: (i) effective feeding techniques for various species of birds; (ii) product presentation; (iii) inventory management; (iv) customer relations; (v) use of the point-of-sale computer software package; (vi) advertising; and (vii) conducting educational seminars and bird-watching nature walks. Training will also include advice relating to the management and operation of the business and recommendations regarding bookkeeping systems for the business.

You will pay us an initial Training Fee of \$2,000.00 for providing our training program to up to 2 people designated by you. At your option, additional individuals designated by you may participate in our training program, for an additional Training Fee of \$1,000.00 per person. Payment of the initial Training Fee will be made in full upon the execution of this Agreement, in cash, by certified check or by personal check, at our discretion. The initial Training Fee will not be refundable for any reason whatsoever.

Once the Store is open to the public, we will be available to provide assistance to you, if necessary, on a reasonable basis. In addition, we will host an annual convention. You are required to participate in our annual convention.

If we develop any new procedures or techniques which, in our opinion, require additional training, we will provide such training to you at our Glen Echo, Maryland headquarters or hotel or other conference facilities in the Washington, D.C. metropolitan area. Except for the fee for our initial training program described above, training and support services will be provided without additional charge except that you will pay all travel and living expenses you and your employees incur in connection with training and other support services, and if you request on-site training or support services which we do not normally provide, you will pay all travel and living expenses we and our employees incur in connection with those training or other support services.

9. GROSS SALES.

For the purposes of this Agreement, the term "Gross Sales" means all revenues from your sales based upon all business conducted upon and from the Store, whether such sales are evidenced by check, cash, credit, charge account, exchange, trade-out or otherwise.

Gross Sales will include, but not be limited to, amounts received from the sale of goods, wares and merchandise, including the sale of bird seed and tangible property of every kind and nature, promotional or otherwise, and for services performed from or at the Store, together with the amount of all orders taken and/or received at the Store or at home shows, garden shows or other similar temporary events, whether such orders are filled from the Store or elsewhere. There will be deducted from Gross Sales any sales at cost and any sales made to participants in educational programs during such programs. Gross Sales will not include the sales of merchandise for which cash has been refunded, provided that such sales have previously been included in Gross Sales. There will be deducted from Gross Sales the price of merchandise returned by customers for exchange, provided that such returned merchandise has been previously included in Gross Sales, and provided that the sales price of merchandise delivered to the customer in exchange is included in Gross Sales. Gross Sales will not include the amount of any sales tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount of such sales tax is added to or absorbed in the selling price, and actually paid by you to such governmental authority. Gross Sales will not include the amount of any shipping charge, provided that the amount of that charge is added to the selling price and actually paid by you to the company handling the shipping. Each charge or sale upon credit will be treated as a sale for the full price in the month during which such charge or sale is made, irrespective of the time when you receive payment for such sale.

10. SERVICE FEE.

In consideration of our services, you will pay us a monthly service fee on or before the 10th day of each month in an amount equal to (i) 2.75% of the Gross Sales of the Store for the immediately preceding month during the first 2 years of the Store's operations, and (ii) 5.5% of the Gross Sales of the Store for the immediately preceding month during the 3rd through the 10th years of the Store's operations. If you renovate the Store premises to our then-current standards during the 10th year of the Store's operations, the service fee will be reduced to 3.75% of the Gross Sales of the Store for the immediately preceding month at the commencement of the 11th year of the Store's operations and remain at that rate for the remainder of the term of this Agreement. If you do not renovate the Store premises to our then-current standards during the 10th year of the Store's operations, the service fee will remain at 5.5% of the Gross Sales of the Store for the immediately preceding month until such renovation is complete, at which time the service fee will be reduced to 3.75% of the Gross Sales of the Store for the immediately preceding month. Delinquent service fees will bear simple interest at the rate of 18% per annum from the due date until paid.

11. LICENSE FEE.

You acknowledge that the initial grant of the License pursuant to this Agreement constitutes the sole consideration for your payment to us of a license fee of \$23,000.00 ("License Fee"). Payment of the License Fee will be made in full upon the execution of this Agreement, in cash, by certified check or by personal check, at our discretion. The License Fee will not be refundable for any reason whatsoever.

12. REPORTS.

On or before the 3rd day of each month, you will deliver to us a statement, in such form as we require from time to time, of all receipts from the operation of the Store, including a departmental breakdown of such receipts, for the immediately preceding month, together with the cost of goods sold, and inventory levels and projected annual sales volume as of the last day of such month. We reserve the right to require, on a monthly basis, a profit and loss statement for the immediately preceding month, and schedules of cash on hand, accounts receivable, and federal and state payroll taxes withheld for such month. You will retain and preserve full and complete records of Gross Sales for at least 2 years in a manner and form satisfactory to us and will also deliver such additional financial, operating and other information and reports as we may reasonably request on the forms and in the manner we prescribe. You agree to submit, within 60 days after the end of the first 6 months of the Store's operation, a balance sheet and a profit and loss statement, in such form as we may reasonably require, covering operations during that 6-month period. You further agree to submit, within 90 days following the close of each fiscal year of the Store's operation, a balance sheet and a profit and loss statement, in such form as we may reasonably require from time to time, covering operations during that fiscal year. We and our agents and auditors will have the right to inspect and audit your accounts, books, records and tax returns at all reasonable times. If the inspection discloses that your annual Gross Sales actually exceeded the amount reported by you as your annual Gross Sales by an amount equal to more than 2% of the annual Gross Sales originally reported to us, you will bear the cost of such inspection and audit. If an inspection by us discloses that you have underreported your Gross Sales for any fiscal year by more than 2%, and we request certification of your profit and loss statement for any subsequent fiscal year, then that profit and loss statement must be certified by a certified public accountant. If you fail to submit to us any of the monthly reports required by this paragraph for any month of a fiscal year, then the profit and loss statement for that fiscal year must be certified by a certified public accountant. In either such event, you, at your expense, will cause your certified public accountant to consult with us concerning that profit and loss statement.

If, at any time during the term of this Agreement, we so require, you will acquire and install in the Store, at your expense, point of sale equipment and software that is compatible with our data collection systems and that we approve in writing prior to its installation and use. In that event, you will maintain electronic connection of your point of sale systems with ours, and will transmit data to us or permit us to poll such point of sale systems at times we specify. You will bear all costs of installation, operation and maintenance of your point of sale systems, except for toll charges we incur in accessing your systems.

13. RESTRICTIONS.

You hereby agree, covenant, represent and warrant as follows:

A. During the term of this Agreement, without our prior written consent, you will not engage in, acquire any financial or beneficial interest (including, without limitation, any interest in corporations, partnerships, trusts, unincorporated associations or joint ventures) in, or become a landlord for any retail business which is similar to the Store.

B. For a period of 24 months after termination of this Agreement for any reason, you will not engage in or acquire any financial or beneficial interest (including, without limitation, any interest in corporations, partnerships, trusts, unincorporated associations or joint ventures) in, or become a landlord of any retail business which is similar to the Store, within the Licensed Territory or within the licensed territory of any other Wild Bird Center franchisee or any Wild Bird Crossing franchisee or within a 20-mile radius of the perimeter of the Licensed Territory or the licensed territory of any other Wild Bird Center franchisee or any Wild Bird Crossing franchisee, or within a 20-mile radius of any Wild Bird Center or Wild Bird Crossing store which we or any of our affiliates operate.

C. You acknowledge that the Wild Bird Center System and benefits derived from it are the sole property of WBCA. Any improvements by you relating to the Wild Bird Center System will become our sole and exclusive property.

D. You will not appropriate, use or duplicate the Wild Bird Center System, or any portion of it, or any computer software used in connection with it, for use at any retail business other than the Store.

E. You acknowledge that all practices, products, know-how and other proprietary information, including the entire contents of the Manuals, disclosed to you pursuant to the License are the confidential trade secrets of WBCA. You agree to (i) follow all guidelines established by us in our sole discretion for maintaining the secrecy of such information; (ii) disclose such information to your employees only to the extent necessary to operate the Store in accordance with the Agreement and the Wild Bird Center System; (iii) not use any such information in any other business or in any manner not specifically authorized or approved in writing by us; and (iv) exercise the highest degree of care and make every effort to maintain the confidentiality of all proprietary information during and after the term of this Agreement.

F. You will acquire no right to use, or to license the use of, any name, mark or other intellectual property right granted or to be granted by this Agreement, except in connection with the operation of the Store. You acknowledge that WBCA is the valid owner of the trade names, logos, trademarks and service marks which are part of the Wild Bird Center System, and will take no action challenging the validity of our ownership of such trade names, logos, trademarks and service marks. You agree that all use of those trade names, logos, trademarks and service marks by you will inure to the benefit of WBCA.

G. You will not use any modified form of any trade name or trademarked or service marked design, lettering or logo licensed by this Agreement, without our express written consent, which consent will be completely discretionary with us.

H. You will notify us immediately if you learn of an apparent infringement of, or a challenge to your use of, any of our trade names, logos, trademarks or service marks. We will defend you in any legal proceeding against you challenging your use of those names, logos or marks. However, we will otherwise have sole discretion to take such action as we deem appropriate and to control exclusively any litigation or administrative proceeding arising out of any such infringement or challenge. You will sign such instruments and documents and render such other assistance as, in the opinion of our attorneys, may be necessary or advisable to protect our interests in any such litigation or administrative proceeding.

I. If it becomes advisable at any time, in our sole discretion, for you to modify or discontinue use of the "Wild Bird Center" trade name or trademark, or any other trade names, logos, trademarks or service marks, and/or to use one or more additional names or marks, you will be obligated to do so. In that event, we will reimburse you for your out-of-pocket costs of complying with such obligation. You recognize that the License granted by this Agreement constitutes an entire system for doing business, of which our trade names, logos, trademarks and service marks are mere symbols. You agree that if we for any reason lose any of our trade names, logos, trademarks or service marks, that loss will not constitute a breach of this Agreement, and you will continue to comply with the terms of this Agreement.

J. You will not advertise the Store or solicit orders within the licensed territory of any other Wild Bird Center or Wild Bird Crossing franchisee, except as permitted by this paragraph. You will have the right to advertise the Store on the Internet in accordance with paragraphs 5 and 13K. You will have the right to advertise the Store in publications or other media which are directed at persons within the Licensed Territory and licensed territories of other Wild Bird Center and Wild Bird Crossing franchisees, provided that all such franchisees are invited to participate in such advertising, and further provided that if such media reaches significantly more persons in any other franchisee's licensed territory than in your Licensed Territory, you will obtain that franchisee's written permission to publish such advertising in such media.

K. You will not have an Internet website which can be accessed by any means other than through a link from our website, or advertise the prices of any products or services sold at the Store on an Internet website..

L. If in our judgment, your acts impair the good will, public image, standards of uniformity or quality or business standing associated with the Wild Bird Center System and the trade names, trademarks, service marks and other intellectual property rights

licensed by this Agreement, you will, immediately upon notice from us, modify your use of the Wild Bird Center System and such trade names, trademarks, service marks and other intellectual property rights in the manner we prescribe.

The restrictions contained in paragraphs 13A and 13B will not apply to ownership of less than 2% of the shares of any corporation whose shares are listed and traded on a national or regional security exchange.

You agree that damages alone cannot compensate us if there is a violation of the nondisclosure or non-competition covenants of this paragraph 13 and that injunctive relief is essential for our protection. You therefore agree that in the case of any alleged violation of the nondisclosure or non-competition covenants of this paragraph 13, we will have the right to seek injunctive relief without posting any bond or security whatsoever, in addition to any other remedies that may be available to us at law or in equity. You acknowledge that the covenants and restrictions set forth in this paragraph 13 are reasonable and necessary for the protection of our legitimate business interests and those of our other franchisees.

14. COMPLIANCE WITH ENTIRE SYSTEM.

You hereby acknowledge that every component of the Wild Bird Center System is important to us and to the operation of any Wild Bird Center, including the designated products, uniformity of product specifications, quality and appearance, and uniformity of service.

We will have the right to inspect the Store at all reasonable times and during all business hours to ensure that your operation of the Store is in compliance with the standards and policies of the Wild Bird Center System.

You will comply with the entire Wild Bird Center System, including, but not limited to, the following:

A. Employ a store design firm designated by us to plan and design the interior of the Store; improve, fixture and equip the Store in accordance with the plans prepared by that store design firm; and purchase all fixtures for the Store from a fixture supplier designated by us;

B. Obtain and use a cash drawer, a receipt printer and an integrated retail operations software package specified by us, and a computer (including a monitor, a modem and a CD-ROM drive), a reports printer, a surge protector, an uninterruptible power supply and other computer hardware and software specified by us; change or upgrade computer hardware and software components when we require, provided that the total cost of such required changes and upgrades during the initial term of the License will not exceed \$20,000.00; prevent any copying of the software components; and prevent any dissemination of information about such software components to any parties other than the developers of

such software, WBCA and the owners, operators and employees of other franchised Wild Bird Centers;

C. Acquire and maintain an e-mail system, capable of receiving large document and graphic attachments, with an address available for receipt of incoming messages 24 hours per day, 7 days per week (including holidays), and read all new messages on such e-mail system at least 5 days each week; use our email reflector service and list your assigned email addresses on all print and electronic materials;

D. Obtain and use an electronic credit card system specified by us from a vendor designated by us, obtain a fax machine, and make that fax machine available for incoming messages 24 hours per day, 7 days per week (including holidays);

E. Operate the Store in a courteous manner in compliance with the prescribed standards of quality and service; comply with all business policies, practices and procedures we impose; and maintain the Store premises in good condition and repair, and in compliance with designated standards prescribed by us from time to time;

F. Obtain and maintain all insurance policies required by the Manuals from the time of commencement of construction of the Store throughout the term of this Agreement, and cause all insurance policies you maintain to name WBCA as an additional insured and contain a waiver of the insurance company's right of subrogation against us;

G. Obtain our prior written consent before making any building design conversions, alterations or additions;

H. Repair or replace equipment or improvements if required as a result of damage, wear and tear, or in order to maintain the Store in good condition;

I. Have the Store staffed and open to the public at least 6 days per week (for not less than 56 hours) throughout the year with the exception of only 6 recognized holidays you select, except when the Store is untenable as a result of fire or other casualty; maintain inventory with a wholesale cost of not less than \$25.00 per square foot of retail display area; and employ adequate personnel so as to operate the Store at its maximum capacity and efficiency;

J. Cause all of your employees, while working in the Store, to present a neat and clean appearance, and render competent and courteous service to all Store customers;

K. Cause all managers and all other employees of the Store to sign confidentiality and non-competition agreements in form satisfactory to us;

L. Offer all Wild Bird Center private label and core inventory products for sale in the Store, obtain our prior written consent before offering for sale at the Store any product which we have not designated for sale at Wild Bird Center stores, and purchase all of your inventory only from suppliers we have approved;

M. Make prompt payment in accordance with the terms of invoices rendered to you on purchases of fixtures, signs, equipment, and inventory and supplies;

N. Comply with all federal, state and local laws, ordinances and regulations affecting the operation of the Store;

O. Operate the Store in a manner which will not impair the goodwill associated with the Wild Bird Center trade name and trademarks;

P. Prevent the disclosure of customer lists to any party other than us;

Q. Participate in WBCA's annual convention each year.

We reserve the right to require you to deposit money into an escrow account that we control, and use that money to purchase fixtures, equipment and inventory for you. We will not make any profit on those purchases.

15. BEST EFFORTS.

You will diligently and fully exploit your rights in the License granted by this Agreement by personally devoting your full-time and best efforts to the operation of the Store or by employing a manager, who is acceptable to us and has successfully completed our training program, who will devote his full-time and best efforts to the operation of the Store.

16. INTERFERENCE WITH EMPLOYMENT RELATIONS OF OTHERS.

During the term of this Agreement, you will not employ or seek to employ any person who is at the time employed by us or any of our subsidiaries or affiliates, or any person who is at the time employed by a Wild Bird Center or Wild Bird Crossing store, or otherwise induce, directly or indirectly, any such person to leave such employment.

17. ASSIGNMENT.

Without our prior written consent, neither the Store nor your interest in the License granted by this Agreement may be assigned or otherwise transferred in whole or in part, whether voluntarily or by operation of law, directly, indirectly or contingently, except as follows:

A. Your Death or Permanent Incapacity. Upon your death or permanent incapacity, the Store and your interest in the License may be assigned either pursuant to the

terms of paragraph 17E or, within 90 days of the date of your death or incapacity, to one or more of the following persons: your spouse, heirs, or nearest relatives by blood or marriage, subject to the following conditions: (1) such person must execute a new franchise agreement in the form we are using at that time, which agreement may include different or additional terms, and (2) in our sole discretion, such person must be capable of conducting the Store business in accordance with the terms and conditions of that agreement, and (3) such person must successfully complete our training program, and (4) such person must pay us a transfer fee in an amount equal to ½ of the initial license fee then charged to new franchisees, for the administrative costs, overhead, attorneys' fees, accounting and other expenses we incur in connection with the transfer, and (5) such person must pay us a transferee training fee in an amount equal to the initial training fee then charged to new franchisees, for up to 2 individuals he designates to attend our training course. If, in our sole discretion, such person cannot devote his full-time and best efforts to the operation of the Store or lacks the capacity to operate the Store in accordance with the franchise agreement, then you or your personal representative will have the right to sell or transfer the Store and the License to another individual pursuant to the terms of paragraph 17E.

B. Assignment to Your Corporation or Limited Liability Company.

Upon your compliance with such requirements as we may from time to time prescribe, we will consent to an assignment of the Store and the License to a corporation or limited liability company whose shares or membership interests are wholly-owned and which is wholly controlled by you. The name of the corporation or limited liability company will not include any of the names, trademarks or copyrights granted by the License. Any subsequent assignment or transfer, either voluntarily or by operation of law, of all or any part of the shares of capital stock or membership interests of such corporation or limited liability company will be made in compliance with the terms and conditions set forth in this paragraph 17.

C. Assignment of Ownership Interests in License or Franchisee Entity.

Notwithstanding anything to the contrary in this Agreement, shares of capital stock or other ownership interests in any corporation, limited liability company or other entity executing this Agreement as franchisee or to which your interest in the Store and the License is transferred pursuant to subparagraph 17B (the "Franchisee Entity") may be transferred among the individuals originally executing this Agreement as franchisee, without the necessity of obtaining our consent. Notwithstanding anything to the contrary in this Agreement, ownership interests in the Franchisee Entity or in the Store and the License may be transferred to persons other than the individuals executing this Agreement as franchisee, with our prior written consent, which consent shall not be unreasonably withheld, so long as (i) the individuals originally executing this agreement as franchisee, collectively, continue to own and control over 50% of the ownership interests in the Franchisee Entity, the Store and the License, (ii) the transferees personally execute this Agreement, and (iii) you or the transferees pay us an assignment fee in the amount of 10% of the License Fee then being charged to new Wild Bird Center franchisees. Any assignment or transfer, either voluntarily

or by operation of law, of ownership interests in the Franchisee Entity and/or the Store and the License, which would result in 50% or more of the ownership interests in such entity and/or the Store and the License being owned or controlled by persons other than the individuals originally executing this Agreement as franchisee, will be made in compliance with the terms and conditions set forth in subparagraphs A, D and E of this paragraph 17. No assignment or transfer of ownership interests in the Franchisee Entity and/or the Store and the License in contravention of this paragraph 17C will be binding on us. You will provide us with such documentation about the ownership interests in the Franchisee Entity, the Store and the License as we may from time to time reasonably request.

D. Our Right of First Refusal. You or your representative will give us 30 days prior written notice of any offer to sell or otherwise transfer the Store and the License pursuant to paragraph 17E, together with a copy of that offer. The notice will set forth the name and address of the proposed purchaser and all the terms and conditions of the offer. We will have the first option to purchase the Store by giving you written notice of our intention to purchase under the same terms as the offer within 20 days following our receipt of your notice. In the event we fail to exercise our right of first refusal and the Store is not subsequently sold for the price and upon the terms of which we were given notice, we will continue to have a first right to purchase the Store upon the terms and conditions of any subsequent offer in accordance with this paragraph 17D.

E. Other Assignment. Other than any assignment or contingent assignment contemplated by the terms of paragraphs 17A, 17B and 17C, you will not sell, transfer or assign the Store or the License to any person or persons without our prior written consent, which consent will not be unreasonably withheld, provided that all of the following conditions are met:

(1) The transferee has a good reputation and a good credit rating and competent business qualifications reasonably acceptable to us. You will provide us with any information we reasonably require to make such determination concerning each such proposed transferee, including, without limitation: the transferee's business plan for the Store and projected cash flow analysis for the Store, based upon projected debt service, projected expenses and projected gross sales; copies of your financial statements and the financial statements of the proposed transferee; a copy of your lease of the Store premises; and a copy of your contract with the proposed transferee for the sale of the Store and the License.

(2) The transferee has successfully completed the training course then in effect for franchisees or otherwise demonstrated to our satisfaction sufficient ability to operate the Store.

(3) The transferee executes a new franchise agreement in the form we are using at that time, which agreement may include different or additional terms.

(4) All of your accrued money obligations to us are satisfied before the assignment or transfer, and you are not in default under this Agreement.

(5) You or the transferee pay us a transfer fee in an amount equal to ½ of the initial license fee then charged to new franchisees, for the administrative costs, overhead, attorneys' fees, accounting and other expenses we incur in connection with the transfer.

(6) You or the transferee pay us a transferee training fee in an amount equal to the initial training fee then charged to new franchisees, for up to 2 individuals designated by the transferee who attend our training course;

(7) You provide us and the transferee with a true and correct list of all creditors with respect to Store operations ("Store Creditors"), and the amounts owed to each Store Creditor, not less than 10 business days before settlement on your transfer of the Store and the License to the transferee ("Settlement"), you update such list 2 business days before Settlement, and you do not make any purchases with respect to Store operations during the period between the date of that update and Settlement. Unless all Store Creditors have been paid in full as of the date of that update, you and the transferee will direct the attorney handling the Settlement to hold a portion, designated by us, of the proceeds of the transfer in an interest-bearing escrow account for the payment of Store Creditors as of the date of Settlement, to pay amounts in such account to Store Creditors upon presentation by the transferee or us of invoices from such Store Creditors for services performed or products supplied prior to Settlement, and to pay any amounts remaining in such escrow account 90 days after Settlement, including accrued interest, to you.

In the event of a transfer pursuant to this paragraph 17E, you will continue to remain personally liable for all affirmative obligations, covenants and agreements contained in this Agreement for the remaining term of this Agreement including any option periods or renewals hereof or for such shorter period as we, in our sole discretion, may determine.

F. Any assignment or transfer of the Store or the License in violation of this paragraph 17 will not convey any right to or interest in the Store or the License and will constitute a material breach of this Agreement.

G. This Agreement is fully assignable by us.

18. OUR RIGHT TO PURCHASE BUSINESS.

In the event of termination or expiration of this Agreement for any reason, or in the event that you desire, prior to the termination of the Franchise Agreement, to discontinue the operation of the Store for any reason other than a sale to a third person, we will have the option to purchase the Store upon the following terms and conditions:

The purchase price for the Store will be equal to the fair market value of the Store, including all leasehold improvements and equipment, inventory, and good will not attributable to us, as determined by a qualified appraiser on whom we mutually agree. If we cannot agree on an appraiser within 15 days following termination or expiration of this Agreement, you and WBCA will each name our own appraisers. If the lower of the two resulting appraisals is less than 85% of the higher appraisal, the original appraisers will appoint a third appraiser, whose determination of the price will be final. Otherwise, the purchase price will be the mean between the two purchase prices originally determined. You and WBCA will share equally the fees and expenses of the appraisers jointly named, but each party will be responsible for the fees and expenses of any appraiser named solely by that party. You and WBCA will each bear our own expenses in presenting evidence to the appraisers. In determining the purchase price, the appraisers appointed under this Agreement will consider all opinions and relevant evidence submitted to them by the parties, or otherwise obtained by them, and will set forth their determination in writing together with their opinions and the considerations on which the opinions are based, and deliver a signed counterpart to each party within 30 days after commencing appraisal. The terms will require a 20% down payment, with the balance to be paid over a period of 3 years with interest at the prime rate of interest then charged by the Chase Manhattan Bank, New York, NY. Payment of the purchase price will be secured by a security interest in the Store.

19. YOU ARE NOT AN AGENT OF WBCA.

You have no authority, express, or implied, to act as an agent for us or any of our affiliates, for any purpose whatsoever. You are and will remain an independent contractor responsible for all obligations and liabilities of, and for all losses and damages to, the Store and its business, including any personal property, equipment, fixtures and real property connected with the Store and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Store. At all times and in all dealings, you will conspicuously hold yourself out to the public as an independent contractor operating your business pursuant to a franchise license from WBCA. You will display a sign at the Store premises which is clearly visible to the general public, indicating that the franchised business is independently owned and operated.

20. SUPPLIER APPROVAL PROCEDURE.

You may purchase inventory for the Store only from suppliers we have approved. If you wish to use an inventory supplier that we have not approved, then you must submit a written request to us for acceptance of that supplier as an approved supplier. Your request will include the following information: the name, address and telephone number of the supplier, its contact person, a list of the products it supplies, the number of years it has been in business, its price list, and a description of the credit terms it offers. We will then investigate that supplier's pricing policy and performance record and obtain samples of its products. We may grant or deny approval of such supplier in our sole discretion. We will

use reasonable efforts to notify you of our decision within 30 days after receipt of your request and the required information about the supplier.

21. MATERIAL BREACH.

The happening of any of the following events will constitute a material breach of this Agreement.

A. Without prejudice to any of our other rights or remedies at law, in equity or under this Agreement, we, at our election, may terminate this Agreement upon the happening of any of the following breaches, unless such breach is cured by you within 30 days after we deliver written notice of such breach to you:

(1) You fail to maintain and operate the Store in an efficient and courteous manner and in compliance with the standards prescribed by the Manuals and/or the Wild Bird Center System; or

(2) You voluntarily or involuntarily cause or permit your right of possession of the premises in which the Store is located to be terminated prematurely for any cause whatsoever, and fail to relocate the Store to other premises approved by us within 6 months after such termination; or

(3) You acquire any interest in a business in violation of paragraph 13A; or

(4) You duplicate the Wild Bird Center System or any computer software used in connection with it in violation of paragraph 13C; or

(5) You make or cause a disclosure of any portion of the Wild Bird Center System in violation of paragraph 13E, or copy or make a disclosure about the computer software which is part of the Wild Bird Center System in violation of paragraph 14B, or make or cause a disclosure of any part of the Manuals; or

(6) You make or permit a disclosure of the Store's customer lists in violation of paragraph 14P; or

(7) You violate paragraph 13F, 13G or 13I by using any name, trademark, service mark, or other intellectual property right of WBCA exceeding the restrictions of paragraph 13; or

(8) You advertise the Store or solicit orders in the licensed territory of another Wild Bird Center or Wild Bird Crossing franchisee, in violation of paragraph 13J; or

(9) You violate paragraph 13K by having an Internet website which can be accessed by any means other than through a link from our website, or by advertising the prices for products or services sold at the Store on an Internet website; or

(10) You knowingly sell products other than those we have designated for sale in Wild Bird Center stores, or which fail to conform to the Wild Bird Center System specifications for those products, or you fail to offer our private label products or core inventory for sale in the Store, or you purchase inventory from suppliers that we have not approved; or

(11) You violate paragraph 14F by failing to obtain or maintain any insurance policy required by the Manuals; or

(12) You violate paragraph 14A, 14B, 14C, 14D, 14E, 14G, 14H or 14I by failing to keep the Store improved, equipped, stocked and repaired in accordance with standards we prescribe; or

(13) Any assignment or other transfer of any interest in the Store or the License granted by this Agreement occurs in violation of paragraph 1B or paragraph 17; or

(14) You deny us the right to inspect the Store as provided in this Agreement; or

(15) You violate paragraph 14K by failing to have any of your managers or other full-time employees sign a confidentiality and non-competition agreement; or

(16) You fail to make prompt payment of undisputed invoices from suppliers or to remit rent, mortgage payments or service fees which you owe; or

(17) You fail, without our prior written approval, to attend our annual convention; or

(18) You fail to promptly prepare or deliver any required monthly or annual statements; or

(19) You submit 2 or more annual financial statements which understate the Gross Sales of the Store by 2% or more, or submit 2 or more monthly financial statements in any 12-month period which understate the Gross Sales of the Store by 2% or more; or

(20) Except as set forth in paragraph 21B, you commit any breach of this Agreement which is susceptible of being cured.

If you fail to cure any of the breaches described in this paragraph 21A within 30 days after we deliver written notice of such breach to you, and we elect to terminate this Agreement because of such breach, termination of this Agreement will be effective upon our delivery of written notice of termination to you pursuant to paragraph 26 of this Agreement.

B. Without prejudice to any of our other rights or remedies at law, in equity or under this Agreement, we, at our election, may terminate this Agreement effective immediately upon delivery of written notice of termination to you pursuant to paragraph 26 of this Agreement, upon the happening of any of the following breaches:

(1) You are adjudicated bankrupt, become insolvent, or a receiver, whether permanent or temporary, of substantially all of your property is appointed by any court, or you make a general assignment for the benefit of creditors or you file a voluntary petition under any bankruptcy law; or

(2) Any service fee or cooperative marketing fee you owe to us is not paid within 5 days after written notice from us that such payment is overdue; or

(3) You fail to pay us for any newsletters or promotional postcards distributed to your customers and potential customers within 30 days after being invoiced for such newsletters or postcards, and such failure continues for 5 days after written notice from us that such payment is overdue; or

(4) You have made any material misrepresentation in your application for the License; or

(5) You engage in conduct which reflects materially and unfavorably upon the operation and reputation of the Wild Bird Center System; or

(6) You abandon the License by failing to operate the Store for 5 consecutive days during which it is required to be open for business under paragraph 14I, unless such failure to operate is due to a relocation permitted by paragraph 2D or to fire, flood, earthquake or other similar causes beyond your control; or

(7) You fail, for a period of 10 days after notice of noncompliance, to comply with any federal, state or local law or regulation applicable to the operation of the Store; or

(8) You are convicted of a felony or any other criminal conduct;

or

(9) You repeatedly commit one or more of the breaches described in paragraph 21A or this paragraph 21B, whether or not corrected after notice.

C. Upon the happening of any of the following breaches (each of which also constitutes a default under paragraph 21A or 21B), we, at our election, without prejudice to any of our other rights or remedies at law, in equity or under this Agreement, may cease providing you with any or all of the services to be provided by us under this Agreement until you have paid us all amounts then due us under this Agreement and provided us with all monthly and annual statements then due:

(1) Any service fee or cooperative marketing fee you owe to us is not paid within 5 days after written notice from us that such payment is overdue; or

(2) You fail to pay us for any newsletters or promotional postcards distributed to your customers and potential customers within 30 days after being invoiced for such newsletters or postcards, and such failure continues for 5 days after written notice from us that such payment is overdue; or

(3) You fail to promptly prepare or deliver any required monthly or annual statements, and such failure continues for 30 days after written notice from us that such statements are overdue.

22. OTHER BREACHES.

If you fail to perform any of the terms and conditions of this Agreement other than those enumerated in paragraph 21, you will be in breach of this Agreement but that breach will not constitute grounds for termination of this Agreement. We will have the right to seek judicial enforcement of our rights and remedies including, but not limited to injunctive relief, damages or specific performance. Any uncured breach of this Agreement will be sufficient reason for us to withhold approval of our consent to any assignment of your interest in the License or any other approval or consent which you are required to obtain from us under this Agreement.

23. EFFECT OF TERMINATION.

A. In the event of termination or expiration of this Agreement for any reason, or in the event that you desire prior to the termination of this Agreement, to discontinue the operation of the Store for any reason other than a sale to a third person who has been approved by us, you agree to perform the following obligations:

(1) You will pay all service fees and other amounts owing to us immediately upon termination or expiration.

(2) You will immediately discontinue the use of the Wild Bird Center System and its associated trade dress, trade names, service marks, copyrights and trademarks, and immediately discontinue the use of any and all signs and printed goods bearing those names and marks or any reference to them.

(3) You will take such action as may be required to discontinue use of the Wild Bird Center trade names, trademarks or service marks in any business licenses, fictitious name registrations or equivalent registrations.

(4) You will immediately return to us all copies of the Manuals, the point-of-sale computer software and all other material containing our trade secrets, operating instructions or business practices.

(5) You will pay all creditors with respect to franchise operations immediately upon termination or expiration of this Agreement.

(6) You will, within 3 days after such termination or expiration, turn over to us the original and all copies of any records of the names and addresses and telephone numbers of all customers of the Store up to and including the date of termination or expiration, together with all files and records pertinent to such customers.

(7) You will cooperate with us to make the necessary arrangements with the telephone company to immediately assign to us the telephone service, including the telephone listing and numbers which will become our absolute property.

(8) If we have exercised our option to purchase the Store pursuant to paragraph 18, you will assist us in every way possible to bring about a complete and effective transfer of the Store, its customers, facilities, and services to us or our designee.

(9) If we have not exercised our option to purchase the Store pursuant to paragraph 18, you will immediately remove from the Store premises all elements of our trade dress and all signs, posters, graphics, furniture, furnishings, advertising, promotional materials, forms, interior or exterior decor and any other articles bearing any of the Wild Bird Center trade names, trademarks or service marks.

(10) You will not disclose, reveal or publish any portion of the Wild Bird Center System or the Manuals and not use any trade name, service mark, copyright, or trademark similar to or likely to be confused with those of WBCA.

(11) You will comply with your obligations under paragraphs 13B and 14D.

B. If you fail to perform any of the obligations set forth in paragraphs 23A(2) and 23A(9) within 15 days after the date of expiration or termination of this Agreement, then at any time after that 15-day period, we will have the right (in addition to any other right or remedy provided or permitted by law or by equity) to enter upon the Store premises or any other premises where signs or articles displaying any of our trade names, service marks and trademarks or words or slogans similar thereto or suggestive thereof or our trade dress may be found, and remove and/or cover by paint or other means all signs and other articles displaying any of our trade names, service marks and trademarks or words or slogans similar thereto or suggestive thereof, and remove or paint over our trade dress, without legal process and using such force as may be necessary, without any liability to you for damages caused by or arising from such actions.

24. WAIVER.

No waiver by us of any breach of any of your covenants or obligations under this Agreement will be considered to be a continuing waiver of any such covenant or provision or of any future breach thereof.

25. RIGHT TO PURCHASE ADDITIONAL FRANCHISES.

A. Provided, in each case, that (i) you have complied with all of the terms and conditions of this Agreement and any other agreement between you and WBCA, and (ii) we are reasonably satisfied with the profitability of the franchises which you are operating pursuant to this Agreement and any other franchise agreements between you and WBCA, and (iii) we are reasonably satisfied with your financial and management capabilities to own and operate an additional franchise, then we agree to sell you, during the term of this Agreement, such additional Wild Bird Center franchises as you may request to purchase pursuant to the terms of this Agreement. We are not obligated to grant or sell you a franchise at any particular location. In the event this option is exercised, you will negotiate in good faith with us to find a suitable location which is mutually agreeable, and which will not, in our good business judgment, result in a material adverse effect upon the Store or other Wild Bird Center or Wild Bird Crossing stores or franchises.

B. In the event that we grant you one or more Wild Bird Center franchises during the term of this Agreement, the license fee for each such Wild Bird Center franchise will be an amount equal to $\frac{1}{2}$ of the initial license fee then charged to new franchisees. There will be no initial training fee for any such Wild Bird Center franchise unless you request training at a time when no other trainee will be attending one of our training courses, in which event an initial training fee in an amount equal to $\frac{1}{2}$ of the initial training fee then charged to new franchisees will be payable for up to 2 individuals trained.

C. The provisions of this paragraph 25 will not be construed to affect or alter any amount which is payable by you to us under any Wild Bird Center franchise

agreement, except for the license fee and the initial training fee. Any other fees or payments payable to us pursuant to the terms of any Wild Bird Center franchise agreement will be in the amounts stated in the Wild Bird Center Franchise Offering Circular then in effect.

26. NOTICES.

No notice, request, consent, approval, waiver or other communication which may be or is required or permitted to be given under this Agreement will be effective unless it is in writing and is delivered in person or by overnight delivery service or sent by registered or certified mail, return receipt requested, first-class postage prepaid, (1) if to WBCA, to c/o Wild Bird Centers of America, Inc., 7370 MacArthur Boulevard, Glen Echo, Maryland 20812, with a copy to Shulman, Rogers, Gandal, Porfy & Ecker, P.A., Suite 300, 11921 Rockville Pike, Rockville, Maryland 20852, Attention: Rebecca Oshway, Esquire, and (2) if to you, to the Store or at any other address that may be given by one of us to the other by notice pursuant to this paragraph. Such notices, if sent by registered or certified mail, return receipt requested, will be deemed to have been given at the time of delivery to or refusal by the addressee.

27. COST OF ENFORCEMENT.

If a claim for amounts owed to us by you is asserted in any arbitration or judicial proceeding or appeal thereof, or if we or you are required to enforce this Agreement in an arbitration or judicial proceeding, then the party prevailing in that proceeding will be entitled to reimbursement of its documented costs and expenses, including reasonable attorneys' fees.

28. INDEMNIFICATION.

A. If we are subject to any claim, demand or penalty or become a party to any suit or other judicial or administrative proceeding by reason of any claimed act or omission by you, your employees or agents, or by reason of any act occurring on the Store premises, or by reason of an omission with respect to the business or operation of the Store, you will indemnify and hold us harmless against any and all judgments, settlements, penalties and expenses, including attorneys' fees, court costs and other expenses of litigation or administrative proceedings, incurred by or imposed upon us in connection with the investigation or defense relating to such claim or litigation or administrative proceeding and, at our option, you will also defend us.

B. Notwithstanding paragraph 28A, if you are subject to any claim, demand or penalty or become a party to any suit or other judicial or administrative proceeding by reason of your compliance with our specific instructions or with directives in this Agreement or in the Manuals, we will indemnify and hold you harmless against any and all judgments, settlements, penalties and expenses, including attorneys' fees, court costs and other expenses of litigation or administrative proceedings, incurred by or imposed upon you in connection with the investigation or defense relating to such claim or litigation or

administrative proceeding and, at your option, we will also defend you. Notwithstanding anything to the contrary herein, the indemnity set forth in this paragraph 28B will not apply to claims, demands, penalties, suits or other judicial or administrative proceedings arising from your mode of compliance with instructions or directives, except to the extent that mode of compliance is dictated by us.

29. MEDIATION OF DISPUTES.

A. Except as otherwise set forth in paragraph 29B, any claim or controversy arising out of or relating to this Agreement, or the breach thereof, may, at either our option or your option, be submitted to mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). The party electing mediation will initiate the mediation by filing a request for mediation with the other party and with the AAA. That filing will be made not less than 15 days after the filing of a Demand for Arbitration, or the option to mediate will be deemed to have been waived. We both agree as follows with respect to such mediation:

- (i) We will bear equally the cost of the mediation, including filing fees with the AAA and the cost of the mediator;
- (ii) Mediation will occur in Montgomery County, Maryland, at a time and location to be designated by the mediator, who will be selected by the AAA;
- (iii) In the mediation sessions, we will both endeavor in good faith to resolve the claim or controversy at issue;
- (iv) Either of us or the mediator will have the right to terminate the mediation at any time after the first mediation session; and
- (v) Neither of us will make any disclosure of the existence or results of the mediation without the prior written consent of the other. The mediator will not make any disclosure of the existence or results of the mediation without the prior written consent of both of us. No discussions in the mediation will be admissible in any arbitration or litigation between us, and the mediator will not be subject to subpoena to testify to any communication between the mediator and either you or us.

B. We will not be required to mediate any breach of this Agreement which entitles us, under this Agreement, to terminate this Agreement. If you desire to mediate the issue of whether you are responsible for the payment of any service fee or the performance of any material obligation which we claim to be due or overdue under this Agreement, we may require, as a condition of agreeing to mediate such issue, that you pay

the disputed service fee or perform the disputed obligation prior to the commencement of the mediation.

30. ARBITRATION.

A. Except as otherwise set forth in paragraph 29 or this paragraph 30, any controversy or claim arising out of or relating to this Agreement (including but not limited to the validity of this Agreement or any of its provisions), your relationship with us, or your operation of the Store, will be submitted for arbitration to the Washington, D.C. office of the AAA on demand of either of us. Such arbitration proceedings will be conducted in Montgomery County, Maryland, and will be heard by one arbitrator in accordance with the then-current Commercial Arbitration Rules of the AAA.

B. The arbitrator will have the right to include in his award any relief which he deems proper under the circumstances, including, without limitation, money damages (with interest on the unpaid amounts from the date due), specific performance, injunctive relief and attorneys' fees and costs in accordance with paragraph 27, provided that the arbitrator will not have the authority to award exemplary or punitive damages, nor will he have jurisdiction over any dispute relating to the ownership, validity or registration of any trade name, trademark or service mark licensed under this Agreement. The award and decision of the arbitrator will be conclusive and binding upon you and us and judgment upon the award may be entered in any court of competent jurisdiction. We each waive any right to contest the validity or enforceability of such award. We both agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable law. We both further agree that, in connection with any such arbitration proceeding, we will each file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not filed in such proceeding will be barred.

C. We both agree that arbitration will be conducted on an individual, not a class-wide, basis, and that an arbitration proceeding between us will not be consolidated with any other arbitration proceeding involving WBCA and any other person.

D. Notwithstanding anything to the contrary in this Agreement, either of us may seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction, provided the dispute for which such relief is sought has been, or is contemporaneously, submitted for arbitration on the merits as provided in this paragraph. Notwithstanding the foregoing, we will have the right to apply directly to a court of competent jurisdiction for a temporary restraining order, preliminary injunction or other emergency relief which may be available to protect the trade name, trademarks or service marks licensed under this Agreement, or the Wild Bird Center System, without the necessity of filing an arbitration demand.

E. The provisions of this paragraph 30 will remain in full force and effect subsequent to and notwithstanding expiration or termination of this Agreement.

31. LAW APPLICABLE; CHOICE OF FORUM.

All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051 et seq.) or other federal law, this Agreement, the License and all claims arising from the relationship of WBCA and you will be governed by the laws of the State of Maryland, without regard to its conflict of laws principles, except that any Maryland law regulating the sale of franchises or business opportunities or governing the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this paragraph. Unless expressly prohibited by the franchising statutes of the state in which your Store is located, we both agree that any action arising out of this Agreement will be litigated in, and hereby submit to the jurisdiction and venue of, any state Circuit Court or federal District Court sitting in Montgomery County, Maryland. We both further agree that service of process by certified mail, return receipt requested, will be sufficient to confer in personam jurisdiction over each of us.

32. SEVERABILITY AND CONSTRUCTION.

In the event any court of competent jurisdiction declares any part of this Agreement to be invalid, the remainder of this Agreement will not be invalidated thereby, but will remain in full force and effect. If any covenant in this Agreement which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, we each agree that such covenant will be enforced to the fullest extent permissible under the laws and the public policies applied in the jurisdiction whose law is applicable to the validity of such covenant.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of termination of this Agreement or refusal to renew the License than is required under this Agreement, or the taking of some other action not required under this Agreement, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement is invalid or unenforceable, the prior notice and/or other action required by such law or rule will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision to the extent required to be valid and enforceable, in which event you will be bound by such modified provision.

33. NUMBER AND GENDER.

Where text requires, words in the singular will be deemed to include the plural and vice-versa, and words of any gender will be deemed to include all genders.

34. HEADINGS NOT PART OF AGREEMENT.

Any heading preceding the text of the several paragraphs of this Agreement are inserted solely for convenience of reference and will not constitute a part of this Agreement or affect its meaning, construction or effect.

35. YOUR ACKNOWLEDGEMENTS.

A. You acknowledge that the covenants not to compete set forth in this Agreement are fair and reasonable, and will not impose any undue hardship on you, since you have other considerable skills, experience and education which afford you the opportunity to derive income from other endeavors.

B. You recognize that some current or future franchise owners of Wild Bird Center franchises may operate under different forms of franchise agreement, and consequently that our obligations and rights in respect to our various franchisees may differ materially in certain circumstances.

C. You acknowledge and agree that we may sell, transfer and/or assign a portion or all of our rights or interests in our assets, and/or the Wild Bird Center System (including our trade names and trademarks) to any one or more third party or parties; may merge, acquire other corporations or be acquired by other corporations; and/or may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You waive any claims, demands or damages in any manner arising from or relating to such sales, assignments or dispositions and/or the loss of association or identification with the Company.

36. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between you and WBCA and supersedes all prior and contemporaneous oral or written agreements or understandings of you and WBCA. Except as set forth in paragraph 32, all subsequent changes and modifications, to be valid, must be by written instrument executed by both of us, although the Manuals, business policy and operating procedures of WBCA may be changed by us in our sole discretion from time to time. No modification, waiver, termination, rescission, discharge or cancellation of this Agreement will affect the right of either you or us to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, rescission, discharge or cancellation.

37. SUCCESSORS.

The provisions of this Agreement will be binding upon and inure to the benefit of WBCA, you and our respective successors and assigns. However, this provision will not be

deemed to grant you any right to assign this Agreement of any of your rights or obligations hereunder, except in accordance with the requirements of paragraph 17.

38. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, we have each executed this Agreement as of the date set forth in the introductory paragraph of this Agreement.

WITNESS/ATTEST:

WBCA:

Wild Bird Centers of America, Inc.

By _____ (SEAL)
George H. Petrides, Sr., President

WITNESS/ATTEST:

YOU:

_____ (SEAL)

EXHIBIT A

Your Licensed Territory is defined as follows: