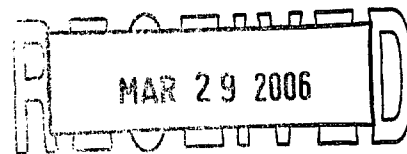


EXHIBIT 3
FRANCHISE AGREEMENT

DEPARTMENT OF CORPORATIONS



SACRAMENTO OFFICE

COFFEE PERKS FRANCHISE, INC.

FRANCHISE AGREEMENT

FRANCHISEE

DATE

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COFFEE PERKS FRANCHISE, INC.

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into on this ___ day of _____, 20___, between **COFFEE PERKS FRANCHISE, INC.**, a Florida corporation, having its principal place of business located at 2985 Mercury Road, Jacksonville, Florida 32207 (hereinafter referred to as "Franchisor") and _____ residing at _____ (hereinafter referred to as "Franchisee").

WHEREAS, the Franchisor has developed a system of uniform standards, methods, procedures, specifications, merchandising and advertising (hereinafter referred to as the "System") for the operation of a wholesale beverage distribution business under the "Coffee Perks" name, which will provide equipment, maintenance and products for Break room and Foodservice locations (hereinafter referred to as "Facility or "Franchised Business"). You will offer product and services that include such items as coffee, iced tea, bottle water, water filtration, vending, espresso/cappuccino, allied and related goods (i.e., paper, janitorial), fountain sodas, etc. ("Products and Services"), all under the trade name, trademark and service mark of "**Coffee Perks**" (collectively, the "Proprietary Marks"); and

WHEREAS, the Franchisor is also the licensee of other marks, from our affiliate, H & R Coffee Co., Inc. and which are specified in Schedule "A" attached hereto or as may be hereafter designated as a part of the System and not thereafter withdrawn, and

WHEREAS, the Franchisee wishes to obtain the right and sub-license from the Franchisor for the use of the Franchisor's System and Proprietary Marks, and in association therewith to own and operate a Facility located at _____ (hereinafter referred to as the "Premises"), and understands and accepts the terms, conditions and covenants set forth herein as those which are reasonably necessary to maintain the Franchisor's high and uniform standards of quality and service in order to protect the goodwill and enhance the public image of the System and the Proprietary Marks; and

WHEREAS, the Franchisor has the sole and exclusive right to the goodwill associated with the System and the Proprietary Marks and is willing to grant the right and license to the Franchisee on the terms and conditions herein contained to use the System and the Proprietary Marks; and

WHEREAS, Franchisee desires to obtain a franchise to use the System and the Proprietary Marks at the location described in Schedule "B", pursuant to the provisions hereof, and Franchisee has had a full and adequate opportunity to be thoroughly advised of the terms and conditions of this Franchise Agreement by counsel of his/her own choosing and represents and warrants that he/she has the business experience and financial ability to operate a Facility; and

WHEREAS, Franchisee acknowledges that Franchisee has read this Agreement and Franchisor's Uniform Franchise Offering Circular ("UFOC") and that Franchisee understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain uniform high standards of quality at all Facilities and to protect the goodwill of the Proprietary Marks; and

WHEREAS, Franchisor expressly disclaims the making of any warranty or guarantee, expressed or implied, oral or written, regarding the potential revenues, profits or success of the business venture contemplated by this Agreement. Franchisee acknowledges that Franchisee has not received or relied upon any such warranty or guarantee; and

WHEREAS, Franchisee acknowledges that Franchisee has no knowledge of any representations by Franchisor, its officers, directors, shareholders or representatives about the franchise offered hereunder, about Franchisor or its franchising programs and policies that are contrary to the statements in Franchisor's UFOC or to the terms of this Agreement; and

WHEREAS, Franchisee acknowledges that this Agreement places detailed and substantial obligations on Franchisee, including strict adherence to Franchisor's reasonable present and future requirements regarding facilities, equipment, suppliers, operating procedures, management methods, merchandising strategies, sales promotion programs and related matters. Franchisee acknowledges that future improvements, changes and developments in the System may require additional expense to be undertaken by Franchisee.

BEFORE SIGNING THIS AGREEMENT, FRANCHISEE SHOULD READ IT CAREFULLY WITH ASSISTANCE OF LEGAL COUNSEL.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I
GRANT OF FRANCHISE

1.1 **Grant.** Subject to the terms, conditions and limitations elsewhere in this Agreement, the Franchisor hereby grants to the Franchisee a non-transferable right and license to use the System, the Proprietary Marks and to market, sell and provide the Products and Services in accordance with the System. The Products and Services are the only products and services authorized to be offered and sold by the Franchisee.

1.2 **Location.** The right and license granted in Section 1.1 hereof shall be restricted solely and exclusively to use in and from the Exclusive Territory, however, Franchisor (and any affiliates that it might have from time to time) will not establish, nor allow another franchise owner to establish, another Franchised Business, the physical premises of which are located within the area set forth on Exhibit "A" which is attached hereto ("Exclusive Territory"). During the term of this Agreement, the Premises shall be used exclusively by the Franchisee and solely for the purpose permitted by this Agreement. In the event that, prior to the termination of the franchise hereunder, the lease or sublease should expire or terminate without fault of the Franchisee, or if the Premises should be destroyed or otherwise rendered unusable for the purposes hereof, or if the Premises should be expropriated or the Franchisee otherwise loses possession thereof without fault on his/her part, or if the lease is expiring or is about to expire without the right to renew same, the Franchisee shall be entitled to relocate the Facility to another premises acceptable to the Franchisor, provided that:

- (a) the Franchisor has first given its written consent to such relocation and new site;
- (b) the new premises shall be developed by the Franchisee in the same manner as described in Article III hereof solely at the Franchisee's costs;
- (c) the Franchisee pays to the Franchisor any costs (including legal fees) incurred by Franchisor with respect to such relocation; and
- (d) the new premises shall be located within Franchisee's Exclusive Territory.

1.3 **Non-Exclusivity.** Except as set forth above, the franchise and licenses granted to Franchisee by this Agreement are non-exclusive and Franchisor shall have, at all times throughout the term of this Agreement and any renewals hereof, and at all places, the unqualified right to open and operate, or to franchise and license others to open and operate, businesses utilizing the System anywhere, except within Franchisee's Exclusive Territory.

1.4 **Limitations on Sale of the Products and Services.** This license does not include any right to sell any product for resale or the right to sell any product or provide any service at or from any location except from within the Exclusive Territory. Use by Franchisee, directly or indirectly, of the System, the Proprietary Marks licensed hereunder, the sale of any product or the servicing of Franchisee's customers at any location other than from within the Exclusive Territory or at Franchisee's customers' premises shall be a material breach of this Agreement and shall give Franchisor, in addition to all other rights and remedies hereunder, the right to terminate this Agreement. Franchisee shall not engage in any promotional activities or sell the Products and Services or similar products, accessories or services, whether directly or indirectly, through the internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system (collectively, the "Electronic Media"); through catalogs or other mail order devices sent or directed to customers or prospective customers located anywhere; or by telecopy or other telephonic or electronic communications, including toll-free numbers, directed to or received from customers or prospective customers located outside of the Exclusive Territory. Franchisee may place advertisements in printed media and on television and radio that are targeted to customers and prospective customers located within the Exclusive Territory, and Franchisee will not be deemed to be in violation of this Agreement if those advertisements, because of the natural circulation of the printed media or reach of television and radio, are viewed by prospective customers outside of the Exclusive Territory. Franchisee may not make any sales or perform services to customers located outside of the Exclusive Territory unless there is not another Facility, either franchised or Franchisor-owned, located in close proximity to Franchisee's Facility.

1.5 **Rights Reserved to Franchisor.** Franchisor reserves the right to establish or operate, or license any other Franchisee to establish or operate, a Facility under the System at any location outside of the Exclusive Territory. Franchisor (and any affiliates that Franchisor periodically might have) reserves the right:

(a) to establish and operate, and grant rights to other franchise owners to establish and operate, Facilities or any other wholesale or distribution environment or similar businesses at any locations outside the Exclusive Territory and on any terms and conditions Franchisor deems appropriate;

(b) to sell the Products and Services, or any products or services identical or similar to, or dissimilar from, those Franchisee sells, whether identified by the Proprietary Marks or other trademarks or service marks through any distribution channels Franchisor thinks best (including mail order and the Internet), wherever located or operating (including within the Exclusive Territory), except not through Facilities (other than Franchisee's Facility), the physical premises of which are located within the Exclusive Territory;

(c) to sell the Products and Services through any distribution channels Franchisor thinks best (including, but not limited to, mail order and the Internet), wherever located or operating (including within the Exclusive Territory), except not through warehouse and/or industrial facilities (other than Franchisee's Facility), the physical premises of which are located within the Exclusive Territory;

(d) to purchase or otherwise acquire the assets or controlling ownership of one (1) or more businesses identical or similar to the Facility (and/or franchise, license, and/or similar agreements for such businesses), some or all of which might be located anywhere, including within the Exclusive

Territory. If there is such a purchase or other acquisition, Franchisor will (i) with respect to those businesses which are in the Exclusive Territory and are not franchised or licensed, (A) offer to sell these businesses to Franchisee or to any third party at their fair market value to be operated under the System, or (B) offer Franchisee the opportunity to operate those businesses in partnership with Franchisor (or its affiliate) under their original trade identities or a different trade identity that does not include the Proprietary Marks. Franchisor has the right to choose which of these alternatives Franchisor thinks best; (ii) with respect to those businesses which are franchised or licensed, act as franchisor and/or licensor of those businesses in compliance with the then-effective franchise and/or license agreements;

(e) to be acquired (regardless of the form of transaction) by a business identical or similar to "Coffee Perks", even if the other business operates, franchises and/or licenses competitive businesses within the Exclusive Territory; and

(f) to engage in any other business activities not expressly prohibited by this Agreement, both within and outside the Exclusive Territory.

1.6 National or Regional Account. Except as provided below, and subject to other policies and procedures set forth in Franchisor's Confidential Operations Manual, Franchisee may not solicit or service the locations of a National or Regional Account (as defined below) without Franchisor's prior written consent. Franchisor has the right to condition its consent (although it is not obligated to grant its consent) on Franchisee's agreement to comply with certain requirements and has the right to withdraw its consent for any or no reason as it deems appropriate. If Franchisor withdraws its consent to Franchisee's soliciting and/or servicing one (1) or more National or Regional Accounts, Franchisee must cease all solicitation and servicing activity with respect to that National or Regional Account(s) immediately.

1.6.1 Franchisor retains the right under all circumstances to provide any services and sell the Products and Services to any National or Regional Account location, wherever operated, provided, however, that where Franchisee has exclusive authority under this Agreement to offer and sell through his/her Facility the products and services that Franchisor would like to provide to the National or Regional Account's locations, Franchisor first will offer Franchisee the opportunity to provide those services and sell the Products and Services to the locations of the National or Regional Account on the terms and conditions that Franchisor has established with the National or Regional Account. If Franchisee fails to accept the offer in the manner Franchisor specifies, Franchisor has the right, or may authorize other Franchisees or third parties, to provide those services and to sell the Products and Services to the locations of the National or Regional Account. The term "National or Regional Account" means any customer that has two (2) or more locations. Nothing in this paragraph is intended to require Franchisee to participate in any National or Regional Account program. Franchisee is not permitted to negotiate cost of the Products and Services with a National or Regional Account without Franchisor's prior consent.

1.7 Failure to Meet Predetermined Sales of Products and Services. In the event Franchisee fails to achieve the sales of the agreed upon of Products and Services, as set forth in Section 24.1 hereof, and Franchisor elects not to exercise its repurchase option, Franchisee shall, at the Franchisor's discretion, lose his/her Exclusive Territory and Franchisor shall have the right to rebrand said Exclusive Territory or any part thereof to any person or persons, following ten (10) days' written notice from Franchisor. Any such rebranding shall not impact Franchisee's operating from the Premises.

ARTICLE II
TERM

2.1 **Initial Term.** This Agreement, unless terminated earlier as hereinafter provided, shall remain in force for an initial term of ten (10) years commencing on the date of this Agreement ("Initial Term").

2.2 **Renewal.** Subject to the provisions of this Section, the Franchisee shall have an option (exercisable only by written notice delivered to the Franchisor less than nine (9) months, but more than six (6) months, prior to the end of the Initial Term of this Agreement) to renew the franchise hereunder for two (2) additional options to renew for periods of five (5) years each, the second following the first renewal term, if:

(a) the Franchisee has been, throughout the Initial Term of this Agreement, in substantial compliance, and at the expiration of such Initial Term is in full compliance, with this Agreement, the lease and all other agreements between the Franchisee and the Franchisor or companies associated or affiliated with the Franchisor;

(b) the Franchisee enters into the Franchisor's then-current Franchise Agreement and all other ancillary agreements, instruments and documents then customarily used by the Franchisor in the granting of "Coffee Perks" franchises (all of which will contain terms substantially the same as those herein contained, except with respect to fees to be paid to Franchisor, which fees shall be the same as those Franchise Agreements being executed at the time of renewal, but which will not obligate the Franchisee to pay a further initial franchise fee), provided that if, at the sole option of the Franchisor, the requirement to enter into the Franchisor's then-current Franchise Agreement is waived by written notice from the Franchisor, the terms hereof (except the option to renew) shall remain in force for the renewal term;

(c) the Franchisee is able to maintain possession of the Facility at the Premises (or at relocated Premises pursuant to Section 1.2 hereof) pursuant to a lease reasonably acceptable to Franchisor;

(d) the Franchisee refurbishes, upgrades, renovates, and remodels his/her Facility to meet the then-current standards and image for all new Facilities;

(e) the landlord of the Premises consents to a renewal or extension of the Franchisor's or Franchisee's lease (if necessary);

(f) at the time each renewal option is exercised and at the time such renewal commences, all monetary obligations to Franchisor and any affiliate of Franchisor must be current and must have been current at all times during the preceding twelve (12) months;

(g) the Franchisee executes a general release running in favor of Franchisor, its officers, directors and shareholders releasing all claims against Franchisor, its officers, directors and shareholders;;

(h) the Franchisee pays to the Franchisor a renewal fee equal to Five Thousand Dollars (\$5,000); and

(i) the Franchisor shall have the right, but not the duty to grant additional renewals, at its sole discretion.

2.3 **Failure to Renew.** For the purposes hereof, the Franchisee shall be deemed to have irrevocably elected not to renew the franchise hereunder (and the option to do so shall thereupon terminate) if the Franchisee fails to execute and return to the Franchisor its then-standard Franchise Agreement and other ancillary documents required by the Franchisor for each renewal term within thirty (30) days after the Franchisor has delivered same to the Franchisee. In such event, Franchisor shall have the immediate right to service Franchisee's existing accounts, or Franchisor may elect to have a designee service such accounts and shall have a sixty (60) days to accomplish same. Franchisee may be required by Franchisor to assist in this account transition.

ARTICLE III **FACILITY PREMISES**

3.1 **Location of Facility.** If a site for the Facility has not been specified at the time of the execution of this Agreement by Franchisor and Franchisee, Franchisee shall use his/her best efforts and proceed with diligence to obtain and designate a location for the Facility within a designated geographic area, which location shall be subject to Franchisor's written acceptance and approval. Franchisor will assist Franchisee in evaluating a suitable location. Upon Franchisor's acceptance and approval of a location, Franchisor and Franchisee shall execute a Location Acceptance Statement in the form of Exhibit "A" hereto, which shall be deemed to be incorporated herein and made a part of this Agreement. Franchisee acknowledges that the location of the Facility is a factor in the Franchised Business' potential for success, and accordingly Franchisor may reject any proposed location in its reasonable discretion. Franchisee also acknowledges that the acceptance and approval by Franchisor of any location shall not in any way be deemed to be a guarantee, warranty or any other assurance (express or implied) of the success of Franchisee's business at such location. In the event a mutually agreeable site for the Facility has not been located within ninety (90) days after execution of this Agreement by Franchisor, Franchisor shall have the right to terminate this Agreement and Franchisor shall refund to Franchisee all but Five Thousand Dollars (\$5,000) of the initial franchise fee paid by Franchisee excluding training expenses incurred by Franchisor at the current per diem training rate, in consideration of Franchisor's time, effort and expenses in traveling to and inspecting the proposed locations.

3.2 **Lease of Premises of Facility.** Franchisee shall not execute any lease for the Facility without Franchisor's prior written approval. If the Facility is to be leased or subleased by Franchisee from an entity or person affiliated in any way with Franchisee, the terms of the lease, including the financial terms, shall be comparable to the fair market terms of similar leases in the appropriate geographic area. Franchisor may reject any lease which does not include terms and conditions reasonably acceptable to Franchisor (and terms and conditions not acceptable to Franchisor may include, without limitation, those which Franchisor does not believe are comparable to fair market terms of similar leases in the appropriate geographic area). In addition, concurrently with the execution of such lease, Franchisee and Lessor shall execute and deliver to Franchisor an "Option for Assignment of Lease" in form and substance as provided for in Exhibit "B" attached hereto.

3.3 **Development of Facility.** Franchisor shall consult with Franchisee regarding the construction of the interior and warehouse design of the Facility or interior/warehouse leasehold improvements. Franchisor will provide Franchisee with design and specifications based upon typical configurations for the layout of a Facility. Franchisee must construct (or renovate) and equip the Facility in a good and workmanlike manner and in conformity with all laws, rules, regulations and requirements of governmental authorities having jurisdiction over the Facility and in accordance with the plans and specifications of Franchisor or, subject to Franchisor's prior written approval, the plans and specifications of Franchisee. All plans and specifications or modifications to Franchisor's plans and specifications proposed by Franchisee shall be submitted to Franchisor for approval at a reasonable time prior to the

commencement of construction and shall be modified as requested by Franchisor. Franchisee will forthwith cause any mechanics' liens, materialmen's liens or other liens which may be recorded or perfected or which may otherwise attach to all or any portion of the Facility as a result of work done by or for Franchisee to be discharged or released of record or be fully bonded.

3.4 Equipment, Furniture, Furnishings and Signs. Franchisee shall install in and about the Facility such equipment, including computer-related equipment and computer software, fixtures, furnishings, furniture, interior and exterior signs, warehouse ramps and/or loading docks, security and surveillance systems, security fencing, phone and electronic systems and other personal property as are required and which strictly conform to the appearance, uniform standards, and specifications of Franchisor existing from time to time (hereinafter sometimes referred to collectively as "Equipment and Furnishings"). Franchisor shall furnish Franchisee with lists and specifications of the approved furniture, fixtures, equipment and signs, and vehicle branding which are required to outfit and furnish the Facility in accordance with Franchisor's image and standards. Franchisor shall have the right to inspect all Equipment and Furnishings and their installation to assure Franchisee's compliance with Franchisor's standards and specifications..

3.5 Opening for Business. Franchisee shall open the Facility for business as follows:

(a) If the location requires the installation of Improvements (as hereinafter defined), then Franchisee shall open the Facility for business upon completion thereof; provided, however, that Franchisee shall not delay the completion of the Improvements; and provided further, that (subject only to force majeure) Franchisee shall open the Facility for business not later than ninety (90) days after the date Franchisee's location is approved by Franchisor.

(b) If the location does not require the installation of Improvements, then Franchisee shall open the Facility within sixty (60) days following training; provided, however, that Franchisee shall not delay taking delivery of possession.

(c) In the event the Facility is not open for business on or before the time provided for above, Franchisor may terminate this Agreement upon thirty (30) days' prior written notice to Franchisee, unless the Facility shall open for business pursuant to the terms of this Agreement within such thirty (30) day period.

(d) For purposes of this Section 3.5(d), "Improvements" shall mean and include all improvements necessary or required to operate a Facility including, but not limited to, electrical, plumbing, lighting, and carpentry work, floor treatment, structural modifications including walls, heating, ventilating, and air conditioning, ceiling, and sheet metal work. Franchisor will consult with Franchisee regarding the construction of the warehouse and office design of Franchisee's Facility or interior leasehold improvements. Franchisor will provide Franchisee with model plans and specifications based on typical configurations for the layout of Franchisee's Facility, including lists and specifications of approved furniture, fixtures, equipment and signs needed to outfit and furnish Franchisee's Facility in accordance with Franchisor's uniform image and standards

(e) In no event shall the Facility be opened for business until: (i) all Franchisee's obligations under this Section 3.5 have been fulfilled; (ii) Franchisor determines that the Facility has been constructed, decorated, furnished, equipped and stocked with materials and supplies in accordance with plans and specifications Franchisor has approved; (iii) the initial training program has been completed to Franchisor's satisfaction by all required persons; (iv) the initial franchise fee and all other amounts due to Franchisor have been paid; (v) Franchisee has furnished Franchisor with all Certificates of Insurance required by Article XII herein; (vi) Franchisee has obtained all required governmental permits, licenses

and authorizations necessary for the operation of the Facility; (vii) Franchisee is in full compliance with all the terms of this Agreement; and (viii) all items in Franchisor's opening checklist have been complied with to Franchisor's satisfaction.

3.6 Motor Vehicles.

3.6.1 Use of Motor Vehicles. Franchisee and his/her employees, agents and independent contractors shall travel to Franchisee's customers' and prospective customers' premises only in vehicles (hereinafter referred to as "Motor Vehicles") that have been acquired, designed, equipped, painted, decaled, decorated and/or otherwise outfitted as specified by Franchisor. It is acknowledged that such restriction is necessary to present a uniform appearance to the public.

3.6.2 Condition. Franchisee shall maintain his/her Motor Vehicles in good working order, performing scheduled maintenance as recommended by the manufacturer and repairing all malfunctions promptly.

3.6.3 Cleanliness and Appearance. Franchisee shall keep all of his/her Motor Vehicles neat and clean.

3.6.4 Disposition. Under no circumstances shall Franchisee allow a Motor Vehicle to come into the possession of anyone who is not a "Coffee Perks" Franchisee without first obliterating all the Proprietary Marks.

3.6.5 Safe Driving. Franchisee shall hire and use only safe and courteous drivers of his/her Motor Vehicles, and maintain the appropriate commercial driving licenses as required for the Motor Vehicle.

3.6.6 Compliance with Law. Franchisee shall at all times cause himself/herself and his/her employees, agents and independent contractors, along with all Motor Vehicles, to be in full compliance with all applicable laws and regulations pertaining to all Motor Vehicles and shall maintain a Drug Free Workplace, as determined by the state authorities.

3.6.7 Taxes and License Fees. Franchisee shall promptly pay all license and use charges and taxes assessed on or pertaining to his/her Motor Vehicles, and shall hold Franchisor harmless therefrom.

3.6.8 Insurance. Franchisee shall obtain and at all times maintain in force, at his/her own expense, such insurance the Franchisor specifies from time to time, including the types and amounts of coverage required under such insurance policies. Each insurance policy must name the Franchisor and its affiliates as additional named insureds, will contain a waiver of all subrogation rights against the Franchisor, its affiliates and any successors and assigns, and will provide for thirty (30) days' prior written notice to the Franchisor of any material modifications, cancellation or expiration of such policies.

3.6.9 Inspection. The Franchisor, by its agents, employees and attorneys, shall have the right at all times during business hours, and without prior notice to Franchisee, to inspect the interior and exterior of Franchisee's Motor Vehicles to ascertain if Franchisee is in compliance with this Agreement. Such inspection may include verification of correct registration, licensing and insurance. Franchisee shall cooperate, and shall cause his/her employees to cooperate, fully with such inspection, and shall give his/her permission as may be necessary to allow Franchisor to obtain government and insurance Franchisor records pertaining to ownership and operation of the Motor Vehicles, and promptly deliver the information and documentation referred to herein to Franchisor, upon Franchisor's request.

3.6.10 Reports. Franchisee shall, when upon adding a Motor Vehicle to the Franchised Business, report to Franchisor in writing the identity of the Motor Vehicle Franchisee is adding. Also, Franchisee shall, from time to time as requested by Franchisor or pursuant to this Agreement, report to Franchisor in writing the identity of all Motor Vehicles Franchisee is then using in connection with the Franchised Business. Franchisee shall also report to Franchisor in writing each time Franchisee disposes of any Motor Vehicle, setting forth the date of disposition, the name and address of the purchaser and a description of the measures taken to obliterate all resemblance to a "Coffee Perks" Motor Vehicle, including but not limited to removing all decals and signage at Franchisee's sole cost and expense. These reports shall also include such other information as Franchisor may reasonably require, and shall be made on such forms, and at such times, as prescribed by Franchisor.

ARTICLE IV **FEES AND REPORTING**

4.1 **Initial Franchise Fee.** In consideration of the grant of this license, the Franchisee shall pay to the Franchisor by cashier's or certified check a non-recurring and non-refundable initial franchise fee for the franchise hereunder in the amount of _____ Thousand (\$_____) Dollars, payable upon execution of this Agreement. The initial franchise fee shall be deemed to have been fully earned by the Franchisor upon execution of this Agreement.

4.2 **Continuing Service Fee.** In further consideration of the grant of this license, the Franchisee shall pay to the Franchisor monthly (the "Period") on the tenth (10th) day of the month following the previous month's end during the term of the Agreement a non-refundable continuing service fee ("Continuing Service Fee") equal to six percent (6%) of the Franchisee's Gross Revenue for such Period. All Continuing Service and other fees payable hereunder shall be made via electronic funds transfer or automatic debit of funds, in a method determined by the Franchisor, in its sole discretion.

4.2.1 Franchisee shall sign and deliver to Franchisor any documents required to authorize Franchisor to debit Franchisee's business checking account automatically for the Continuing Service Fee and other amounts due under this Agreement. On or before the day Franchisor specifies, Franchisee must report to Franchisor by telephone or electronic means or in written form, as Franchisor directs, the Facility's true and correct Gross Revenue for the previous month. Franchisor will debit Franchisee's account for the Continuing Service Fee on or after the tenth (10th) day of the month for the previous month. Franchisee agrees to make the funds available for withdrawal by electronic transfer before each due date.

4.2.2 If Franchisee fails to report the Facility's Gross Revenue, Franchisor may debit Franchisee's account for one hundred twenty percent (120%) of the last Continuing Service Fee that it debited. If the Continuing Service Fee debited from Franchisee's account is less than the Continuing Service Fee Franchisee actually owes to Franchisor (once Franchisor has determined the Facility's true and correct Gross Revenue), Franchisor will debit Franchisee's account for the balance of the Continuing Service Fee due on the day Franchisor specifies. If the Continuing Service Fee debited from Franchisee's account is greater than the Continuing Service Fee actually owed, Franchisor will credit the excess against the amount Franchisor otherwise would debit from Franchisee's account during the following month.

4.3 **Advertising Contributions.** Recognizing the value of uniform national and regional advertising and promotion of the System, the Franchisee, in further consideration of the grant of this license, agrees to pay to the Franchisor, without notice from Franchisor, on the tenth (10th) day after the end of each Period, a non-refundable advertising contribution ("Advertising Fee") to the Fund (as

hereinafter defined) equal to two percent (2%) of the Franchisee's Gross Revenue, payable at the same time and in the same manner as the Continuing Service Fee provided for in Section 4.2 hereof.

4.4 Definition of Gross Revenue. For purposes of this Agreement, the term "Gross Revenue" includes the total during any month of all sales, monies, revenues, charges and receipts received by Franchisee or any other person which are derived from products manufactured or sold and services performed within the Exclusive Territory and from all sales and orders made, solicited or received within the Exclusive Territory, and from all other business whatsoever conducted within the Exclusive Territory or related in any way to the Franchised Business, whether such revenues are evidenced by cash, credit (and regardless of collection in the case of credit), checks, credit cards, gift certificates, scrip, electronic funds or direct deposits, coupons, services, property or other means of exchange, and whether such sales are of vending or coin operated machine items, services, merchandise or products of any nature whatsoever. However, Gross Revenue shall not include (i) sales taxes or other taxes measured on the basis of the Gross Revenue of the business imposed by governmental authorities directly on sales and collected from customers, provided the taxes are added to the selling price and are in fact paid by Franchisee to the appropriate governmental authorities; and (ii) sales for which refunds have been made to customers to the extent that such sales have been previously included in Gross Revenue for which a Continuing Service Fee was paid.

4.4.1 Gross Revenue shall be deemed received by Franchisee at the time an invoice is rendered by Franchisee, whether such payment represents an installment or partial payment or payment in full for any of the products, merchandise or services sold, contracted for or rendered. Gross Revenue consisting of property or services shall be valued at the prices applicable, at the time such Gross Revenue are received, to the products or services exchanged for such Gross Revenue.

4.4.2 Franchisee shall report the daily Gross Revenue to Franchisor at the time of payment of the Continuing Service Fee and Advertising Fee on such form and in such detail as may be prescribed from time to time by Franchisor, and at the same time Franchisee shall deliver to Franchisor copies of all customer product and service order forms in such form and such detail as Franchisor may from time to time require.

4.5 Late Payments. To encourage prompt and timely payment of the Continuing Service Fees and Advertising Fees and to cover the costs and expenses involved in handling and processing any payments not received by their due dates, Franchisee shall also pay, upon demand, a late payment charge in an amount equal to the lesser of: (i) two percent (2%) per month; or (ii) the highest rate permitted by law. Such charge shall accrue from the date payment was due until the date payment is actually received by Franchisor. Notwithstanding the foregoing, each failure to pay the Continuing Service Fees, Advertising Fees or other payments payable to Franchisor when due will be a material breach of this Agreement. The foregoing shall not apply if the lateness is the result of Franchisor's failure to debit such account in a timely manner.

4.6 Application of Payments. Franchisor shall have sole discretion to apply any payments received from Franchisee to any past due indebtedness of Franchisee for the Continuing Service Fees, Advertising Fees, purchases made from Franchisor or its affiliates, late payment charges or any other indebtedness of Franchisee to Franchisor or its affiliates.

4.7 Bookkeeping, Accounting and Records. The Franchisee shall use a bookkeeping, accounting, inventory control, point of sale and record-keeping system for the business of the Facility that is recommended and reasonably approved by Franchisor, and Franchisee shall retain all invoices, order forms, time cards, payroll records, check stubs, bank deposit receipts, bank statements, sales tax records and returns, cash disbursements journals and general ledgers. The Franchisee shall keep such original

documents at the Facility throughout the term of this Agreement, and for at least five (5) years thereafter, at a location of which the Franchisor shall be kept advised, unless the Franchisor gives written permission to dispose of such records. All sales shall be recorded at the time of sale in the presence of the customer on Franchisee's point of sale system reasonably approved by the Franchisor and having a cumulative totaling device.

4.8 Reports and Tax Returns. The Franchisee shall furnish to the Franchisor throughout the term of this Agreement in the form from time to time prescribed by the Franchisor:

(a) on the tenth (10th) day of each month, a facsimile or electronic report of Gross Revenue for the preceding month, together with the Continuing Service Fees due;

(b) within five (5) days after each of the Franchisor's Periods, a report of the Franchisee's Gross Revenue and other Facility activities for such Period (including such information as may be required by Franchisor) verified by the Franchisee on forms to be supplied or approved by the Franchisor;

(c) within thirty (30) days after the documents referred to in Section 4.9 hereof are filed, an exact copy of all returns, schedules and reports filed by the Franchisee for income, corporate or sales tax purposes;

(d) within ten (10) days after the end of each calendar month, a statement of Gross Revenue for such month and all preceding months of such calendar year, a balance sheet, a cash flow analysis or working capital analysis, a monthly profit and loss statement for such month, and a profit and loss statement from the beginning of the Franchisee's latest financial year, on such forms as the Franchisor may specify;

(e) within sixty (60) days after the end of each fiscal year of the Franchisee, a reviewed balance sheet, statement of profit and loss and source and application of funds from the beginning of that fiscal year, prepared by an independent certified public accountant and verified by the Franchisee's statutory declaration as to the information furnished to such accountant; and

(f) such other reports, statements, annual budgets, sales slips, order forms, records, calculations and indices as the Franchisor may, from time to time, require.

4.9 Audited Statements. If the Franchisor, in its sole discretion, determines that any report, financial statement, tax return or schedule furnished by the Franchisee understates the Gross Revenue of the business by more than two percent (2%), distorts any other material information or is materially incomplete, unclear or misleading, it shall have the right to require the Franchisee to furnish audited annual financial statements for that year at the Franchisee's sole cost and expense, with such statements being prepared in accordance with generally accepted accounting principles consistently applied.

4.10 Audit. The Franchisor or its representatives or agents shall have the right at any time during normal business hours, and upon seventy-two (72) hour prior notice to the Franchisee, to inspect, copy, request, receive and/or audit or cause to be inspected, copied, requested, received and/or audited the business records, bookkeeping and accounting records, sales, reports, financial statements and tax returns that the Franchisee is required to submit to the Franchisor hereunder along with the Franchisee's books and records and those of any corporation or partnership to which the Franchisee has assigned this Agreement. If the Franchisor should determine that an audit is necessary during the term hereof or after the expiration or termination of the franchise, the Franchisee will, upon notice, deliver to the Franchisor all required records and documents to conduct such audit. The Franchisee shall fully cooperate with

representatives of the Franchisor conducting any such audit. In the event that any such audit should disclose an understatement of Gross Revenue for any Period or Periods, the Franchisee shall pay, within fifteen (15) days after receipt of the audit report, the fees, contributions and any other amounts (including, without limitation, interest pursuant to Section 25.13 hereof) due upon the amount of such understatement. Further, in the event such audit is made necessary by the failure of the Franchisee to furnish reports, financial statements, tax returns or schedules as herein required, or if an understatement of Gross Revenue for any Period is determined by any such audit to be greater than two percent (2%) of the Gross Revenue for such Period disclosed by the audit, the Franchisee shall reimburse the Franchisor for the cost of such audit, including, without limitation, the charges of any independent accountants, legal fees, and travel expenses, room, board and compensation of their employees or representatives. The foregoing remedies are in addition to all other rights and remedies Franchisor may have under this Agreement or under applicable law.

4.11 **Information from Others.** The Franchisee hereby authorizes the Franchisor to make reasonable inquiries of the Franchisee's bank, credit reporting agencies, suppliers and trade creditors concerning the business of the Facility and hereby directs such persons and companies to provide to the Franchisor such information as it may request.

4.12 **Inspection.** The Franchisor or its representatives or agents shall have the right at any time during normal business hours, and without prior notice to the Franchisee, to enter and inspect and photograph the Premises and all aspects of the operation of the Facility together with all records, books of account, tax returns and other documents and materials in the possession or under the control of the Franchisee relating to the business of the Facility, the Franchisee and the subject matter and terms of this Agreement, including, without limitation, all records of the Franchisee required to be maintained pursuant to applicable law, to ascertain that the Franchisee is operating the Facility in accordance with the System, the terms of this Agreement and the Confidential Operations Manual. The Franchisor or its representatives or agents shall be allowed to make extracts from or copies of any such material and to take samples of any products sold at the Facility and immediately remove any unauthorized products from the Facility without any liability to Franchisor, including, but not limited to, payment for such unauthorized products. In the event that the Franchisor gives notice to the Franchisee of any deficiency detected during such inspection, the Franchisee shall diligently correct such deficiency as soon as possible, but in any event within five (5) days after receipt of such notice. If the Franchisee fails to correct such deficiency within such five (5) day period, the Franchisor shall have the right (but not the obligation) to correct such deficiency on behalf of and at the sole expense of the Franchisee, and in such case the Franchisee shall reimburse the Franchisor for all costs incurred by the Franchisor (including, without limitation, a reasonable charge for the time of any personnel of the Franchisor) in connection therewith.

ARTICLE V

ADVERTISING AND PROMOTION

5.1 **The Fund.** Recognizing the value of uniform advertising and promotion to the goodwill and public image of the System, the Franchisee agrees that the Franchisor or its designee shall have the right to establish, maintain and administer a national creative advertising fund (hereinafter referred to as the "Fund") for such national and regional advertising programs as the Franchisor may deem necessary or appropriate, in its sole discretion, as follows:

(a) the Franchisor shall direct all national and regional advertising programs with sole discretion over the creative concepts, materials, endorsements and media used therein, and the placement and allocation thereof. The Franchisee understands and acknowledges that the Fund is intended to maximize general public recognition and acceptance of the System and the Proprietary Marks for the benefit of all Facilities operating under the System, and that the Franchisor undertakes no

obligation in administering the Fund to ensure that expenditures from the Fund are proportionate or equivalent to the Franchisee's contributions made for his/her Facility, or that any particular Facility or Franchisee benefits directly or pro rata from the placement of any such advertising;

(b) the Franchisee agrees that the Fund may be used to meet any and all costs of maintaining, administering, directing and preparing national and/or regional advertising materials, programs and public relations activities (including, without limitation, the cost of preparing and conducting television, radio, internet or other electronic media, magazine, billboard, newspaper, direct mail and other media programs and activities, for conducting marketing surveys, test marketing, employing advertising agencies to assist therewith, and providing promotional brochures, coupons and other marketing materials to all Franchisees of the System). The Fund shall be accounted for separately from the other funds of the Franchisor, and shall not be used to defray any of the Franchisor's general operating expenses, except for such reasonable administrative costs and overhead, not to exceed ten (10%) percent, as the Franchisor may incur in activities reasonably related to the administration or direction of the Fund and its advertising programs;

(c) a statement of the operations of the Fund shall be prepared annually by the Franchisor's accountants and shall be made available to the Franchisee on written request. The cost of the statement shall be paid by the Fund. Except as expressly provided in this Section 5.1, the Franchisor assumes no direct or indirect liability or obligation to the Franchisee with respect to the maintenance, direction or administration of the Fund;

(d) the Franchisor shall, for each Franchisor-owned Facility, make contributions to the Fund calculated at the same percentage of the Gross Revenue of such Facility as is required to be contributed by Facility Franchisees generally within the System;

(e) the Franchisor shall have the right to create an advertising council composed of Franchisees and Franchisor representatives, including any of Franchisor's designees. Said council shall have input with respect to expenditures of Fund contributions; and

(f) The Franchisee understands and acknowledges that the Fund is intended to maximize recognition of the Proprietary Marks and patronage of "Coffee Perks" businesses. Although the Franchisor will endeavor to utilize the Fund to develop advertising and marketing materials, and to place advertising, in a manner that will benefit all "Coffee Perks" businesses, the Franchisor undertakes no obligation to ensure that expenditures by the Fund in or affecting any geographic area are proportionate or equivalent to contributions to the Fund by "Coffee Perks" businesses operating in that geographic area or that any "Coffee Perks" business will benefit directly or in proportion to its contribution to the Fund from the development of advertising and marketing materials or the placement of advertising. Except for losses to the Fund resulting from theft, embezzlement, or similar actions by the Franchisor's representatives, the Franchisor assumes no direct or indirect liability or obligation to the Franchisee with respect to the maintenance, direction, or administration of the Fund.

5.2 Local Advertising. In addition to making the Fund contributions required in Section 4.3 hereof, the Franchisee shall make every reasonable effort to vigorously and aggressively promote and increase the demand for the services and products of the Facility by conducting, at his/her further expense, the following local advertising during the term of this Agreement:

(a) the Franchisee shall obtain and pay for listings for the Facility in the white pages and classified sections (Yellow Pages) of local telephone directories distributed in the area in which his/her Facility is located, as recommended by the Franchisor, of the kind and size as may from time to time be specified by the Franchisor. If other Facilities are served by the same white pages and classified

section, the Franchisor shall have the right, in its sole discretion, to require group advertisements and listings therein, to make arrangements directly with the telephone Franchisor on the Franchisee's behalf for his/her participation therein, and to determine the formula for allocating part of the costs thereof to the Franchisee, and the Franchisee shall pay such on demand;

(b) the Franchisee shall participate in such sales and promotional campaigns and activities as the Franchisor may direct from time to time; provide such approved promotional material to each customer of the Facility as the Franchisor may require; and maintain a sufficient supply thereof, stationery, business cards and other collateral material, for that purpose at all times; and

(c) the Franchisee shall display all such signs, emblems and logos at the Premises and on the Motor Vehicles as the Franchisor may require from time to time.

5.3 Additional Local Advertising. Subject to the prior written approval of the Franchisor, the Franchisee shall, at the Franchisee's expense, conduct additional advertising in the Franchisee's local area, and the Franchisor may, from time to time, offer the Franchisee approved local marketing plans and materials including, without limitation, newspaper mats, radio commercial tapes, television commercial prints or tapes, printed collateral material, sales aids and other promotional and marketing materials, on the same terms and conditions as the Franchisor is then offering to its other "Coffee Perks" Franchisees. Prior to their use by the Franchisee, samples of all local marketing materials not prepared or previously approved by the Franchisor shall be submitted to the Franchisor for written approval, which approval shall not be unreasonably withheld. Notwithstanding the generality of the foregoing, the Franchisee shall spend a minimum amount equal to two (2%) percent of the Gross Revenue in his/her marketing area per month. Upon request from Franchisor, Franchisee shall provide Franchisor with verification of all expenditures for local advertising within thirty (30) days of such request. The foregoing expenditures shall, at Franchisor's discretion, include advertising programs and campaigns described in Section 5.2(b) above.

5.4 Advertising Cooperatives. In addition to the Advertising Fee and in lieu of the required local advertising expenditures discussed above, if a local advertising cooperative is formed by Franchisor's Franchisees and approved by Franchisor, Franchisee shall contribute to said cooperative the amount agreed upon by a majority of the members of the cooperative, and to pay that amount to the advertising cooperative at the times agreed upon by the majority. If, however, the amount contributed to the cooperative is less than what is required to be spent locally (Section 5.3 above), then Franchisee shall nevertheless be required to spend the difference locally.

5.5 Grand Opening Advertising. The Franchisee shall not be required to spend any dollars for a grand opening advertising campaign. However, any grand opening promotions that Franchisee elects to conduct must first be approved by Franchisor.

5.6 Website.

5.6.1. Definitions: For the purpose of this Agreement, the following words and phrases shall have the meaning set forth in this Paragraph 5.6.1:

5.6.1.1 "Content" means all text, images, sounds, files, video, designs, animations, layout, color schemes, trade dress, concepts, methods, techniques, processes and data used in connection with, displayed on, or collected from or through Franchisor's Web site.

5.6.1.2 "Deep Link" means a link to content of a Web site. Typically, a deep link to an interior page of a Web site (i.e., bypassing the front page of the Web site).

5.6.1.3 **“Electronic Commerce”** means offering and selling merchandise and services associated with the Proprietary Marks, and receiving and accepting orders and payment for that merchandise and services, directly or indirectly, through any means of electronic communication, including receiving and accepting orders over the Internet.

5.6.1.4 **“Frame”** refers to a feature which, when used in conjunction with certain browsers, allows visitors of a Web site to view content from other Web sites without actually leaving the first page.

5.6.1.5 **“Franchisee’s Web Page”** means one or more interior pages of Franchisor’s Web site dedicated in whole or on part of the Facility.

5.6.1.6 **“Franchisor’s Web site”** means one or more Internet Web site that may, among other things, facilitate orders, provide information about the System and the products and services that are offered on the Web site and at Facilities operated under the Proprietary Marks; Franchisee’s Web Page may be part of the Franchisor Web site.

5.6.1.7 **“Internet”** means any means of electronic communication that employs inter-connected computer networks to communicate information (of any kind) by fiber optics, wire, radio or other methods of transmission, including the myriad of computers, telecommunications facilities and similar means (both equipment and software) that comprise the interconnected worldwide network of networks that employ the TCP/IP (Transmission Control Protocol/Internet Protocol) or any predecessor or successor protocols to that protocol.

5.6.1.8 **“Intranet”** means a private method of communication for use only by employees and franchisees of Franchisor; the Franchisor’s Intranet may be either a “True” intranet (a series of inter-connected computers that use the same type of software as the Internet, but that are not technically part of the Internet and do not use the Internet to transmit material to one another) or an extranet (which will actually transmit information over the Internet, but require a password to access data on the servers used by Franchisor).

5.6.1.9 **“Link”** means a cross-reference which, with the aid of an interactive browser program, allows the end-user to move or connect easily from one document (including, another Web site or page on a Web site) to another.

5.6.1.10 **“Software”** means all computer programs and computer code (e.g., HTML, Java) used for or on the Web site, excluding any software owned by third parties.

5.6.1.11 **“URL”** means uniform resource locator, the unique address assigned to each page of a Web site.

5.6.1.12 **“Web site”** means a series of inter-connected “pages” on the World Wide Web section of the Internet (the “World Wide Web” is the portion of the Internet that features graphic-rich pages using the HTTP and HTML protocols);

5.6.2. **Use of Proprietary Marks and National Brand Logos on Internet:** Franchisee shall not develop, create, generate, own, license, lease or use in any manner any computer medium or electronic medium (including, any Internet home page, e-mail address, Web site, bulletin board, newsgroup or other Internet-related medium) which in any way uses or displays, in whole or part, the Proprietary Marks, or any of them, or any words, symbols or terms confusingly similar thereto

without Franchisor's express prior written consent, and then only in such manner and in accordance with this Agreement, such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time and only so long as Franchisee is not in default of this Agreement or any other Agreement between Franchisor its affiliates and Franchisee. Without limiting the generality of the foregoing, Franchisee shall not cause, permit or allow the Proprietary Marks, or any of them, or any words, symbols or terms confusingly similar thereto, be used or displayed in whole or part; (a) as, or as a part of, an Internet domain name; (b) as, or as a part of, URL (at any level or address); or (c) on or in connection with any Internet home page, Web site, bulletin board, newsgroup, chat-group, buddy list, instant messenger, meta-tag or the comparable identifier in any future technology) or other internet-related activity, without Franchisor's express prior written consent, and then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time. Franchisee shall not link to or frame Franchisor's Web site (including Franchisee's Web Page, if any) to any other Web site or authorize any third party to Link to or frame the Web site (including Franchisee's Web Page, if any) without Franchisor's express prior written consent, and then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time.

5.6.2.1 Except as provided in Paragraph 5.6.4 of this Agreement Franchisee shall not use, nor authorize any third party to use, the Proprietary Marks to advertise, promote, offer or sell any goods or services through the Internet, if those goods or services are the same as or similar to those (a) which are offered at or from the Facility, (b) which bear any of the Proprietary Marks, or (c) which otherwise offered or sold under the Proprietary Marks. Franchisee may, however, use the Proprietary Marks to sell such goods or services through the Internet in compliance with Paragraph 5.6.4 of this Agreement or with Franchisor's prior written consent, but then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time.

5.6.2.2 Franchisor will own and will retain all right, title and interest in and to the Proprietary Marks and the use thereof in any and all manners and to all existing and future domain names, URLs, future addresses and sub addresses established by Franchisor (including Franchisee's Web Page sub addresses) which may or may not include the Proprietary Marks; all Software; all Content prepared for, or use on, Franchisor's Web site; and all intellectual proprietary rights in or to any of them.

5.6.3 **Franchisor's Web Site:** Franchisor may, but shall not be obligated to, establish and maintain from time to time Franchisor's Web site to provide information about the System and the goods and services the Facilities provide, even through Franchisor's Web site is accessible by person in Franchisee's trade area. Franchisor has sole discretion and control over design and content of Franchisor's Web site, except the Franchisor may configure the site to accommodate Franchisee's Web Page as described in Paragraph 5.6.3.2 of this Agreement. Franchisor may, at its sole option, from time to time, without prior notice to Franchisee: (a) change, revise, or eliminate the design, content and functionality of Franchisor's Web site; (b) make operational changes to Franchisor's Web site; (c) change or modify, or modify the URL and /or domain name of Franchisor's Web site; (d) substitute, modify, or rearrange Franchisor's Web site, at Franchisor's sole option, including in any manner that Franchisor considers necessary or desirable to, among to other things, (1) comply with applicable laws, (2) respond to changes in market conditions or technology, and (c) respond to any other circumstances; (3) limit or restrict end-user access (in whole or in part) to Franchisor's Web site; and (e) disable or terminate Franchisor's Web site without any liability to Franchisee.

5.6.3.1 Franchisor's Web site may include a series of interior pages that may identify participating franchisees by among other things, name, geographic region, address, telephone number and/or e-mail address. Franchisor may permit Franchisee to customize or post certain

information to Franchisee's Web Page, subject to Franchisee's compliance with the procedures, policies, standards and specifications that Franchisor may establish in the Manuals from time to time which may require the Franchisee to pay a reasonable fee for the privilege of having Franchisee's Web Page, and may include, without limitation, specifications and limitations for the data or information to be posted to Franchisee's Web Page, customization specifications, the basic template for design of Franchisee's Web Page, parameters and deadlines specified by Franchisor, disclaimers, and such other standards and specifications and rights and obligations of the parties as Franchisor may establish from time to time. Any modifications (including customizations, alterations, submissions or updates) to the Content made by Franchisee for any purpose will be deemed to be a "work made for here" under the copyright laws, and therefore, Franchisor shall own the intellectual property rights in and to such modifications. To the extent any modification does not qualify as a work made for hire as outlined above, Franchisee hereby assigns those modifications to Franchisor for no additional consideration and with no further action required and shall execute such further assignments(s) as Franchisor may request. Franchisee may not modify Franchisee's Web Page except in coordination with Franchisor's webmaster and in compliance with Franchisor's policies and procedures. Franchisee shall contribute a reasonable fee toward the cost of the Web site's maintenance, which may vary from year to year during the term of this Agreement and shall pay the same to Franchisor in the manner and at the times that Franchisor may establish in the Manuals from time to time. If Franchisee fails to pay when due any fees or other amount payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's affiliates, Franchisor may disable Franchisee's Web Page until such time as Franchisee pays its outstanding obligations in full. Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact with full power and authority for the sole purpose of disabling Franchisee's Web Page. This appointment shall be deemed to be coupled with an interest and shall continue in full force and effect until the termination or expiration of this Agreement.

5.6.3.2 Franchisor may Link Franchisor's Web site to the Web sites of third parties, including, electronic service providers, Franchisor's affiliates and other providers of goods and services. Franchisor may also permit third parties to Link (including Deep Links to any interior page of Franchisor's Web site, including Franchisee's Web Page) and frame Franchisor's Web site (including Franchisee's Web Page). Franchisor may place legal notices, disclaimers, Franchisor's corporate logos and slogans, advertisements, endorsements, trademarks, and other identifying information on Franchisor's Web site, all of which may be modified, expanding, or eliminated at Franchisor's option. Further, Franchisor may establish or participate in programs whereby Franchisor refers end-users to other Web site, or Franchisor receives referrals from other Web sites. All consideration (monetary and non-monetary) received by Franchisor on account of the placement or date of advertisements, endorsements, and sponsorships on Franchisor's Web site (including any Franchisee Page), and all consideration (monetary and non-monetary) received by Franchisor on account of affiliate programs, will belong only to Franchisor. Franchisor may also establish programs which encourage repeat and business by end-users.

5.6.3.3 Without limiting Franchisor's general unrestricted right to permit, deny and regulate Franchisee's participation on Franchisor's Web site in Franchisor's sole discretion, if Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, including the payment for Franchisee's link to Franchisor's Web site, or any other agreement with Franchisor or Franchisor's affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's affiliates, Franchisor may disable or terminate Franchisee's Web Page and remove all references to the Facility on Franchisor's Web site until the breach is cured.

5.6.3.4 Franchisor has no control over the stability or maintenance of the Internet generally; as a result, Franchisor is not responsible or damage or loss caused by errors of the Internet. Furthermore, Franchisor is not liable for any direct or indirect, special, incidental, exemplary or

consequential damages arising out of the use of, or the inability to use, Franchisor's Web site or the Internet, including loss of profits, goodwill, or savings; downtime; or damage to or replacement of programs and data, whether passed in contract, tort, product liability, or otherwise.

5.6.4 **Electronic Commerce.** Franchisee will not use the Proprietary Marks to advertise, promote or sell any services or merchandise through the Internet, nor will Franchisee offer or sell any service that is identify with the Proprietary Marks or any memorabilia or other merchandise that bears the Proprietary Marks through the Internet, except in compliance with Paragraph 5.6.2 of this Agreement and this Paragraph 5.6.4. Franchisee's breach of this restriction will constitute willful trademark infringement and a material breach of this Agreement.

5.6.4.1 Franchisor may, at its discretion, use the Web site described in Paragraph 5.6.3 of this Agreement or may establish another facility on the Internet for the purpose of engaging in Electronic Commerce with respect to products and services that are identified with the Proprietary Marks.

5.6.4.2 If Franchisor decides to engage in Electronic Commerce, it will (a) establish uniform procedures, policies and protocols to govern electronic communications between Franchisor and its customers and the use and dissemination of information that Franchisor obtains with respect to customers' identities, purchasing habits and other commercially relevant matters; (b) develop a secure site on the facility through which Franchisor can accept credit card and other confidential information from its customers; (c) establish a central administration center through which customer orders are processed, customer complains are handled, sales taxes (if any) are remitted, and records of sales transactions are created and maintained; (d) establish a central fulfillment center through which all customer orders are filled; and (e) establish the terms and conditions under which members of the System may participate in Franchisor's Electronic Commerce program.

5.6.4.3 In the event that Franchisor initiates Franchisor's Electronic Commerce program, Franchisee will have the opportunity to participate in the program provided the Franchisee is in good standing under this Agreement and any other agreement with Franchisor or Franchisor's affiliates. The Electronic Commerce program set forth in the Manuals may (a) state the terms on which Franchisor and participating franchisee of Franchisor may share program revenues and expenses, (b) obligate Franchisee to adhere to Franchisor's procedures, policies and protocols that govern electronic communications and the use and dissemination of customer information, (c) authorize Franchisor from time to time to modify the procedures, policies and protocols that govern the Electronic Commerce program; and (d) release Franchisor from liability to Franchisee and its customers for theft or disclosure of confidential customer information or breach of Franchisor's privacy standards unless the proximate cause of such theft, disclosure or breach is Franchisor's gross negligence or willful misconduct.

5.6.4.4 If Franchisee declines to participate in the Electronic Commerce program on the terms stated in the Manuals, Franchisee will have no right to share in the program revenues, nor will Franchisee have any responsibility to bear or pay any program expenses.

5.6.4.5 If Franchisee fail to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's affiliates, Franchisee hereby authorizes Franchisor to disable or terminate the end-user's ability to place pick-up and deliveries orders with Franchisee until the breach is cured.

5.6.5 **Franchisor's Intranet.** Franchisor may, at its option, establish and maintain, an Intranet through which Franchisor, franchisees of Franchisor and Franchisor's employees may communicate with each other, and through which Franchisor may disseminate the Manuals, updates

thereto and other confidential information. Franchisor shall have sole discretion and control over all aspects of the Intranet, including the content and functionality thereof. Franchisor will have no obligation to maintain the Intranet indefinitely, and may dismantle it at any time without liability to Franchisee.

5.6.5.1 If Franchisor establishes an Intranet, Franchisee shall have the privilege to use the Intranet, subject to Franchisee's strict compliance with the standards and specifications, protocols and restrictions that Franchisor may establish from time to time. Such standards are specifications, protocols and restrictions may relate to, among other things, (a) the use of abusive, slanderous or otherwise offensive language in electronic communications; (b) communications between or among franchisees that endorse or encourage breach of any franchisee's Franchise Agreement; (c) confidential treatment of materials that Franchisor transmits via the Intranet; (d) password protocols and other security precautions; (e) grounds and procedures for Franchisor's suspending or revoking a franchisee's access to the Intranet; and (f) a privacy policy governing Franchisor access to use of electronic communications that franchisees post to the Intranet. Franchisee further acknowledges that, as administrator of the Intranet, Franchisor can technically access and view any communication that any person posts on the Intranet. Franchisee further acknowledges that the Intranet facility and all communications that are posted to it will become Franchisor's property, free of any claims of privacy or privilege that Franchisee or any other person may assert.

5.6.5.2 Upon receipt of notice from Franchisor that Franchisor has established the Intranet, Franchisee shall establish and continually maintain (during all times that the Intranet shall be established and until the termination of this Agreement) an electronic connection (the specifications of which shall be specified in the Manuals) with the Intranet that allows Franchisor to send message to and receive messages from Franchisee, subject to the standards and specifications. Franchisee shall contribute a reasonable amount toward the cost of the Intranet's maintenance which may vary from year to year during the term of this Agreement and shall pay the same to Franchisor in the manner and at the times that Franchisor may establish in the Manuals from time to time.

5.6.5.3 If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's affiliates, Franchisor may temporarily disable to terminate Franchisee's access to the Intranet until such time as Franchisee pays its outstanding obligation in full without Franchisor having any liability to Franchisee, in which case Franchisor shall only be required to provide Franchisee a paper copy of the Manuals and any updates thereto, if none have been previously provided to Franchisee, unless Franchisee is not otherwise entitled to the Manuals.

5.6.6. **Assignment Upon Termination or Expiration.** Franchisee shall, at the option and request of Franchisor, assign to Franchisor all rights to all e-mail addresses, URLs, domain names, Internet listings, and Internet accounts related to the Facility following demand by Franchisor upon Franchisee's misuse of the same and/or the termination or expiration of this Agreement. Furthermore, Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact with full power and authority for the sole purpose of assigning these rights to Franchisor. This appointment shall be deemed to be coupled with an interest and shall continue in full force and effective until the termination or expiration of this Agreement.