

DEPARTMENT OF CORPORATIONS
MAR 29 2006
SACRAMENTO OFFICE

ARTICLE VI
TRAINING AND TECHNICAL ASSISTANCE

6.1 **Managerial Responsibility.** It is agreed that at all times during the term of this Agreement, either Franchisee or a fully trained Manager, certified by the Franchisor (the "Manager(s)"), shall:

- (a) devote full time, attention and effort to the active management and operation of the business of the Facility;
- (b) irrespective of any delegation of authority, not inconsistent with clause (a), reserve and exercise ultimate authority and responsibility with respect to the management and operation of the business of the Facility; and
- (c) represent and act on behalf of the Franchisee in all dealings with the Franchisor.

If two (2) or more individuals are named in this Section, each of them shall fulfill the requirements of clause (a) and both or all of them shall jointly fulfill the requirements of clauses (b) and (c).

6.2 **Initial Training Program.** At least sixty (60) days before the Facility is opened for business and following the execution of a lease for the Premises, the Franchisor shall make available to the Franchisee a two (2) weeks training program which the Franchisee and the Manager, that Franchisee designates, must successfully complete prior to the opening of the Facility. Such training program shall be held at the Franchisor's office location or at such other place as may be specified by the Franchisor. All costs and expenses incurred by the Franchisee and such Manager relating to such training program (including, without limitation, the cost of travel, food, accommodations and wages) shall be paid by the Franchisee. The Franchisor shall provide only the instruction, training facilities and materials for classroom and on-site instruction of the Franchisee and one (1) Manager, not to exceed two (2) persons total. If the Franchisor determines that the Franchisee or one (1) or more of the Managers cannot or has not completed the training program to the Franchisor's satisfaction (after giving the Franchisee the opportunity to designate a replacement Manager), the Franchisor may terminate this Agreement pursuant to Section 13.1 hereof and refund to Franchisee all but Five Thousand Dollars (\$5,000) of the initial franchise fee paid by Franchisee, in consideration of Franchisor's time, effort and expense in approving and qualifying the franchisee, plus Five Hundred Dollars (\$500) per day per person that attended training. Franchisor may, in its sole discretion, provide additional or refresher training programs at a time and place designated by the Franchisor. Franchisee must pay to Franchisor its then-current per diem training fee for each of Franchisor's representatives involved in said additional or refresher training, in addition to reimbursing Franchisor for all expenses of said representatives, including travel, lodging and meals.

6.3 **Hiring and Training of Employees by the Franchisee.** The Franchisee shall hire and train, at his/her expense, except as may be set forth in Section 6.2, all employees of the Facility, and shall be exclusively responsible for the terms of their employment and compensation. The Franchisee shall not employ anyone who refuses or fails to complete such training program or who refuses to sign Franchisor's non-competition agreement. The Franchisee shall at all times maintain a sufficient number of trained employees to service the Franchisee's customers, but at least the minimum number specified by the Franchisor in its Operations Manual.

6.3.1 Franchisor may require Franchisee (or Franchisee's Manager(s)) and/or previously trained and experienced managers to attend training courses that Franchisor periodically

chooses to provide at the times and locations Franchisor designates. Franchisor may charge reasonable attendance fees for these courses. Franchisee is also responsible for all travel and living expenses incurred in attending Franchisor's training courses.

6.4 **Operating Assistance.** The Franchisor shall make available to the Franchisee such operating assistance and training on a continuing basis as the Franchisor considers appropriate and which may consist of advice and guidance with respect to:

(a) methods and procedures for the purchase, storage, sales and distribution of the Products and Services;

(b) such additional services and products as the Franchisor may approve, from time to time, to be used or offered for sale by Franchisees;

(c) the purchase, operation, maintenance and use of equipment (regardless of location), maintenance and repair, products, uniforms, materials and supplies;

(d) formulating and implementing advertising and promotional programs using such merchandising, marketing and advertising research data and advice as may, from time to time, be developed by the Franchisor and deemed by it to be helpful in the operation of the Facility;

(e) the establishment and implementation of administrative, bookkeeping, inventory control and general operating procedures for the proper operation of the Facility; and

(f) the operation, cleanliness and efficiency of the Facility.

ARTICLE VII **DUTIES OF FRANCHISOR**

7.1 **Franchisor's Duties.** During the term of this Agreement, the Franchisor shall, at its expense, offer to the Franchisee the following:

(a) an initial training program in System standards, specifications, methods and techniques as provided for in Section 6.2 hereof;

(b) upon Franchisee's request such periodic continuing individual or group advice, consultation, and assistance, by weekly correspondence (electronic or otherwise), quarterly field visits, or by periodic telephone or written communications made available from time to time to all Franchisees of the System, as the Franchisor may deem necessary or appropriate to assist the Franchisee in conforming to the requirements of the System. Such continuing advice may include, but not be limited to, such topics as products and services to be offered to customers, Motor Vehicle maintenance, improvements and developments in operating a Facility, pricing, administrative, bookkeeping, accounting and inventory control procedures, and operating problems encountered by the Franchisee;

(c) subject to Section 10.1 hereof, to lend to the Franchisee one (1) copy of the Confidential Operations Manual and one (1) copy of any other manuals designated for use with the System, as well as such additions and modifications thereto as the Franchisor may, in its sole discretion, issue from time to time;

(d) new, modified or supplemented standards for the System that, in Franchisor's sole discretion, are beneficial or necessary to maintain the uniformity and goodwill of the System utilized by all Franchisees; and

(e) arrangements for Franchisee to purchase his/her initial supply of the Products and Services, equipment, sales and marketing materials from Franchisor or from Franchisor's designated suppliers or manufacturers.

7.1.1 Franchisor or Franchisor's affiliates or other restricted sources shall sell and Franchisee shall purchase the Products and Services intended for sale exclusively through "Coffee Perks" Facilities and its entire system from the Franchisor, its designated or approved affiliates or other restricted sources.

7.2 **Products and Services.** Upon request and at the Franchisee's expense, the Franchisor shall offer to the Franchisee, during the term of this Agreement, any of the following services and products which it is then offering to other Franchisees and on the same terms and conditions:

(a) supplies of signs, equipment, accessories, printed business forms and other materials and supplies used in the operation of the Facility;

(b) on-site assistance by a person employed or retained by the Franchisor at mutually convenient times; and

(c) periodic supplemental training, as set forth in Section 6.2 hereof.

7.3 **System Maintenance.** The Franchisor shall continue its efforts to maintain uniform standards of quality, cleanliness, appearance and service at all Facilities in the System, to promote, protect and enhance the public image and reputation of the System, and to increase the demand for the services and products offered by all System Franchisees, and to that end the Franchisor shall:

(a) administer a program for national and regional advertising and promotion, subject to the provisions of Section 5.1 hereof;

(b) review all other materials prepared by the Franchisee for use in local advertising and promotion pursuant to Section 5.3 hereof, in proof form; and

(c) conduct periodic inspections of the services and products provided to the public by the Franchisee's Facility.

7.4 **Meetings.** To develop and maintain cooperation and friendship with other Franchisees, to enhance the ability to operate the Franchised Business properly, to learn the most recent developments in business methods for the Franchised Business and to take instructions from Franchisor on new or revised procedures or requirements, Franchisee shall be required to attend any regional meetings organized and conducted by Franchisor for Franchisees, to be held at locations to be determined by Franchisor.

7.4.1 Franchisor will pay all costs of organizing and conducting such meetings utilizing monies of the Fund, but Franchisee shall be responsible for his/her own travel expenses, meals and lodging, including those of his/her Manager(s), if any. However, Franchisor shall be under no obligation to organize or hold such meetings until, in Franchisor's sole and absolute discretion, it is advisable to do so.

7.4.2 Franchisee may be excused from attending any regional meetings only for reasonable necessity, after prior notice in writing to Franchisor and following Franchisor's approval. However, regardless of any excuses, Franchisee must attend a make-up session to be arranged by Franchisor at a date and location to be selected by Franchisor. The cost of organizing and conducting each such make-up session, including the fees of any guest lecturer, rental of a meeting place and audio-visual materials and equipment, and reasonable compensation for the time of Franchisor personnel required to organize such make-up session, shall be borne in equal shares by all those who attend it, as determined by Franchisor. Failure to attend a make-up session after missing a regional meeting shall be deemed good cause for termination of this Agreement.

7.4.3 Franchisee's Manager(s), if any, must attend and complete, at Franchisee's expense, all the meetings and training sessions described in Article VII hereof, in addition to Franchisee and to the same extent as Franchisee.

7.5 **Directories.** To assist in the efficient operation of the "Coffee Perks" System, Franchisor shall provide and Franchisee shall assist Franchisor in the continuous development and maintenance of the following directories for their use solely by the "Coffee Perks" System:

7.5.1 Franchisee Directory. To assist Franchisee in maintaining contact with other franchisees, referring customers to them and receiving referrals from them, Franchisor shall publish, from time to time, a directory of the names, addresses and telephone numbers of every franchisee in good standing, in the System.

7.5.2 Approved Suppliers Directory. Franchisor will compile from time to time and deliver to Franchisee a directory of the names and addresses of authorized sources of materials and supplies for all goods and services which Franchisee may only purchase from Approved Suppliers (as hereinafter defined). Such directory may also include suggested sources of supply for items which must meet Franchisor's specifications. Franchisor may require a listing fee for suggested sources of supply, but will not require any such fee or other payment for listing Approved Suppliers of items which Franchisee cannot purchase except from Approved Suppliers. Such directory may be national or regional, at Franchisor's sole and absolute discretion. Franchisor may sell advertising in such directory for Franchisor's own account.

7.6 **Disbursement of Internet Sales Leads.** In the event Franchisor receives any sales leads via its website which are from potential customers who are physically located within Franchisee's Exclusive Territory, Franchisor shall direct such sales leads to Franchisee. Franchisee must keep Franchisor apprised of the status of each sales lead, within thirty (30) days of receiving such lead. If Franchisee is unable to complete the sale of the Products and Services to the customer, Franchisor shall have the right to fulfill such order itself or direct same to another Franchisee, without compensating Franchisee for his/her failed efforts.

ARTICLE VIII **DUTIES OF THE FRANCHISEE**

8.1 **Obligations of Franchisee.** In order to maintain the high quality and uniform standards associated with the System and the Proprietary Marks, and to promote and protect the goodwill associated therewith, the Franchisee shall:

(a) at all times comply strictly, and cause the Facility to comply strictly, with all standards, specifications, processes, procedures, requirements and reasonable instructions of Franchisor

regarding the operation of the Facility. Franchisee shall adopt as a standard for performance and operation of his/her Facility the standards of Franchisor and conform to all specifications relating to construction, decor, design, equipment, packaging, products, services, uniforms, signs, displays or decorations, and other identifying materials, uniform record keeping practices, days and hours of operation and such other matters as may be in the Confidential Operations Manual, any administrative bulletins, and other confidential manuals or materials developed by Franchisor, or otherwise, as any of same may be modified from time to time by Franchisor. To insure the conformance and compliance by Franchisee with Franchisor's standards of performance, Franchisee will permit Franchisor, its officers, employees and designated representatives to enter his/her Facility at any time and from time to time to conduct an inspection and take photographs or videos to ascertain whether or not the uniform standards are being met;

(b) at all times keep and maintain the Facility Premises and equipment at the customer's location, the Equipment and Furnishings in a neat, clean, orderly and sanitary condition, and the Equipment and Furnishings in good repair and maximum working condition, including Motor Vehicle maintenance, purchasing of new Motor Vehicles and uniforms, as needed and other equipment, regardless of location. In connection therewith, Franchisee shall from time to time abide by any reasonable requirement of Franchisor with regard to the remodeling and upgrading of the Facility to comply with standards then applicable to new "Coffee Perks" Franchisees. The interior of the Facility shall be renewed or repainted as necessary, but in any event not less frequently than every five (5) years, in accordance with Franchisor's then-current standard color schemes and standards, or within said five (5) year period if reasonably required by Franchisor. If at any time during the Initial Term or any renewal thereof any of the Equipment and Furnishings become obsolete or depreciated, then to the extent that they require replacement in accordance with Franchisor's standards, Franchisee will replace the same with items required by Franchisor's then-current standards and specifications. Franchisee shall not attach or exhibit any signs, displays, or posters on or in the interior of said building other than signs, displays or posters then currently supplied, required, or authorized in writing by Franchisor, nor shall Franchisee permit or suffer others to do so. If any substantial alterations are to be made upon the Facility Premises or Motor Vehicles during the Initial Term or any renewal thereof, then said alterations shall be first approved in writing by Franchisor and plans and specifications therefor agreed to in writing by Franchisor. To maintain a modern, progressive, and uniform operational image, Franchisor, at any time during the Initial Term or any renewal thereof, shall have the right to require Franchisee to perform such remodeling, repairs, and replacements in and upon the Facility Premises, improvements, and Equipment and Furnishings used by Franchisee which are reasonably necessary and practical to bring such Facility Premises, improvements, and Equipment and Furnishings up to the then-current standards of Franchisor. Franchisee will bear the entire cost of any remodeling, repairs, replacements, or other maintenance or refurbishing required hereunder. Franchisee acknowledges that possible additional investment may be required pursuant to this Section. If Franchisee fails to make any required remodeling, repairs, replacements, redecoration or other maintenance or refurbishing required hereunder within ten (10) days after receipt of notice from Franchisor of the actions required to be taken, Franchisor may, but is not required to, arrange for the completion of all required actions on Franchisee's behalf and Franchisee shall reimburse Franchisor upon demand for all costs incurred;

(c) operate the Facility, its vehicles and equipment at the customer's location, in accordance with the standards, specifications, requirements and instructions as may be communicated to Franchisee by Franchisor. Franchisee must comply strictly with all standards, specifications, processes, procedures, requirements and instructions of Franchisor, whether they now exist or are hereafter established from time to time regarding the operation of the Facility. The Facility and everything located therein must be maintained in first-class condition and repair and must be kept clean, neat, sanitary and secure. It must be adequately lighted and must be operated in a clean, wholesome, sanitary and secure manner consistent with Franchisor's requirements. All maintenance, repairs and replacements requested

by Franchisor or needed in connection with the Facility must be made promptly. All employees of Franchisee must be clean and neat and must wear the required uniform, if any, at all times;

(d) offer for sale the Products and Services and only the Products and Services, as same exist from time to time. The Products and Services must be offered for sale on a continuous basis within the Exclusive Territory at the time and in the manner required by Franchisor. No sale of any product or service except the Products and Services may be solicited, accepted or made at or from within the Exclusive Territory. If requested by Franchisor, on at least thirty (30) days' notice, as part of a general program or standardization effort by Franchisor, the marketing of the Products and Services may be modified. In such an event, such modified product becomes the Products and Services.

(i) Franchisee must at all times maintain an adequate inventory of the Products and Services, customer equipment and repair parts sufficient in quantity and variety to realize the full potential of the Franchised Business.

(ii) Franchisor may, from time to time, conduct market research and testing to determine consumer trends and salability of new products and services. Franchisee must cooperate by participating in Franchisor's market research programs, test marketing new products and services and providing timely reports and other relevant information regarding marketing research. In connection with such test marketing, Franchisee must purchase a reasonable quantity of products to be tested and effectively promote and make a reasonable effort to sell such products and services.

(iii) Franchisee may not: (a) sell any product for resale; (b) sell any product or service at or from any place except within the Exclusive Territory; or (c) prepare or deliver any product or service at any place other than from within the Exclusive Territory.

(iv) Franchisee shall purchase his/her entire supply of the Products and Services from Franchisor, its designated affiliates or other restricted sources, in which case Franchisee will be obligated to acquire the Products and Services only from such restricted sources at prices Franchisor deems appropriate;

(e) at his/her own expense, promotionally display in and upon the Premises and Motor Vehicles, "Coffee Perks" advertising signs of such nature, form, color, number, location, size and containing such material as Franchisor shall direct or approve in writing. Franchisor or its suppliers shall furnish to Franchisee, without cost or expense to Franchisee, design plans for outside advertising signs. Only signs or advertising media approved by Franchisor shall be displayed by Franchisee in or upon the Facility Premises or elsewhere. All signs must be purchased from suppliers approved by Franchisor. Franchisee shall install and maintain such signs at his/her own expense for the period that such signs remain in Franchisee's possession. Upon termination of this Agreement for whatever reason, the signs shall become the property of Franchisor, and Franchisee shall promptly remove and procure any such signs and deliver them to Franchisor according to its direction;

(f) adhere to Franchisor's minimum quality standards and specifications for all facets of the "Coffee Perks" Franchised Business, including equipment, signage, layout design, decor, furniture, fixtures, furnishings, inventory supplies, Motor Vehicles, advertising and sales promotion materials and other products or materials used in the operation of a Facility. Such standards and specifications have been established by Franchisor for uniformity, quality control and to protect, maintain and foster its reputation, goodwill and public acceptance. All such information regarding standards and specifications shall be provided to Franchisee in writing or otherwise through the Confidential Operations Manual. The Confidential Operations Manual is incorporated in this Agreement by reference and

Franchisee will comply with all provisions therein. All such standards and specifications may be modified at any time by Franchisor. Franchisor will provide Franchisee with a list of and specifications for the equipment, fixtures, furniture and furnishings which are consistent with the standard Facility. Franchisor will provide Franchisee with a list of recommended fixtures, furniture, Equipment and Furnishings and the Approved Suppliers thereof, which list may be modified by Franchisor from time to time. Franchisor shall also provide Franchisee with lists and specifications of approved promotional materials, supplies, and other inventory items needed in the daily operation of the Franchised Business. Franchisor will provide Franchisee the opportunity to purchase in sufficient quantity, and in a timely manner to meet Franchisee's reasonable needs, such products and supplies as Franchisor or its affiliated Franchisor is in the business of selling. Franchisee will also have the opportunity to purchase from Franchisor advertising, promotional and training materials developed by Franchisor.

(i) Franchisor has and will continue to periodically approve suppliers and distributors of the products, customer equipment, materials and supplies used in the operation of a Facility that meet Franchisor's standards and requirements, including, without limitation, standards and requirements relating to product quality, customer equipment, Motor Vehicles, prices, cost of goods, consistency, reliability, financial capability, labor relations, customer relations, sales and marketing support. Franchisee must purchase all products, materials and supplies only from distributors and other suppliers approved by Franchisor from time to time.

(ii) Franchisor may approve a single distributor or other supplier (collectively "Approved Supplier") for any product and may approve a supplier only as to certain products, except for the Products and Services which shall be purchased exclusively from Franchisor or its designee. Franchisor may concentrate purchases with one (1) or more suppliers to obtain lower prices or the best advertising support or services for any group of Facilities. Franchisor may, if it chooses, take advantage of discounts offered by a supplier in connection with the acquisition of large quantities of products and resell said products to Franchisee at a profit. Approval of a supplier may be conditioned on requirements relating to the frequency of delivery, concentration of purchases, quality of products, product exclusivity, standards of service, including prompt attention to complaints, or other criteria and may be temporary, pending Franchisor's continued evaluation of the supplier from time to time.

(iii) If Franchisee desires to purchase any items from any unapproved supplier, Franchisee must submit to Franchisor a written request for approval of the proposed supplier and obtain Franchisor's written approval of the supplier prior to purchasing any such items from said supplier. Franchisor may charge Franchisee a reasonable, non-refundable fee, not to exceed One Thousand Dollars (\$1,000), to cover the cost Franchisor incurs in determining its approval. Franchisor may inspect the proposed supplier's facilities and require product samples from the proposed supplier to be delivered at Franchisor's option either directly to Franchisor or to any independent entity which Franchisor designates for testing. Franchisor's evaluation and ultimate approval or rejection shall be completed within thirty (30) days of submission. Franchisor reserves the right to periodically re-inspect the facilities and products of any Approved Supplier and to revoke its approval if the supplier does not continue to meet any of Franchisor's criteria. Franchisor shall in no event be obligated to approve any proposed supplier;

(g) comply with all mandatory specifications, standards and operating procedures relating to the appearance, function, cleanliness, sanitation and operation of a Facility, customer Break Room service standards, food service standards and its Motor Vehicles. Mandatory specifications, standards, and operating procedures prescribed from time to time by Franchisor, or otherwise communicated to Franchisee in writing, will constitute provisions of this Agreement as if fully set forth in

this Agreement. All references to "this Agreement" include all such mandatory specifications, standards and operating procedures;

(h) secure and maintain in force in his/her name all required licenses, permits and certificates relating to the operation of the Facility. Franchisee must operate the Facility in full compliance with all applicable laws, ordinances and regulations, including, without limitation, all government regulations relating to workers' compensation insurance, unemployment insurance, and withholding and payment of federal and state income taxes, social security taxes and sales taxes. All necessary and appropriate measures must be taken to avoid unsatisfactory safety, sanitation or health ratings at all times from government authorities. Conditions or practices disapproved by any such authorities must be corrected promptly except that, after consultation between Franchisee and Franchisor, Franchisee may contest in good faith the action by such authority as being arbitrary, capricious, unfair or unlawful. All advertising employed by Franchisee must be completely factual, in good taste (in Franchisor's judgment), and must conform to the highest standards of ethical advertising. Franchisee must in all dealings with Franchisor, customers, suppliers, and public officials adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. Franchisee must refrain from any business or advertising practice which may be harmful to the business of Franchisor, the goodwill associated with the Proprietary Marks or other Facilities. Franchisee must notify Franchisor in writing within five (5) days of the commencement of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental unit, which may adversely affect the operation or financial condition of Franchisee or the Facility, or of any notice of violation of any law, ordinance or regulation relating to health or safety;

(i) assure that at all times the Franchised Business must be under the direct, on-premises supervision of a manager who has satisfactorily completed Franchisor's training program. Franchisee shall staff the Franchised Business with the number of managers, assistant managers or other key personnel as Franchisor specifies from time to time. Franchisee shall hire all employees of the Franchised Business and be exclusively responsible for the terms of their employment, their compensation, and for the proper training of the employees in the operation of the Franchised Business and shall require all such personnel, including Franchisee, to execute Franchisor's Non-Competition and Confidentiality Agreement in the form annexed hereto as Exhibit "E". Franchisee may not recruit or hire, either directly or indirectly, any employee (or former employee for twelve (12) months after his or her employment has ended) of a Franchised Business without Franchisor's or that Franchisee's advance written permission or that of the employer-Franchisee. (If Franchisee violates this provision, Franchisee shall pay the hired employee's former employer twice the hired employee's annual salary, plus all costs and attorneys' fees incurred as a result of the violation);

(j) provide that payment for all Products and Services purchased from the Franchisor by the Franchisee shall be due and payable within fifteen (15) days after receipt of an invoice therefor, unless otherwise specified by the Franchisor. All other supplies, forms, documents and equipment required for the operation of the Facility and not required to be purchased from the Franchisor or its designees may be purchased from the Franchisor or from any source or supplier approved or designated in writing by the Franchisor or from any other source or supplier, provided that the Franchisor shall have first approved in writing such other source or supplier, which approval shall not be unreasonably withheld so long as the standards of the System are met;

(k) maintain at all times such arrangements with (and only with) such credit card issuers or sponsors, and shall implement and at all times operate such point-of-sale systems and credit verification systems as the Franchisor may designate from time to time;

(l) assure that his/her Manager(s) and other personnel of the Franchised Business as the Franchisor may direct shall attend and participate at such additional or supplemental training courses, seminars and Franchisee meetings as may be specified by the Franchisor from time to time. The Franchisor shall have the right to charge the Franchisee a reasonable fee for such additional or supplemental training courses, seminars or Franchisee meetings and the Franchisee shall also be responsible to pay all travel, accommodation, meal and other expenses of the Franchisee and its Manager(s) and other personnel in respect of attending and completing such courses, seminars or meetings;

(m) issue and honor any type of gift certificate or other types of promotions or marketing campaigns, provided such promotion does not violate any federal antitrust laws.

8.2 **Inventory.** Franchisee shall, at all times, maintain on the Premises and/or in Motor Vehicles, under proper conditions, an adequate inventory of the Products and Services, all required components, materials, equipment and supplies therefor, including, without limitation, the marketing, manufacturing, installation and administrative aspects of the Franchised Business.

8.3 **Computer Hardware and Software Systems.** Since the effective and efficient operation of a "Coffee Perks" Franchised Business is intimately connected with the use and maintenance of appropriate computer hardware, including hand-held computers and printers and software systems as specified by Franchisor, with direct interconnection to and access by Franchisor's computer hardware and software systems, Franchisee must purchase, use, maintain and update computer and other systems, including software programs which meet Franchisor's specifications, as they evolve over time and which, in some cases, may only be available through Franchisor and/or its affiliates. Franchisee must maintain his/her systems on-line to provide full access for computer systems used by Franchisor and Franchisee must promptly update and otherwise change his/her computer hardware and software systems and Franchisor requires from time to time, at Franchisee's expense. Franchisee will pay all amounts charged by any supplier or licensor, which may be Franchisor or an affiliate, of the systems and programs used by Franchisee, including charges for use, maintenance, support and/or update of these systems or programs.

8.4 **Mutual Dependence.** Franchisee acknowledges that he/she is one of a number of "Coffee Perks" Franchisees, each of whose success depends in substantial part on the integrity, reputation and marketing efforts of each other Franchisee. Franchisee further acknowledges that the value of the Proprietary Marks and of membership in the "Coffee Perks" System to Franchisee, to Franchisor and to each other Franchisee depends on the maintenance of uniform standards of quality, integrity and appearance. Franchisee further acknowledges that any action which impairs the reputation and goodwill of the Proprietary Marks, impairs or adversely affects the objectives of the Franchisor or brings the Franchisor into disrepute, or departs from the uniform practices specified by Franchisor, will be likely to injure all members of the "Coffee Perks" System.

8.5 **Uniformity.** Franchisee agrees that he/she will at all times adopt and follow all the Franchisor's directives concerning the appearance of Franchisee's Premises and Motor Vehicles, the quality and appearance of goods and services offered, the appearance of Franchisee and his/her staff, other business practices and other matters likely to affect the public perception of the "Coffee Perks" System as a unified and reliable network of companies. Franchisee will offer all of, and only, the goods and services which Franchisor authorizes.

8.6 **Variations.** Complete and detailed uniformity under many varying conditions may not be possible or practicable, and Franchisor therefore reserves the right and privilege, at the sole and absolute discretion of Franchisor and as Franchisor may deem in the best interest of all concerned in any specific instance, to vary standards to accommodate special needs of Franchisee, or those of any other Franchisee,

based upon the peculiarities of a particular site or location, density of population, business potential, population of trade area, existing business practices, requirements of local law or local custom, or any other condition which Franchisor deems to be of importance to the successful operation of such Franchisee's business. Further, Franchisor may from time to time allow certain Franchisees to depart from normal System standards and routines in certain respects in order to experiment with or test new products or services, equipment, Motor Vehicles, designs, procedures and the like. In no event shall such variance, or such testing, be deemed a waiver of any of Franchisor's rights, or an excuse from performance of any of Franchisee's duties hereunder. Franchisor may at any time require Franchisee to commence full compliance with all of Franchisor's standards and procedures. Franchisor shall not under any circumstances be required to grant any variance to Franchisee. Nothing contained in this Article is intended to confer on Franchisee any right to compel Franchisor to grant a variance to Franchisee or to grant, withdraw or modify any variance given to any other Franchisee. Such matters shall at all times remain within the sole and absolute discretion of Franchisor.

8.7 **Referrals.** Franchisee acknowledges that it is in his/her best interest to refer prospective customers to other Franchisees of the "**Coffee Perks**" System when, because of territorial restrictions, distance or excessive work, or for other reasons, Franchisee cannot promptly, properly and profitably serve such customers himself/herself. Franchisee agrees that he/she will not undertake any work that he/she is not capable of performing promptly and properly. If Franchisee is prevented by the terms of this Section from accepting one or more new customers, Franchisee will refer each such prospective customer another franchisee who would serve the area where such prospective customer lives or works. Franchisee shall be permitted to service customers outside their Exclusive Territory provided there is not another franchisee operating therein. However, once a franchisee is granted a Franchised Business for that open territory, Franchisee must deliver those accounts and all account records to the new franchisee.

8.8 **Relationship with Former Franchisees.** Franchisee acknowledges that former franchisees (those whose franchise agreements have expired or have been terminated) are in a position to compete unfairly with the Franchisee and/or other members of the "**Coffee Perks**" System, and to cause great injury to the reputation of the "**Coffee Perks**" System and/or the Proprietary Marks. Franchisee therefore agrees as follows:

8.8.1 Franchisee will not sell, loan, give or otherwise transfer or deliver to any former franchisee, any vendor, any former employees or their immediate family member, or anyone not operating within Franchisee's Franchised Business or allow any former franchisee or their immediate family member, to copy or otherwise obtain, any confidential business information about the "**Coffee Perks**" System; any advertising or promotional materials produced by the Fund or by Franchisor or which bear any of the Proprietary Marks; any other materials or publications of Franchisor, including, without limitation, the Confidential Operations Manual; any directory or roster of franchisees or Approved Suppliers, any other customer lists or mailing lists pertaining in any way to the "**Coffee Perks**" System; or any other information about the "**Coffee Perks**" business or the System which is not available to the public.

8.8.2 Franchisee will not refer prospective customers to any former franchisee.

8.8.3 Franchisee will not notify or advise any former franchisee of, or in any other way assist any former franchisee in learning about, the date, time and place of any meetings of franchisees.

8.8.4 If Franchisee observes any former franchisee using any of the Proprietary Marks in any way, or utilizing business premises or motor vehicles from which the Proprietary Marks and/or distinctive color scheme have not been completely obliterated, Franchisee shall immediately report such observation to Franchisor, along with all details available to Franchisee.

8.8.5 Franchisee shall in general have no dealings with a former franchisee which Franchisee, under this Agreement, could not have with a person who has never been a "Coffee Perks" Franchisee.

8.8.6 The provisions of Section 8.9 of this Agreement shall apply to Franchisee as soon as Franchisee is on notice of the expiration or termination of another franchise agreement. Franchisee shall be deemed to be on such notice when:

(i) Franchisee receives a new Franchisee Directory in which such franchise does not appear; or

(ii) Franchisee receives written notice from Franchisor that one or more particular franchise agreements have expired or have been terminated.

8.9 **Parties to Litigation.** Franchisee will not in any way contribute to the legal costs and fees of any actual or contemplated legal proceeding against Franchisor, the Fund or any other Franchisee or any individual member or owner thereof, nor in any other way encourage, support or assist such litigation, except:

(i) to give evidence to the extent required by law, pursuant to a subpoena or court order; or

(ii) to carry on litigation to which Franchisee is a proper party.

8.10 **Membership in Trade Associations.** Franchisee shall be required to join any appropriate or Franchisor recommend trade association during the initial term and any renewals of this Agreement. Franchisee shall provide evidence of membership to Franchisor immediately upon request.

ARTICLE IX **PROPRIETARY MARKS**

9.1 **Proprietary Marks.** When used in this Agreement, "Proprietary Marks" mean the "Coffee Perks" trademark and service marks which are used now or in the future to identify Facilities or the Products and Services and to distinguish it from that of any other business, and the trademarks, service marks, trade names, logos and commercial symbols as may be designated by the Franchisor from time to time for use in connection with the System.

9.2 **License of Proprietary Marks.** Franchisee is licensed to use the Proprietary Marks, goodwill and trade secrets in the operation of the Facility only within the Exclusive Territory. Nothing in this Agreement shall be construed as authorizing or permitting their use anywhere else or for any other purpose, except as may be authorized in writing by Franchisor. During the term of this Agreement and any renewal or extension hereof, Franchisee shall identify himself/herself as the owner of the Facility in conjunction with any use of the Proprietary Marks, including, but not limited to, on invoices, order forms, receipts, business stationery, contracts with all third parties or entities, as well as the display of such notices in such content and form and at such conspicuous locations as Franchisor may designate in writing.

9.3 **Franchisor Retains Ownership.** Franchisee acknowledges that the ownership of all of the Proprietary Marks, goodwill and trade secrets remains solely with Franchisor and that Franchisee shall not register or attempt to register the Proprietary Marks or to assert any rights in them other than as

specifically granted in this Agreement, nor shall Franchisee use the Proprietary Marks as part of any domain name, electronic address, or search engine that Franchisee may maintain on the Internet, Worldwide Web, or any other similar proprietary or common carrier electronic delivery system, or otherwise in connection with a Website, unless the Franchisor has approved such use. A Website is defined as an interactive electronic document contained in a network of computers linked by communications software, including the Internet and Worldwide Web Home Pages.

9.4 Use of Proprietary Marks. Franchisee shall only use the Proprietary Marks, logos, trade styles, color combinations, designs, signs, symbols and slogans of Franchisor or of the national brands with whom Franchisor has agreements with, and only in the manner and to the extent specifically permitted by this Agreement, the Confidential Operations Manual or in any manuals, directives or memos prepared by Franchisor, and in the manner Franchisor specifies in any Website Franchisor has established for the System.

9.5 Approval of Items Using Proprietary Marks. Franchisor reserves the right to approve all signs, memos, stationery, business cards, advertising material, forms and all other objects and supplies using the Proprietary Marks. All advertising, publicity, point of sale materials, signs, decorations, furnishings, equipment, or other materials employing the words "**Coffee Perks**" shall be in accordance with this Agreement and the Confidential Operations Manual, and Franchisee shall obtain Franchisor's approval prior to such use.

9.6 Cessation of Use after Expiration, Termination or Non-Renewal. Upon the expiration, termination or non-renewal of this Agreement, Franchisee shall immediately cease using the Proprietary Marks, color combinations, designs, symbols or slogans; and Franchisor may cause Franchisee to execute such documents and take such action as may be necessary to evidence this fact. After the effective date of expiration, termination or non-renewal, Franchisee shall not represent or imply that he/she is associated with Franchisor. To this end, Franchisee irrevocably appoints Franchisor or its nominee to be Franchisee's attorney-in-fact to execute on Franchisee's behalf any document or perform any legal act necessary to protect the Proprietary Marks from unauthorized use. Franchisee acknowledges and agrees that the unauthorized use of the Proprietary Marks will result in irreparable harm to Franchisor for which Franchisor shall be entitled to obtain injunctive relief, monetary damages, reasonable attorneys' fees and costs.

9.7 Notification of Infringement. Franchisee shall immediately notify Franchisor of any apparent infringement of or challenge to Franchisee's use of the Proprietary Marks, or any claim, demand, or suit based upon or arising from the unauthorized use of, or any attempt by any other person, firm, or corporation to use, without authorization, or any infringement of or challenge to, any of the Proprietary Marks. Franchisee also agrees to immediately notify Franchisor of any other litigation instituted by any person, firm, corporation or governmental entity against Franchisor or Franchisee.

9.8 Franchisor to Defend. Franchisor shall undertake the defense or prosecution of any litigation concerning Franchisee that relates to any of the Proprietary Marks or that, in Franchisor's judgment, may affect the goodwill of the System; and Franchisor may, in such circumstances, undertake any other action which it deems appropriate. Franchisor shall have sole and complete discretion in the conduct of any defense, prosecution or other action it chooses to undertake. In that event, Franchisee shall cooperate and execute those documents and perform those acts which in the opinion of Franchisor are necessary for the defense or prosecution of the litigation or for such other action as may be undertaken by Franchisor.

9.9 Franchisee to Use Only Designated Proprietary Marks. In order to develop and maintain high uniform standards of quality and service and to protect the reputation and goodwill of

Franchisor, Franchisee shall do business and advertising using only the Proprietary Marks designated by the Franchisor or by any national brands whose marks and/or logos are licensed to the System. Franchisee shall not do business or advertise using any other name. Franchisee is not authorized to and shall not use the words "Coffee Perks" by itself, as a part of the legal name of any corporation, partnership, proprietorship or other business entity to which Franchisee is associated, or with a bank account, trade account or in any legal or financial connection.

9.10 **Inspection.** In order to preserve the validity and integrity of the Proprietary Marks, and to assure that Franchisee is properly employing them in the operation of Franchisee's business, Franchisor and its agents shall have the right at all reasonable times to inspect and photograph Franchisee's business, financial books and records, and operations. Franchisee shall cooperate with and assist Franchisor's representative in such inspection.

9.11 **Copyright Symbols.** Franchisee shall be required to affix the ®, ™ or ™ symbol upon all advertising, publicity, signs, decorations, furnishings, equipment or other printed or graphic material employing the words "Coffee Perks" or any other of the Proprietary Marks, whether presently existing or developed in the future.

9.12 **No Right to Deny Use of Proprietary Marks.** Franchisee acknowledges that he/she does not have any right to deny the use of the Proprietary Marks to any other "Coffee Perks" Franchisees. In consideration therefor, Franchisee shall execute all documents and take such action as may be requested to allow Franchisor or other "Coffee Perks" Franchisees to have full use of the Proprietary Marks, except that other "Coffee Perks" Franchisees shall not be permitted to have use of the Proprietary Marks within the Exclusive Territory.

9.13 **Avoidance of Conflict.** If during the term of this Agreement there is a claim of prior use of the "Coffee Perks" name or any other of the Proprietary Marks in the area in which Franchisee is doing business or in another area or areas, Franchisee shall so use Franchisor's other Proprietary Marks in such a way and at Franchisor's discretion in order to avoid a continuing conflict.

9.14 **Indemnification.** The Franchisor agrees to indemnify Franchisee against, and to reimburse Franchisee for, all damages, costs, reasonable attorneys' fees and expenses for which he/she is held liable in any proceeding in which Franchisee's use of any Proprietary Mark pursuant to and in compliance with this Agreement is held to constitute trademark infringement, unfair competition or dilution, and for all costs reasonably incurred by Franchisee in the defense of any such claim brought against him/her or in any such proceedings in which he/she is named as a party, provided that Franchisee has timely notified the Franchisor of such claim or proceedings, has otherwise complied with this Agreement and has tendered complete control of the defense of such to the Franchisor. If the Franchisor defends such claim, the Franchisor shall have no obligation to indemnify or reimburse Franchisee with respect to any fees or disbursements of any attorney retained by Franchisee.

9.15 **Limited License.** Franchisee understands and agrees that the limited license to use the Proprietary Marks granted hereby applies only to such Proprietary Marks and/or national brand marks or logos, as are designed by Franchisor, and which are not subsequently designated by Franchisor as being withdrawn from use, together with those which may hereafter be designated by Franchisor in writing. Franchisee expressly understands and agrees that he/she is bound not to represent in any manner that he/she has acquired any ownership or equitable rights in any of the Proprietary Marks by virtue of the limited license granted hereunder, or by virtue of Franchisee's use of any of the Proprietary Marks.

If it becomes advisable at any time, in the discretion of Franchisor, to modify or discontinue use of any Proprietary Mark or national brand logos and/or to adopt or use one or more additional or

substitute Proprietary Marks, then Franchisee shall be obligated to comply with any such instruction by Franchisor. Franchisee waives any other claim arising from or relating to any Proprietary Mark change, modification or substitution. Franchisor will not be liable to Franchisee for any expenses, losses or damages sustained by Franchisee as a result of any Proprietary Mark addition, modification, substitution or discontinuation, except as provided herein. Franchisee covenants not to commence or join in any litigation or other proceeding against Franchisor for any of these expenses, losses or damages.

9.16 **Name Registrations.** Before commencing business at the Facility, Franchisee must supply evidence satisfactory to Franchisor that Franchisee has complied with all applicable laws regarding the use of fictitious or assumed names. Franchisee must take such steps as Franchisor approves in writing to register the name "**Coffee Perks**" to be able to operate the Facility under such name within Franchisee's Exclusive Territory. Except for registration of a "d/b/a" or assumed name or other fictitious name certificate in connection with the operation of the Facility, Franchisee must not register or attempt to register Franchisor's names or the Proprietary Marks in Franchisee's own name or that of any other entity, nor shall Franchisee make any attempt to register a domain name which includes the Proprietary Marks.

ARTICLE X

OPERATIONS MANUAL AND CONFIDENTIALITY

10.1 **Confidential Operations Manual.** The Franchisor has developed and will lend to the Franchisee during the term of this Agreement an operating manual for the Facility and Franchised Business (herein referred to as the "Confidential Operations Manual") containing mandatory specifications, standards, methods, techniques and procedures for the operation of the Facility and the Franchised Business, prescribed from time to time by the Franchisor for its Franchisees, and containing information relative to other obligations of the Franchisee hereunder. All such specifications, standards and operating procedures shall be consistent with this Agreement and all applicable laws. Specifications, standards and operating procedures prescribed from time to time by the Franchisor in the Confidential Operations Manual or otherwise communicated to the Franchisee in writing shall constitute provisions of this Agreement as if fully set forth herein and shall be kept confidential by the Franchisee at all times during the term of this Agreement and after the termination or expiration thereof for any reason. The Franchisee shall operate his/her Facility strictly in accordance with the Confidential Operations Manual. The Franchisor shall have the right to add to, and otherwise modify, the Confidential Operations Manual from time to time to reflect changes in the Products and Services, the System, standards, operating procedures, or the operation of the Facility; provided, however, no such addition or modification shall alter the Franchisee's fundamental status and rights under this Agreement. The Franchisee covenants to accept, implement and adopt any such modifications at his/her own cost, except as provided in Section 9.15 hereof covering a change in the Proprietary Marks. The Franchisee shall keep the Confidential Operations Manual up to date with replacement pages and insertions as instructed by the Franchisor. Operating procedures and standards that the Franchisor prescribes from time to time in the Confidential Operations Manual will constitute provisions of this Agreement as if fully set forth herein. All references to this Agreement shall include all such standards and operating procedures. The Franchisee acknowledges that the Confidential Operations Manual contains proprietary information of the Franchisor and the Franchisee agrees to keep the Confidential Operations Manual and its contents confidential at all times and not to make any copies thereof. The Confidential Operations Manual shall at all times remain the property of the Franchisor, and the Franchisee shall promptly return the Confidential Operations Manual to the Franchisor upon the Franchisor's request, and in any event upon the termination or expiration of this Agreement for any reason. In the event a dispute arises as to the contents of the Confidential Operations Manual, the master copy maintained by Franchisor shall be controlling.

10.2 Confidentiality. The Franchisor and its affiliates possess certain confidential information (the "Confidential Information") relating to the operation of "Coffee Perks" Businesses, which includes:

(a) methods, techniques, formats, specifications, systems, procedures, sales and marketing techniques, route distribution and maintenance, delivery and warehouse logistics, knowledge, and experience in developing and operating "Coffee Perks" Businesses;

(b) knowledge of specifications for and suppliers of certain Products and Services, materials, coffee blend recipes, and flavor profiles, supplies, equipment, furnishings, and fixtures;

(c) knowledge of operating results and financial performance of "Coffee Perks" Businesses;

(d) technological and design specifications for equipment and products, and

(e) proprietary computer software.

Confidential Information will exclude information received by the Franchisee from a third party (provided such third party has not by the disclosure breached any obligations to the Franchisor), information available in the public domain, and the information the Franchisee can demonstrate it already knew before it became a "Coffee Perks" Business Franchisee.

The Franchisor may disclose certain Confidential Information to the Franchisee in the initial training program and subsequent training, the Confidential Operations Manual and guidance furnished to the Franchisee during the term of this Agreement. The Franchisor will conspicuously mark all information deemed to be confidential.

The Franchisee acknowledges and agrees that it will not acquire any interest in Confidential Information, other than the right to utilize Confidential Information in operating the Business during the term of this Agreement, and that using or duplicating any Confidential Information in any other business would constitute an unfair method of competition. The Franchisee acknowledges and agrees that Confidential Information is proprietary, includes trade secrets of the Franchisor and its affiliates, and is disclosed to the Franchisee solely on the condition that the Franchisee agrees, and the Franchisee does hereby agree, that it:

(a) will not use Confidential Information in any other business or capacity;

(b) will maintain the absolute confidentiality of Confidential Information during and after the term of this Agreement;

(c) will not make unauthorized copies of any portion of Confidential Information disclosed in written or other tangible form; and

(d) will adopt and implement all reasonable procedures that the Franchisor prescribes from time to time to prevent unauthorized use or disclosure of Confidential Information, including, without limitation, restrictions on its disclosure to its employees and the use of, as appropriate, nondisclosure and non-competition agreements with employees who have access to Confidential Information. If the Franchisee is legally compelled to disclose Confidential Information in a judicial or administrative proceeding, the Franchisee agrees to notify the Franchisor prior to disclosure and to use all reasonable efforts to obtain, and to afford the Franchisor and its affiliates the opportunity to obtain, an appropriate protective order or other assurance satisfactory to the Franchisor and its affiliates of confidential treatment for the information required to be disclosed.

Franchisee further acknowledges and agrees that Confidential Information is beyond the skills, knowledge, and experience it now has and will be valuable to it in developing the Business.

All materials, discoveries, inventions, ideas, and/or improvements (whether or not patentable or copyrightable) relating to the Franchised Business whether created by or on behalf of the Franchisee or its owners (if the Franchisee is a corporation, limited liability Franchisor, or partnership), will be promptly disclosed to the Franchisor, deemed to be the Franchisor's sole and exclusive property, and deemed to be works made-for-hire for the Franchisor and may be shared among all franchisees without consideration paid to Franchisee. The Franchisee and its owners agree to execute whatever assignment or other documents the Franchisor requests to evidence the Franchisor's ownership or to assist the Franchisor in obtaining copyright registrations or patent rights. Franchisee and its owners agree to use such items solely in connection with activities permitted in this Agreement and not to use any substantially similar materials, discoveries, inventions, ideas, and/or improvements for any purpose during or after the term of this Agreement.

Except as otherwise provided in the immediately preceding paragraph, and whether or not patentable or copyrightable, all materials, discoveries, inventions, ideas, and/or, improvements (the "Work") will be deemed to be the Franchisee's sole and exclusive property if, and only if, each of the following conditions is satisfied: (i) the equipment and facilities used in creating or developing the Work belong to or were hired by the Franchisee; (ii) the Work does not result directly from the use of the Franchisor's or its affiliates' Confidential Information; and (iii) the Franchisor does not pay the Franchisee to create or develop the Work. If any of these conditions is not satisfied, then any Work created or developed by the Franchisee will be deemed to be the Franchisor's sole and exclusive property and deemed to be works made-for-hire for the Franchisor. Under such circumstances, the Franchisee and its owners agree to execute whatever assignment or other documents the Franchisor requests to evidence the Franchisor's ownership of the Work or to assist the Franchisor in obtaining copyright registrations or patent rights in the Work. The Franchisee and its owners agree in such instances to use the Work solely in connection with activities permitted in this Agreement and not to use any substantially similar items for any purpose during or after the term of this Agreement.

10.3 Exclusive Relationship. Franchisee acknowledges and agrees that the Franchisor would be unable to protect Confidential Information against unauthorized use or disclosure and unable to encourage a free exchange of ideas and information among "Coffee Perks" Businesses if franchised owners of "Coffee Perks" Businesses were permitted to hold interests in or perform services for a Competitive Business. The Franchisee also acknowledges that the Franchisor has granted the franchise to the Franchisee in consideration of and reliance upon the Franchisee's agreement to deal exclusively with the Franchisor. The Franchisee therefore agrees that during the term of this Agreement, except for the Franchised Business and other "Coffee Perks" Businesses operated under franchise agreements with the Franchisor, neither the Franchisee nor, any of its owners (or the immediate families of the Franchisee or its owners) shall have any direct or indirect interest as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative, or agent, or in any other capacity, in any Competitive Business or in any entity which is granting franchises or licenses or establishing joint ventures for the operation of Competitive Businesses. The restrictions of this Section shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent three percent (3%) or less of the number of shares of that class of securities issued and outstanding. The term "Competitive Business" shall mean any business (i) specializing, in whole or in part, in the operation of a coffee service, bottled water, vending or food service distribution business, or (ii) manufacturing or distributing coffee brewing or dispensing machines, for the coffee service, bottled water, vending or food service distribution market, or (iii) producing or roasting coffee, manufacturing bottled water for any purpose. The Franchisee (and its owners) agree that it may and will be conclusively presumed that any violation of this Section was accomplished by and through the Franchisee's (or its owners') unlawful use of Confidential Information.

10.4 **Database.** Franchisee acknowledges that the database of customers is proprietary to Franchisor and that Franchisor shall have access to same electronically following notice to Franchisee on an annual basis.

10.4.1 **Customer List.** Franchisee agrees that the list of the names, addresses and other information (including, without limitation, telephone numbers) regarding Franchisee's current customers, former customers, and those who have inquired about the services and products ("Customer List"), shall be included in the Confidential Information, shall at all times remain the property of the Franchisor, upon termination, expiration or non-renewal, and shall constitute a trade secret of the Franchisor. Franchisee agrees that the Franchisee may shall not disclose the Customer List, or any portion thereof, to any person other than the Franchisor, either during the term of this Agreement or thereafter. Franchisee further agrees that a breach of this Section shall be grounds for immediate termination of this Agreement pursuant to Section 13.1 (7).

10.5 **Return of Confidential Operations Manual.** Franchisee shall keep the Confidential Operations Manual in his/her Facility at all times and promptly return all copies to Franchisor upon the expiration or termination of this Agreement, and shall refrain from making any copies thereof or otherwise reproducing it either in whole or in part at any time.

ARTICLE XI

OPERATIONAL REQUIREMENTS

11.1 **Sole Business at Premises.** Franchisee shall not carry on all or part of any business except the Franchised Business at the Premises or from the Motor Vehicles. Without limiting the generality of the foregoing, Franchisee shall not receive mail or telephone calls or visitors at the Premises for or in connection with any other line of business, without Franchisor's prior approval. However, in the event Franchisee has added the "Coffee Perks" Franchised Business to his/her existing business premises, Franchisee shall nevertheless be required to maintain "Coffee Perks" dedicated Motor Vehicles and telephone lines for this Franchised Business.

11.2 **Hours of Operation.** Franchisee shall be open for business to the public beginning no later than 8:00 a.m. and remaining open until no earlier than 5:00 p.m., Monday through Friday of each week, except legal holidays. Natural disasters, war, strikes or riots preventing Franchisee temporarily from complying with the foregoing shall to that extent suspend Franchisee's obligation to comply therewith.

11.3 **Payment Methods.** Franchisee shall accept in payment for services rendered and goods sold in connection with the Franchised Business only the following forms of payment:

- (a) United States currency; and/or
- (b) Cashier's check in U.S. funds drawn on a bank or savings and loan association or credit union chartered by the United States or by a state of the United States; and/or
- (c) Preprinted local check of the customer, in U.S. funds, not to exceed the amount of Franchisee's invoice to customer, drawn on a bank or savings and loan association or credit union chartered by the United States or by a state of the United States, only if satisfactory identification is noted on the check; and/or
- (d) Visa, MasterCard or other major credit cards, with approval as required by the issuing bank; and/or

(e) Credit card issued or sponsored by Franchisor, under the **Coffee Perks** name or other name which Franchisee is then authorized by Franchisor to use; and/or

(f) A pre-arranged financing program(s), if implemented by Franchisor, under the **Coffee Perks** name or other name which Franchisee is then authorized by Franchisor to use; and/or

(g) American Express, Citibank, Bank of America, or other Traveler's Checks which Franchisor may approve; and/or

(h) Other forms of payment, in money, electronic transfers, barter credits or other property or things of value, but only with the prior written consent of Franchisor, which may be granted or withheld at Franchisor's sole and absolute discretion. It is understood and agreed that the purposes of the restrictions of this Section 11.3 are to protect Franchisee and the System from improvident business practices and credit risks, to provide for adequate and reliable record-keeping, and to protect both parties from errors or distortions in computing of Franchisee's Gross Revenue.

11.4 **Business Forms.** Franchisee shall use only those forms, contracts, invoices and statements which have been approved as to form by Franchisor. If Franchisor has made available a form of customer contract, credit disclosure, customer invoice, and/or statement of account for use by Franchisee, Franchisee shall reimburse Franchisor's legal fees and other expenses incurred in connection with reviewing any other form of the same type which Franchisee submits for approval.

11.5 **Prior Review of Collection Practices.** Franchisee acknowledges that abusive or excessive collection techniques and unnecessary or unfounded litigation against his/her customers is likely to injure the goodwill of the Proprietary Marks and the reputation of the System. Franchisee therefore agrees that he/she will neither (a) assign any account for collection, nor employ any collection agency, without obtaining Franchisor's prior approval of the collection agency; nor (b) commence any legal action or proceeding against any customer or former customer, or allow a collection agency to do so, without first submitting such matter for Franchisor's review for a period of ten (10) days from the time Franchisor receives all documentation pertaining to the account, customer or former customer in question.

11.5.1 If Franchisor believes that such legal action is not well founded in law, or brings disrepute on the Franchisor, or is likely to result in disclosure of trade secrets or other confidential business information about the Franchisor, and so advises Franchisee in writing prior to the expiration of such ten (10) days referred to herein, Franchisee shall make such modifications to his/her complaint as may be necessary to avoid risks of the kind set forth in Section 11.5 hereof, and shall obtain Franchisor's approval before filing or serving the complaint. Such approval shall not be unreasonably withheld.

11.6 **Compliance with Laws and Ethical Business Practices.** Franchisee shall secure and maintain in force, in his/her name, all required licenses, permits and certificates relating to the operation of the Franchised Business. Franchisee shall operate his/her Franchised Business in full compliance with all applicable laws, ordinances and regulations, including, without limitation, laws relating to health regulations, workers' compensation insurance, unemployment insurance, and withholding and payment of income taxes, payroll taxes, social security taxes and sales taxes. All advertising by Franchisee will be completely factual, in good taste in Franchisor's sole and absolute discretion, and will conform to high standards of ethical advertising. Franchisee will, in all dealings with his/her customers, suppliers and public officials, adhere to high standards of honesty, integrity, fair dealing and ethical conduct, in each case above and beyond merely legal requirements. Franchisee will refrain from any business or advertising practice which may be injurious to Franchisor's business and the goodwill associated with the Proprietary Marks and other **Coffee Perks** businesses. Franchisee will notify Franchisor in writing within

five (5) days of the commencement of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award or decree of any court, agency, or other governmental instrumentality, which relates to or which may affect the operation or financial condition of Franchisee and/or his/her Franchised Business.

11.6.1 In no event shall Franchisee's failure or inability to comply with applicable laws or regulations excuse Franchisee from timely performance of each and every one of his/her obligations under this Agreement.

11.7 **Disclosure.** In order to facilitate compliance with current and future legal obligations and requirements, Franchisor shall maintain the right, in its sole and absolute discretion, to disclose, whether in its offering circulars or otherwise, any information relating to Franchisee's ownership and operation of his/her "Coffee Perks" Facility, including, but not limited to, Franchisee's name, address and/or telephone number, e-mail address, revenues, expenses, results of operation or other information.

11.8 **Inspection by Franchisor.** Franchisor and its employees and representatives shall have the right to observe and monitor the activities of Franchisee and Franchisee's employees, agents and independent contractors, including the right to enter Franchisee's Premises and at all reasonable times during the business day, and without prior notice to Franchisee, for the purpose of ascertaining if all the provisions of this Agreement and if the operating standards and procedures and other Franchisor directives are being observed by Franchisee. On any such inspection, Franchisor and/or such representatives shall have the right to observe Franchisee's marketing and sales techniques; to monitor Franchisee's use of required design principles and techniques; to inspect and photograph Franchisee's Premises and Motor Vehicles, fixtures and equipment; to inspect products and the storage, manufacturing, installation and overall condition thereof; to observe the customer relations services rendered by Franchisee and to inquire of Franchisee's customers about their satisfaction; to observe the conditions of maintenance and repair; to observe and question Franchisee's employees; and otherwise to investigate all aspects of Franchisee's operations.

11.8.1 Franchisee and all those under Franchisee's control shall cooperate fully in such inspection by admitting Franchisor's representatives to Franchisee's Premises, Motor Vehicles, by allowing Franchisor's representatives to accompany Franchisee's representatives to customer meetings, by answering questions, by providing and explaining business records, by providing samples, and work space as reasonably requested, and by otherwise facilitating in good faith the proper completion of such inspection.

11.8.2 Franchisee shall include in any and all agreements with independent contractors terms and conditions sufficient to ensure cooperation by their respective employees, agents and independent contractors with such inspections by Franchisor.

11.9 **Other Forms of Agreement.** Franchisee understands, acknowledges and agrees that Franchisor may have offered franchises in the past, may currently be offering franchises and/or may offer franchises in the future on economic and/or other terms, conditions and provisions which may significantly differ from those offered by this Agreement and any related documents.

ARTICLE XII **INSURANCE**

12.1 **Insurance.** Prior to opening the Facility for business, Franchisee must obtain the following insurance coverage under policies of insurance issued by carriers approved by Franchisor: (1) comprehensive public liability insurance and comprehensive product liability insurance against claims

for bodily and personal injury, death, director and officer liability, and property damage caused by or occurring in conjunction with the operation of the Facility or Franchisee's conduct of business pursuant to this Agreement under one (1) or more policies of insurance containing minimum liability coverage prescribed by Franchisor from time to time; (2) general casualty insurance including fire and extended coverage, vandalism, theft, burglary and malicious mischief insurance for the replacement value of the Facility and its contents; (3) Workers' Compensation or other employer's liability insurance as well as such other insurance as may be required by statute or rule in the state in which the Facility is located; (4) business interruption and rent insurance for a period adequate to reestablish normal business operations with coverage adequate to coincide with the value of the Facility Premises and its contents; (5) automobile liability coverage, including coverage of owned, non-owned and hired vehicles; and (6) comprehensive plate glass insurance, if applicable. Franchisee must maintain all required policies in force during the entire term of this Agreement and any renewals thereof. Franchisor may periodically increase or decrease the amounts of coverage required under these insurance policies and require different or additional kinds of insurance at any time, including excess liability insurance, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances. Each insurance policy must name Franchisor (and, if Franchisor so requests, the directors, employees or shareholders of Franchisor) as additional insureds and must provide Franchisor with thirty (30) days' advance written notice of any material modification, cancellation, or expiration of the policy.

Before the expiration of the term of each insurance policy, Franchisee must furnish Franchisor with a Certificate of Insurance for each policy to be maintained for the upcoming term, along with evidence of the payment of the premium for each. If Franchisee does not maintain the required insurance coverage, or does not furnish Franchisor with satisfactory evidence of the required insurance coverage and the payment of the premiums for same, Franchisor may obtain, at its option and in addition to its other rights and remedies under this Agreement, any required insurance coverage on Franchisee's behalf. If Franchisor does that, Franchisee agrees to fully cooperate with Franchisor in its effort to obtain the insurance policies, promptly execute all forms or instruments required to obtain or maintain the insurance, allow any inspections of the Facility which are required to obtain or maintain the insurance and pay to Franchisor, on demand, any costs and premiums Franchisor incurs.

Franchisee's obligation to maintain insurance coverage, as described in this Agreement, will not be reduced in any manner by reason of any separate insurance Franchisor maintains on its own behalf, nor will Franchisor's maintenance of that insurance relieve Franchisee of any obligations under this Article XII.

ARTICLE XIII **TERMINATION**

13.1 **Defaults with No Right to Cure.** Franchisee's rights and Franchisor's obligations under this Agreement will automatically terminate on delivery or, in any event, on three (3) calendar days after mailing of notice of termination to Franchisee, without further action by Franchisor and without opportunity to cure, if:

(1) Franchisee or any of its owners fails, in the time provided in, or otherwise in accordance with this Agreement to: (a) locate a site accepted by Franchisor; (b) obtain lawful possession of the Premises; (c) develop and open the Franchised Business; or (d) Franchisee or any of his/her Managers fails to successfully complete the initial training program;

(2) Franchisee or any of its owners abandons or fails to operate the Franchised Business for three (3) consecutive days during which Franchisee is required to operate the

business under the terms of this Agreement, or any shorter period after which it is not unreasonable under the facts and circumstances for Franchisor to conclude that Franchisee does not intend to continue to operate the business, unless such failure to operate is due to fire, flood, earthquake or similar causes beyond Franchisee's control, or surrenders or transfers control without Franchisor's prior written approval;

(3) Franchisee or any of its owners has made any material misrepresentation or omission in its application for the Franchised Business, including, but not limited to, failure to disclose any prior litigation or criminal convictions (other than minor traffic offenses);

(4) Franchisee or any of its owners is judged bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, is unable to pay its debts as they become due, or a petition under any bankruptcy law is filed against Franchisee or any of its owners or a receiver or other custodian is appointed for a substantial part of the assets of the Franchised Business;

(5) Franchisee or any of its owners is convicted by a trial court of or pleads no contest to a felony, or to any crime or offense that may adversely affect the reputation of the Franchisee or any owner or the Franchised Business or the goodwill associated with the Proprietary Marks or engages in any misconduct which unfavorably affects the reputation of the Franchisee or any owner of the Franchised Business, Franchisor or the goodwill associated with the Proprietary Marks (including, but not limited to, child abuse or other mistreatment, health or safety hazards, drug or alcohol problems, or allowing unlawful activities or unauthorized or illegal items to be used or distributed at the Premises or in connection with the Franchised Business);

(6) Franchisee or any of the Franchisee's owners makes an unauthorized transfer as defined in this Agreement;

(7) Franchisee or any of the Franchisee's owners makes any unauthorized use or disclosure of or duplicates any copy of any Confidential Information (including but not limited to Customer List), makes any unauthorized use of the Proprietary Marks, or uses, duplicates, or discloses any portion of the Confidential Operations Manual or Franchisee and/or any other person/entity violates any restriction on ownership, operation etc. of a Similar Business (as hereinafter defined);

(8) Franchisee or any of the Franchisee's owners loses the right to possession of the Premises and does not relocate the Franchised Business to other premises in accordance with this Agreement;

(9) Franchisee and/or any of Franchisee's owners (and/or any affiliate of Franchisee and/or any affiliate's owner) makes any knowing misrepresentation to Franchisor or any affiliate, including, but not limited to, any misrepresentation of Gross Revenue and/or any amounts due Franchisor and/or any affiliate and/or commits any other act or omission constituting fraud, misrepresentation or similar act or omission, whether with respect to Franchisor, any of the Franchisor-related entities and/or any third party (Franchisee agrees that any fraud, misrepresentation or similar act or omission by Franchisee, etc. is by its nature incurable, since it would adversely affect the goodwill associated with the Proprietary Marks and/or irrevocably damage the relationship between Franchisee and Franchisor);

(10) Franchisee (and/or any of the Franchisee's owners and/or affiliate of Franchisee) engages in any legal action (including arbitration, but not including mediation) against Franchisor

and/or any of the Franchisor-related persons/entities and does not receive a final judgment or award substantially in his/her favor on the merits;

(11) Franchisee fails, for a period of ten (10) days after notification of non-compliance, to comply with any federal, state or local law or regulation applicable to the operation of the Franchised Business;

(12) Franchisee violates any material law pertaining to the operation of the Franchised Business, whether or not Franchisee receives notice of non-compliance;

(13) there are five (5) or more customer complaints with respect to Franchisee's Franchised Business in any twelve (12) month period, whether or not resolved; and/or

(14) Franchisee has failed to retain (or otherwise fails to produce on request) any records required to be maintained by Franchisor's record retention policy or otherwise are required for Franchisor to confirm Franchisee's compliance with the provisions of this or any other agreement; and/or

(15) Franchisee breaches the non-disclosure provision pertaining to this Agreement set forth in Section 10.2 and 10.3 hereof.

13.2 Defaults with Right to Cure. Franchisee's rights and Franchisor's obligations under this Agreement will automatically terminate on Franchisor's mailing of notice of termination to Franchisee, without further action by Franchisor and without further opportunity to cure beyond that set forth in this Section, if Franchisee, any of the Franchisee's owners or any affiliate of any of the foregoing:

13.2.1 Five (5) Day Cure. Fail to report accurately the Gross Revenue of the Franchised Business; or fail to submit, in fully accurate and complete form and when required, any other report due under this Agreement, any lease/sublease or otherwise; or fail to make payments of any amounts due Franchisor, any affiliate and/or any supplier/creditor of Franchisee; or use the System and the Proprietary Marks at or from a location other than from within the Exclusive Territory; or sell any product, including the Products and Services, and service customers from a location outside of the Exclusive Territory and do not correct such failure within five (5) calendar days after written notice is mailed to Franchisee;

13.2.2 Thirty (30) Day Cure. Cause or permit to exist any default under the lease or sublease for the Premises and fail to cure such default within the applicable cure period set forth in the lease or sublease; fail to attend any make-up session of a regional meeting; fail to remain current in Franchisee's obligations to taxing authorities, landlords, equipment lessors, suppliers or others; or fail to comply with any other provision of this Agreement, or any other agreement with Franchisor and/or any affiliate of Franchisor, or any specification, standard or operating procedure or rule prescribed by Franchisor (including reporting requirements); Franchisee (or its owners) fails to pay any federal or state income tax, sales or other taxes due on the operations of the Franchised Business, unless Franchisee is in good faith contesting its liability for such taxes or has made arrangements with the respective agency for settlement of claim and remains in compliance with same; Franchisee violates any health, safety, or sanitation law, ordinance, or regulation and does not initiate corrective measures after written notice is delivered to the Franchisee and complete such corrective measures within the time period specified by the agency involved; and, in any such case, do not: (a) correct such failure within thirty (30) calendar days after written notice of such failure to comply is mailed to Franchisee; or (b) if such failure cannot reasonably be corrected within such thirty (30) day period, undertake within thirty (30) calendar days after such written notice is mailed to Franchisee, and diligently continue until completion, efforts to bring the Franchised Business into full compliance and furnish, at Franchisor's request, proof acceptable to

Franchisor of such efforts and the date full compliance will be achieved; provided that, in any event, such defaults must be fully cured within ninety (90) calendar days after such written notice is mailed to Franchisee.

13.3 Repeated Defaults. Franchisee's rights and Franchisor's obligations under this Agreement will terminate without further action by Franchisor, or notice to Franchisee, if Franchisee or any affiliate fails on two (2) or more separate occasions within any period of twelve (12) consecutive months, or on three (3) or more separate occasions within any period of twenty-four (24) consecutive months, to comply with any material provisions (whether the same or different) of this Agreement and/or the Confidential Operations Manual, whether or not such failures to comply are timely corrected.

If Franchisee (and/or any affiliate) have (a) defaulted, on two (2) or more separate occasions within any period of twelve (12) consecutive months, or on three (3) or more separate occasions within any period of twenty-four (24) consecutive months, in any obligation(s) (whether the same or different), whether or not such defaults are timely corrected, or (b) have committed any default, or have violated any material obligation to Franchisor and/or any of the Franchisor-related persons/entities, which is incurable, or (c) have committed any material default, or have violated any material obligation to Franchisor and/or any of the Franchisor-related persons/entities, which remains uncured after any applicable cure period, whether under this Agreement, any other agreement with Franchisor and/or any of its affiliates, the Confidential Operations Manual or otherwise, then Franchisor may cancel any and/or all of Franchisee's rights of first refusal, and/or any other territorial or similar rights, whether arising under this Agreement, any other agreement and/or otherwise.

13.4 No Equity on Termination, etc. Franchisee's ownership of the Franchised Business is controlled by the provisions of this Agreement and Franchisee will have no equity or other continuing interest in the Franchised Business, any goodwill associated with it or otherwise, or any right to compensation, return of amounts paid or otherwise, at the expiration and/or termination of the term of the Franchised Business.

13.5 Content and Delivery of Notice of Termination. Termination for any cause shall be accomplished by mailing or delivering written notice of termination to the Franchisee, which notice shall state the grounds thereof. Any such notice shall be delivered by registered or certified mail, sent by telegram or personally delivered to the Franchisee or left with a responsible person at Franchisee's place of business or at the home(s) of its owner(s). Termination shall be effective upon the Franchisee's receipt of such written notice, unless a later date is specified therein, in which event termination shall be effective on such later date. Any termination becomes effective at the close of business on the day on which it takes effect.

13.6 Judicial Termination. Anything in this Agreement to the contrary notwithstanding, if a court, arbitrator or court-appointed magistrate or referee having jurisdiction of the matter has entered its judgment or award that a party has good cause to cancel or terminate this Agreement, or may be relieved from its obligations hereunder, this Agreement shall be deemed terminated as of the date such judgment or award becomes final. Unless Franchisor has terminated this Agreement pursuant to one of the other provisions of this Article XIII, this Agreement shall remain in force during the pendency of any such proceeding and any appeals therefrom until such judgment has become final, and shall thereupon be terminated.

13.7 Injunctive Relief. Franchisee agrees that the Franchised Business is, or is likely to be, one of a large number of businesses similarly situated and selling to the public similar products and services, and that the failure on the part of Franchisee to comply with the terms of his/her Franchise Agreement could cause irreparable damage to Franchisor and/or to some or all other Franchisees.

Therefore, it is agreed that in the event of a breach or threatened breach of any of the terms of this Agreement by Franchisee, Franchisor shall forthwith be entitled to an injunction restraining such breach, and/or to a decree of specific performance, as applicable, without having to show or prove any actual damage. This remedy shall be in addition to, and not in lieu of, all other remedies or rights which Franchisor might have by virtue of any breach of this Agreement by Franchisee.

13.8 Cross-Defaults, Non-Exclusive Remedies, etc. Cross-Defaults, Non-Exclusive Remedies, etc. Any default by Franchisee (or any person/Company affiliated with Franchisee) under this Agreement may be regarded as a default under any other agreement between Franchisor (or any affiliate of Franchisor) and Franchisee (or any affiliate of Franchisee). Any default by Franchisee (or any person/Company affiliated with Franchisee) under any other agreement, including, but not limited to, any lease and/or sublease, between Franchisor (or any affiliate of Franchisor) and Franchisee (or any person/Company affiliated with Franchisee), and any default by Franchisee (or any person/Company affiliated with Franchisee) under any obligation to Franchisor (or any affiliate of Franchisor) may be regarded as a default under this Agreement. Any default by Franchisee (or any person/Company affiliated with Franchisee) under any lease, sublease, loan agreement, security interest or otherwise, whether with Franchisor, any affiliate of Franchisor and/or any third party may be regarded as a default under this Agreement and/or any other agreement between Franchisor (or any affiliate of Franchisor) and Franchisee (or any affiliate of Franchisee).

In each of the foregoing cases, Franchisor (and any affiliate of Franchisor) will have all remedies allowed at law, including termination of Franchisee's rights (and/or those of any person/Company affiliated with Franchisee) and Franchisor's (and/or Franchisor's affiliates') obligations. No right or remedy which Franchisor may have (including termination) is exclusive of any other right or remedy provided under law or equity and Franchisor may pursue any rights and/or remedies available.

13.9 Setoffs, etc. Franchisee waives any and all existing and future claims and setoffs against any amounts due hereunder, which amounts shall be paid when due regardless of any other claims which Franchisee may have against Franchisor. However, Franchisor shall be entitled to apply or cause to be applied against amounts due to it or its affiliates any amounts which may from time to time be held by Franchisor or its affiliates on Franchisee's behalf or be owed to Franchisee by Franchisor or its affiliates. Notwithstanding any designation by Franchisee, Franchisor (and/or any affiliate) will have sole and absolute discretion to apply any payments received from Franchisee, whether designated as payable to Franchisor, the Fund or otherwise, to any past due or other indebtedness of Franchisee (or any affiliate of Franchisee) for Continuing Service Fees, advertising contributions, purchases, interest or otherwise. Franchisor (and/or any affiliate) may set off from any amounts that may be owed to Franchisee (or any affiliate of Franchisee) any amount that Franchisee owes to Franchisor (and/or any affiliate) or with respect to any advertising contribution. In particular, Franchisor may retain any amounts it has received for Franchisee's account (whether rebates or other funds and whether paid by or due from suppliers or otherwise) as a credit and payment against any amounts that Franchisee (or any affiliate of Franchisee) owes or will owe to Franchisor (or any affiliate) or with respect to any advertising contribution. Franchisor may do so without notice at any time. However, Franchisee does not have the right to offset or withhold payments owed to Franchisor (and/or any affiliate) for amounts purportedly due Franchisee (or any affiliate of Franchisee) from Franchisor and/or any affiliate. Franchisor may condition Franchisee's participation in any program (including, but not limited to, any program involving payments from third party suppliers or otherwise) as Franchisor determines in its sole and absolute discretion, including, but not limited to, Franchisee being a **Coffee Perks** Franchisee in good standing and not in default under this or any other agreement with Franchisor or any affiliated entity.

ARTICLE XIV
THE FRANCHISEE'S RIGHTS AND OBLIGATIONS UPON TERMINATION OR
EXPIRATION

14.1 **Payment of Amounts Owed to the Franchisor and Other Creditors.** The Franchisee agrees to pay, within seven (7) days of the effective date of termination or expiration of this Agreement, all amounts owed to the Franchisor and any Franchisor affiliated with the Franchisor and the Franchisee's trade and other creditors which are then unpaid. All periodic payments shall be deemed to accrue daily and shall be adjusted accordingly.

14.2 **Return of Manuals and Retention of Records.** The Franchisee agrees that, within five (5) days of the effective date of termination, non-renewal or expiration of this Agreement for any reason, he/she will immediately return to the Franchisor all copies of the Confidential Operations Manual and all lists of customers, prospect and leads of the Facility, vendor information and materials and all promotional or other materials of a proprietary nature or which bear any of the Proprietary Marks. The Franchisee shall retain all business records for at least three (3) years following the expiration of termination of this Agreement, and shall keep the Franchisor advised of the location of such records.

14.3 **Cancellation of Assumed Names/Transfer of Phone Numbers.** The Franchisee agrees, upon termination, non-renewal or expiration of this Agreement for any reason, to take such action as may be required to cancel all registrations relating to the use of any of the Proprietary Marks, including, but not limited to, any electronic address, domain name, search engine or Website that associates Franchisee with Franchisor, cancel or assign memberships in any designated trade associations, the Facility or the Proprietary Marks (if Franchisor allowed Franchisee to establish same), and will not directly or indirectly at any time or in any manner identify any premises or any business as a franchise, or himself or herself as a Franchisee, of the Franchisor; and the Franchisee shall not, in any manner or for any purpose, use any of the Proprietary Marks or any colorable imitation thereof. The Franchisee shall notify the telephone company and all listing agencies of the termination or expiration of the Franchisee's right to use any telephone number and any classified or other telephone directory listings associated with such names and to authorize the transfer of same to the Franchisor or its new Franchisee. The Franchisee acknowledges that, as between the Franchisor and Franchisee, the Franchisor has the sole rights to and interest in all telephone numbers and directory listings associated with the Proprietary Marks. The Franchisee will provide the Franchisor, on execution, with an undated assignment of the telephone number to the Franchisor, in the form annexed hereto as Exhibit "C".

14.4 **Signs and Appearance of the Franchisee's Facility.** In the event that the Franchisee maintains possession of the Premises subsequent to the termination or expiration of this Agreement, the Franchisee agrees to immediately, upon request from the Franchisor, make such alterations and removals or changes in signs and colors as the Franchisor may reasonably request so as to distinguish effectively the Premises from its former appearance and from the then-prevailing Facility image.

14.5 **Continuing Obligations.** All obligations of the parties hereto which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect, notwithstanding such expiration or termination. In particular, but without limiting the generality of the foregoing, the provisions of Articles IX, X, XIII and XV hereof shall survive termination or expiration of this Agreement.

14.6 **Termination of Lease.** Breach of this Agreement by the Franchisee shall constitute a breach of Franchisee's Facility's lease; a breach of the lease shall constitute a breach of this Agreement. All payments required to be made by the Franchisee hereunder to the Franchisor shall be deemed to be additional rent pursuant to the lease. In the event that this Agreement expires or is terminated for any

reason whatsoever by either party, the Franchisee shall immediately upon such expiration or termination, if requested by the Franchisor, vacate the Premises and deliver up possession to the landlord, subject to the terms of the Option for Assignment of Lease attached hereto as Exhibit "B". Termination of this Agreement shall, at the Franchisor's option, be deemed to be termination of the lease. The Franchisee shall leave the Premises in a clean, tidy condition, free of debris, and shall remove therefrom only his/her own personal property. The Franchisee acknowledges that upon such termination, all leasehold improvements and fixtures on the Premises shall become the Franchisor's property, without compensation to the Franchisee.

14.7 Franchisor's Right to Repurchase. Upon expiration, non-renewal or termination of this Agreement, Franchisor shall have the option, exercisable by written notice to Franchisee within thirty (30) days after expiration, non-renewal or termination of this Agreement, to purchase from Franchisee for cash all tangible assets of the Facility, including real property. Franchisor will also be entitled to an assignment of Franchisee's lease for the Premises of the Facility or, if an assignment is prohibited, a sublease for the full remaining term of the lease and on the same terms and conditions as Franchisee's lease. The purchase price for said assets shall be an amount agreed upon by Franchisee and Franchisor. In the event Franchisee and Franchisor cannot agree on a purchase price within a reasonable time, the purchase price shall be determined by an independent appraiser selected as follows: Franchisor and Franchisee shall each select one (1) appraiser and those two (2) appraisers shall select a third appraiser who shall determine the purchase price. The decision of the third appraiser shall be binding on all parties. Franchisor and Franchisee shall each pay the cost of their respective appraisers, and the cost of the third appraiser shall be divided equally between Franchisor and Franchisee. In determining the purchase price, no value shall be included for intangibles, goodwill or going concern value.

The closing of Franchisor's purchase of the assets (the "Closing") shall occur at a time and place designated by Franchisor, but in no event later than sixty (60) days after determination of the purchase price. The purchase price shall be paid in a manner and in terms determined by the Franchisor. Franchisor shall have the right to offset against and reduce the amount of the first installment of the purchase price, and defer said installment, if necessary, by any and all amounts owed by Franchisee to Franchisor or any of its affiliates. If Franchisee is unable to deliver clear title to all the purchased assets or if there are other unresolved issues, the Closing will be accomplished through an escrow.

If Franchisor exercises the repurchase option set forth herein, Franchisor shall have the right, to immediately appoint a manager to maintain the operation of the Facility in order to maintain continuity. Alternatively, Franchisor may require Franchisee to close the Facility during such time period without removing any assets other than perishable products. Franchisor has an unrestricted right to assign the option to repurchase set forth herein.

14.8 Liquidated Damages. Upon termination of this Agreement according to its terms and conditions, as a result of a material breach of this Agreement by Franchisee, Franchisee agrees to pay to Franchisor within fifteen (15) days after the effective date of this Agreement's termination, in addition to the amounts owed hereunder, liquidated damages equal to the present value (using the then-current 30-Year Treasury Bond rate) of the Continuing Service Fees Franchisee would have paid on the product of (a) the Facility's average monthly Gross Revenue during the twelve (12) months of operation preceding the effective date of termination multiplied by (b) the number of months remaining in the Agreement had it not been terminated.

The parties hereto acknowledge and agree that it would be impracticable to determine precisely the damages Franchisor would incur from this Agreement's termination and the loss of cash flow from Continuing Service Fees due to, among other things, the complications of determining what costs, if any, Franchisor might have saved and how much the Continuing Service Fees would have grown over what

would have been this Agreement's remaining term. The parties hereto consider this liquidated damages provision to be a reasonable, good faith pre-estimate of those damages.

The liquidated damages provision only covers Franchisor's damages from the loss of cash flow from the Continuing Service Fees. It does not cover any other damages, including damages to its reputation with the public and landlords and damages arising from a violation of any provision of this Agreement other than the Continuing Service Fee section. Franchisee and each of its owners agree that the liquidated damages provision does not give Franchisor an adequate remedy at law for any default under, or for the enforcement of, any provision of this Agreement other than the Continuing Service Fee section.

ARTICLE XV **NON-COMPETITION**

15.1 Non-Competition During Agreement. During the term of this Agreement, the Franchisee shall not individually or in conjunction with any person, firm, partnership, corporation or other third party as principal, agent, shareholder, director, officer, employee, consultant or guarantor or in any other manner whatsoever, directly or indirectly, carry on or be engaged in or concerned with or interested in, financially or otherwise, or advise in the establishment or operation of, any Competitive Business.

15.2 Non-Competition Following Termination, Expiration or Transfer. In the event of the expiration, non-renewal or termination of this Agreement for any reason whatsoever, or in the event this Agreement is transferred pursuant to Section 16.2, 16.5 or 16.8 hereof, the Franchisee (or, in the case of a Transfer among the individuals comprising the Franchisee pursuant to Section 16.5, the Transferor individual(s)) shall not, without the prior written consent of the Franchisor, at any time during the period of two (2) years from the date of such expiration or termination or transfer, either individually or in conjunction with any person, firm, partnership or corporation or other third party as principal, agent, shareholder, director, officer, employee, consultant, guarantor or in any other manner whatsoever, directly or indirectly, carry on, be engaged in or be concerned with or interested in, financially or otherwise, or advise in the operation of, within a radius in any direction of fifty (50) miles of the state in which the Franchised Business is located or within a radius in any direction of fifty (50) miles of any other Facility as of the date of this Agreement, any Competitive Business.

15.3 Interference with Employment Relations. During the term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement for any reason whatsoever, or the transfer of this Agreement pursuant to Section 16.2, 16.5 or 16.8 hereof, the Franchisee (or, in the case of a Transfer among the individuals comprising the Franchisee pursuant to Section 16.5, the Transferor individual(s)) shall not solicit for employment any person who is, at the time of such solicitation, employed by the Franchisor or by any other Franchisee of the Franchisor, nor shall the Franchisee directly or indirectly induce any such person to leave his or her employment.

15.4 Amendment of Restrictive Covenants. The Franchisee acknowledges that the provisions of this Article XV have been inserted for the sole benefit of the Franchisor and that the Franchisor shall have the right, from time to time during the term of this Agreement in its sole discretion, to waive in whole or in part or otherwise reduce the scope of any covenant set forth in this Article XV or any portion thereof without the Franchisee's consent, effective upon the Franchisor giving notice thereof to the Franchisee.

15.5 Other Covenants. The Franchisee covenants that after termination, non-renewal or expiration of this Agreement, regardless of the cause of termination or expiration, the Franchisee shall not, without the Franchisor's prior written consent, directly or indirectly:

(a) adopt, use, employ or trade under any of the Proprietary Marks, nor adopt, use, employ or trade under any other name, mark or symbol that constitutes a reproduction, counterfeit, copy, imitation or variation thereof, or which is confusingly similar thereto;

(b) adopt, use, employ or trade under any description or representation that falsely suggests or indicates a connection or association with the Franchisor;

(c) copy, communicate or otherwise use for the benefit of the Franchisee or of any other person any information deemed confidential pursuant to Article X hereof; or

(d) contest or aid others in contesting the validity or enforceability of the Proprietary Marks or the System, contrary to Article IX hereof.

15.6 **Power of Attorney.** The Franchisee hereby irrevocably appoints the Secretary of the Franchisor as the Franchisee's true and lawful attorney to take any action, execute any document, or do any other act or things required by Articles IX and XIV hereof at the Franchisee's sole risk and expense upon the Franchisee's failure or refusal to comply fully therewith within ten (10) days after termination, non-renewal or expiration of this Agreement; and the Franchisee further consents and agrees that the Franchisor or its designated agents shall have the right to enter the Facility at any time, at the Franchisee's sole risk and expense and without liability for trespass, tort or other act, to make any alterations thereto required by Section 14.4 hereof upon the Franchisee's failure or refusal to do so within ten (10) days after the termination, non-renewal or expiration of this Agreement, and the Franchisee hereby covenants and agrees for its successors and assigns to allow, ratify and confirm whatever the Secretary of the Franchisor shall do by virtue of the foregoing power of attorney. The Franchisee hereby declares that the powers of attorney herein granted may be exercised during any subsequent legal incapacity on his/her part.

ARTICLE XVI

ASSIGNMENT, TRANSFER AND SALE

16.1 **By Franchisor.** Franchisor shall have the right, without the need for Franchisee's consent, to assign, transfer or sell its rights under this Agreement to any person, partnership, corporation or other legal entity provided that the transferee agrees in writing to assume all obligations undertaken by Franchisor herein and Franchisee receives a statement from both Franchisor and its transferee to that effect. Upon such assignment and assumption, Franchisor shall be under no further obligation hereunder, except for accrued liabilities, if any. Franchisee further agrees and affirms that Franchisor may go public; may engage in a private placement of some or all of its securities; may merge, acquire other corporations, or be acquired by another corporation; and/or may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. With regard to any of the above sales, assignments and dispositions, Franchisee expressly and specifically waives any claims, demands or damages arising from or related to the loss of Franchisor's name, Proprietary Marks (or any variation thereof) and System and/or the loss of association with or identification of Coffee Perks Franchise, Inc. as Franchisor under this Agreement. Franchisee specifically waives any and all other claims, demands or damages arising from or related to the foregoing merger, acquisition and other business combination activities including, without limitation, any claim of divided loyalty, breach of fiduciary duty, fraud, breach of contract or breach of the implied covenant of good faith and fair dealing.

Franchisee agrees that Franchisor has the right, now or in the future, to sell to, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business, regardless of the location of that chain's or business' facilities, and to operate, franchise or license those businesses and/or facilities as "Coffee Perks" Facilities operating under the

Proprietary Marks or any other marks following Franchisor's purchase, merger, acquisition or affiliation, regardless of the location of these facilities, which Franchisee acknowledges may be within his/her Exclusive Territory, proximate thereto or proximate to any of Franchisee's locations.

If Franchisor assigns its rights in this Agreement, nothing herein shall be deemed to require Franchisor to remain in the coffee servicing equipment and maintenance business or to offer or sell any products or services to Franchisee.

16.2 **By Franchisee.** The Franchisee shall not, in whole or in part, voluntarily or involuntarily, directly or indirectly, pledge, encumber, mortgage, assign, subdivide, subfranchise or otherwise transfer any interest in this Agreement, or any interest in the Facility or the franchise granted hereunder (including, without limitation, by the personal representatives of the Franchisee in the event of the death of the non-corporate Franchisee, by will, declaration of, or transfer in, trust or the laws of intestate succession), or any interest in the Franchisee or in any proprietorship, partnership or corporation which owns any interest in this Agreement or in the Facility or the franchise granted hereunder or in the Franchisee, nor offer, permit or suffer the same without the prior written approval of the Franchisor. Approval shall be subject to compliance with each of the following conditions either before or concurrently with the effective date of the transfer:

(a) the Franchisee being then in full compliance herewith and settling and paying to the Franchisor or its affiliates and all trade creditors of the Facility all outstanding debts;

(b) the transferee executing the Franchisor's then-current "Coffee Perks" franchise agreement and lease of the Facility (which shall have a term equal to the remainder of the term hereof) and such other ancillary agreements, instruments and documents then customarily used by the Franchisor to grant Facility franchises;

(c) the Franchisee and its officers, directors and shareholders, if a corporation, executing a general release of the Franchisor, its officers, directors and employees releasing all claims against Franchisor, its officers, directors and employees ;

(d) the transferee purchasing all of the Franchisee's assets used in the business of the Facility in accordance with all applicable bulk sales legislation and assuming all of the Franchisee's business liabilities;

(e) the transferee being an individual having adequate financial resources and otherwise meeting all the criteria for "Coffee Perks" Franchisees, ;

(f) the transferee remitting to the Franchisor a transfer fee equal to Five Thousand Dollars (\$5,000) for the administration of such transfer and the preparation, execution and filing of all documentation required by the Franchisor in connection with such transfer;

(g) the Franchisee and transferee entering into a written agreement of purchase and sale, the form and material terms and conditions which shall be subject to the Franchisor's reasonable approval;

(h) neither the transferee nor its owners or affiliates operate or have any ownership interest in a business that sells the Products and Services or which in any way competes with a "Coffee Perks" Facility;

(i) Franchisor determines that the purchase price and payment terms will not adversely affect the transferee's operation of the Facility;

(j) if Franchisee finances any portion of the purchase price, Franchisee and/or its owners agree that all of the transferee's obligations under promissory notes, agreements or security interests reserved in the Facility are subordinate to the transferee's obligation to pay Continuing Service Fees, Advertising Fees and Cooperative contributions, and other amounts due to Franchisor, its affiliates and third party vendors and otherwise to comply with this Agreement;

(k) Franchisee or its transferring owners (and their spouses) will not, for two (2) years beginning on the transfer's effective date, engage in any of the activities prescribed in Article XV hereof; and

(l) Franchisee and its transferring owners will not directly or indirectly at any time or in any manner (except with respect to other Facilities they own and operate) identify themselves or any business as a current or former "Coffee Perks" Facility or as one of Franchisor's Franchisees; use any Proprietary Mark, any colorable imitation of a Proprietary Mark, or other indicia of a "Coffee Perks" Facility in any manner or for any purpose; or utilize for any purpose any trade name, trade or service mark, or other commercial symbol that suggests or indicates a connection or association with Franchisor.

16.3 Effect of Consent to Transfer. Franchisor's consent to a transfer of this Agreement and the Facility or any interest in Franchisee is not a representation of the fairness of the terms of any contract between Franchisee and the transferee, a guarantee of the Facility's or transferee's prospects of success, or a waiver of any claims Franchisor has against Franchisee (or its owners) or of Franchisor's right to demand the transferee's full compliance with this Agreement's terms and conditions.

16.4 Assignment to Corporation. Notwithstanding Section 16.2, after obtaining the written consent of the Franchisor, the franchise granted hereunder may, subject to Section 17.1, be assigned by the Franchisee without charge, once only, to a newly formed corporation which shall conduct no business other than the Franchised Business granted hereunder, which is actively managed by the Franchisee and in which the Franchisee at all times owns and controls one hundred (100%) of the equity and voting rights and interests therein. The Franchisee and such corporation shall execute both Schedule "C" and Exhibit "D" attached hereto.

In the event of such an assignment by the Franchisee of the Franchise Business granted hereunder to a corporation which the Franchisee controls, the Franchisee agrees, as a condition of being permitted to make such assignment, to cause the corporation and its directors and shareholders to acknowledge this Agreement and to agree in writing to be bound by the provisions hereof, cause the corporation in its Articles of Incorporation to provide in effect that its object or business is confined exclusively to the operation of a "Coffee Perks" Facility as provided in this Agreement, and cause the corporation to restrict the issue of, and its directors and shareholders to restrict the transfer of, shares of the corporation so that the Franchisee shall continuously own greater than fifty percent (50%) of the equity and voting rights and interests in such corporation.

16.5 Transfer Among Franchisees. In the event that the Franchisee comprises two (2) or more individuals, the Franchisor shall not unreasonably withhold its consent to a sale, assignment or transfer of any kind (a "Transfer") of the interest of one (1) such individual (the "Transferor") in the franchise hereunder to the other individual or individuals comprising the Franchisee, if but only if:

(a) the Transferor transfers the whole of such interest in this Agreement and the lease and all other agreements relating to the franchise hereunder;

(b) the Transfer shall not relieve the Transferor of the Transferor's obligations hereunder to the Franchisor;

(c) the Transfer shall be completed in accordance with all applicable bulk sales legislation;

(d) the Transferor shall have given the Franchisor at least thirty (30) days' prior written notice of the proposed Transfer, together with all reasonable details thereof which the Franchisor may demand;

(e) the Transferor and the remaining individual(s) with an interest in the Franchisee execute such documents as may be required by the Franchisor in connection with such Transfer; and

(f) the remaining individual(s) with an interest in the Franchisee is (are), in the opinion of the Franchisor, capable of operating the business associated with the Facility without the Transferor.

16.6 Franchisor's Right of First Refusal. If the Franchisee shall at any time decide to sell the Franchised Business or the ownership interest therein, the Franchisee shall obtain a bona fide, executed written offer to purchase the Facility, together with all real or personal property, leasehold improvements and other assets used by the Franchisee in connection with the Facility, from a responsible and fully disclosed purchaser and shall submit an exact copy of such offer to the Franchisor. The Franchisor shall, for a period of thirty (30) days from the date of delivery of such offer, have the right, but not the obligation, exercisable by written notice to the Franchisee, to purchase all of the Facility and the said assets of the Franchisee for the price and on the terms and conditions contained in such offer, provided that the Franchisor may substitute cash for any form of payment proposed in such offer and there shall be deducted from the purchase price the amount of any commission or fee that would otherwise have been payable to any broker, agent or other intermediary in connection with such sale. During said thirty (30) day period, Franchisor shall have the right to inspect all of Franchisee's books and records relating to the Facility's operation, specifically including all financial records and statements for the three (3) full fiscal years preceding the date on which the thirty (30) day right of first refusal commences, and if Franchisee is a corporation, all corporate minute books and transfer records. If the Franchisor does not exercise its right of first refusal, the Franchisee may complete the sale of the Facility to such purchaser on the same terms offered to the Franchisor subject to the provisions of Section 16.2 hereof. If the sale to such purchaser is not completed within sixty (60) days after delivery of such offer to the Franchisor, the Franchisor shall again have the right of first refusal herein provided.

16.7 Temporary Operation of Business by Franchisor. For the purposes of this Section 16.7, "Franchisee" shall include the controlling shareholder of a corporate Franchisee. In the event that the Franchisee:

(a) fails to keep the Franchised Business operating during the hours required by the Franchisor (whether pursuant to the Confidential Operations Manual or otherwise);

(b) is absent from the Facility for more than three (3) consecutive days or for more than thirty (30) days in any consecutive ninety (90) day period, or abandons the Premises; or

(c) dies or becomes incapacitated and the Franchisee's heirs or personal representatives have not yet, or do not, assume control of the business of the Facility by means of an assignment (with the Franchisor's approval) pursuant to Sections 16.2 and 16.8 hereof, then, unless and

until the Franchisor terminates this Agreement pursuant to Article XIII or Section 16.8 hereof, the Franchisor shall be entitled to enter onto the Premises and to operate and manage the business associated with the Facility for the Franchisee's (or the Franchisee's estate) account until the franchise hereunder is terminated, assigned to a party acceptable to the Franchisor or until the Franchisee resumes control over the business associated with the Facility and operates it in accordance herewith; provided, however, that no such operation and management by the Franchisor shall continue for more than ninety (90) days without the written consent of the Franchisee or the Franchisee's personal representatives or the representatives of the Franchisee's estate. In the event that the Franchisor so operates the business associated with the Facility, it shall account to the Franchisee (or the Franchisee's estate) for all net income from such operation, less its reasonable expenses incurred in, and a reasonable management fee not to exceed five (5%) percent for, its operation of the Facility.

16.8 Death or Incapacity. For the purposes of this Section 16.8, "Franchisee" shall include the controlling shareholder of a corporate Franchisee. If the Franchisee dies or becomes incapacitated (which shall be deemed to include, in the reasonable opinion of the Franchisor, the inability of the Franchisee, by reason of physical or mental illness or disability, to operate the business of the Facility in the ordinary course for a period of thirty (30) days or more in any consecutive ninety (90) day period) so that he/she (or, in the case of his/her incapacity only, the Manager(s)) is not able to devote full time and attention to the operation of the business of the Facility, then the rights granted hereunder may be transferred to the heirs or personal representatives of the Franchisee, if the Franchisor's prior written consent is obtained, within twelve (12) months from the beginning of the disability or from the date of death. In no event will the Franchisor be willing to provide its consent to such transfer unless the conditions set forth in Section 16.2 hereof (save and except the requirement to pay the Franchisor's then-current transfer fee) are satisfied. In the event that such conditions (save and except the requirement to pay the Franchisor's then-current transfer fee) are not satisfied, the Franchisor shall have the right in its sole discretion to terminate this Agreement by notice, in the case of death, to the estate of the Franchisee and, in the case of incapacity of the Franchisee, to the Franchisee.

ARTICLE XVII

PARTNERSHIP AND CORPORATE FRANCHISEE

17.1 Partnership and Corporate Franchisee. If the Franchisee or any successor thereof is a partnership or corporation, or if the franchise granted hereunder is assigned to a partnership or corporation pursuant to Article XVI hereof:

(a) upon the execution of this Agreement (or, in the case of an assignment, upon such assignment) and subject to the provisions of Article XVI hereof, upon each transfer of an interest in this Agreement or in the Franchisee, all holders of an interest in the Franchisee shall execute a written agreement with the Franchisor in the form required by the Franchisor individually undertaking to be bound, jointly and severally, by all of the terms of this Agreement;

(b) the articles of partnership, partnership agreement, articles of incorporation, by-laws and other organization documents shall recite that the issuance and transfer of any interest therein is restricted by the terms of Article XVI of this Agreement and copies thereof shall be furnished to the Franchisor at Franchisor's request. The Franchisee shall also submit to the Franchisor, at any time upon request, a list of all directors, officers and partners or beneficial shareholders reflecting their respective interests in the Franchisee and other information regarding the Franchisee, in such form as the Franchisor may require; and

(c) the Franchisee, if it is a corporation, shall maintain stop transfer instructions against the transfer on its records of any securities with voting rights subject to the restrictions of Article

XVI hereof and shall issue no such securities, nor permit any issued securities to remain outstanding, upon the face of which the following printed legend does not legibly and conspicuously appear: "The transfer of the shares represented by this certificate is subject to the terms and conditions of a Franchise Agreement with Coffee Perks Franchise, Inc., dated _____."

ARTICLE XVIII **TAXES, PERMITS AND INDEBTEDNESS**

18.1 **Responsibility for Taxes.** The Franchisee shall be solely responsible for all expenses of the business franchised by this Agreement and shall promptly pay when due all taxes levied or assessed and all indebtedness to the Franchisor or to others incurred by the Franchisee in connection with the conduct of such business. The Franchisor and its affiliates shall have no liability for any sales, use, service occupation, excise, gross receipts, income, property, payroll or other taxes, whether levied upon the Franchisee, the Franchised Business, the Franchisee's property, or the Franchisor and its affiliates, in connection with the sales made or business conducted during the operation by the Franchisee (except any taxes the Franchisor and its affiliates are required by law to collect from the Franchisee with respect to purchases made from the Franchisor or such affiliates). Payment of all such taxes shall be the Franchisee's sole responsibility.

18.2 **Compliance with Laws.** The Franchisee shall comply with all federal, provincial and local by-laws, rules and regulations, and shall timely obtain any and all permits, certificates or licenses necessary for the full and proper conduct of the business licensed by this Agreement, including, without limitation, licenses to do business, name registrations and sales tax permits.

18.3 **Notice of Litigation.** The Franchisee shall notify the Franchisor in writing within five (5) days of the commencement of any action, suit or proceeding and of the issuance of any order, writ, injunction, award or decree of any court, agency or other government instrumentality which may adversely affect the operation or financial condition of the business associated with the Facility.

ARTICLE XIX **DISCOUNTS**

19.1 **Discounts to Franchisor.** In the event that any volume discounts, rebates, allowances, or other similar discounts are received by the Franchisor from any manufacturer or other supplier designated by the Franchisor on account of purchases made by the Franchisor or its affiliates for its account or for the account of the Franchisee, or by the Franchisee directly for his/her own account, the Franchisor shall have the option of remitting same to the Fund or retain the full amount of the said volume discounts, rebates, allowances, or other similar discounts.

ARTICLE XX **CUSTOMER RELATIONS**

20.1 **Limitation on Services Offered.** Franchisee shall not offer any services of any kind at the Premises, from the Motor Vehicles or in any other way associated or connected with the Proprietary Marks, except those services authorized by this Agreement, the Confidential Operations Manual and any other written consent which Franchisor may from time to time authorize.

20.2 **Quality of Service.** In order to protect the reputation of the Franchisor and the Franchised Business and increase consumer confidence in the Proprietary Marks and the System, Franchisee agrees to service all of its customers in a timely and workmanlike manner, for the agreed

charges and in compliance with all applicable laws and regulations. Franchisee shall also observe all required safety standards in the course of performing services.

20.3 **Customer's Premises.** To maintain and enhance the reputation of Franchisee's own business and that of the **Coffee Perks** business, Franchisee shall leave each customer's premises in a condition equal to or better than that in which he/she finds them.

20.4 **Employment and Retainer Agreements.** Franchisee shall cause each agreement for employing or retaining either employees or independent contractors to contain provisions which require all employees and/or independent contractors to comply with all the foregoing provisions of Article XX hereof. Franchisee shall in any event be responsible for full compliance by his/her employees and independent contractors and their own employees and independent contractors with the provisions of Article XX hereof.

20.5 **Complaints.** Franchisee shall respond promptly and in good faith to any complaints raised by his/her customers. Franchisee shall perform corrective work promptly, courteously and in a workmanlike manner. No later than twenty-four (24) hours following Franchisee's receipt of any customer complaint, Franchisee shall provide to Franchisor a complaints report listing the name, addresses, and telephone numbers of any customers who have made a complaint, a brief description of the complaint, and corrective work which has been or will be completed.

20.5.1 Franchisor may make such investigation of the matter as it deems appropriate, including inspection of the job site and conferences with the complaining customer. If Franchisor determines Franchisee has failed to comply with the terms and conditions of this Agreement in performing work for such customer, Franchisor may, in its sole and absolute discretion, so notify both Franchisee and Franchisee's customer. If Franchisee does not promptly complete all work necessary to comply with this Agreement, Franchisor may, but shall not be required to, complete such work itself, utilizing monies from the Fund.

20.5.2 Franchisee hereby agrees to indemnify Franchisor and/or its affiliates and/or the Fund from any and all costs, damages, losses, legal fees, and any other expenses which Franchisor and/or its affiliates and/or the Fund may incur in completing such work, and further agrees to reimburse Franchisor and/or its affiliates and/or the Fund for all funds advanced for such purpose, with interest at the rate provided by Section 25.13 hereof. Franchisee's obligations under this subsection 20.6.2 shall survive expiration or termination of this Agreement.

20.5.3 Franchisor's performance of such corrective work shall under no circumstances be deemed a waiver of its right to declare a default under this Agreement, and to terminate this Agreement for Franchisee's default if not timely cured.

20.7 **Legal Actions.** Franchisee shall notify Franchisor promptly, in writing, of any civil action or any administrative proceeding or criminal prosecution commenced against Franchisee and/or its owners in any way arising out of or in connection with the operation of the Franchised Business.

ARTICLE XXI

RELATIONSHIP AND INDEMNIFICATION

21.1 **Independent Parties.** The Franchisee is and will at all times remain an independent contractor and is not and shall not represent himself/herself to be the agent, joint venturer, partner or employee of the Franchisor, or to be related to the Franchisor other than as its independent Franchisee. No representations will be made or acts taken by the Franchisee which could establish any apparent

relationship of agency, joint venture, partnership or employment, and the Franchisor shall not be bound in any manner whatsoever by any agreements, warranties or representations made by the Franchisee to any other person, nor with respect to any other action of the Franchisee. The Franchisee shall not establish any bank account, make any purchase, apply for a loan or credit, or incur or permit any obligation to be incurred in the name or on the credit of the Franchisor.

21.2 **Non-Liability.** The Franchisor shall not be obligated or liable for any injury or death to any person, or damage to or loss of any property caused by the Franchisee's action, failure to act, negligence, breach of this Agreement or willful misconduct, nor for any liability of the Franchisee.

21.3 **Indemnification by the Franchisor.** The Franchisor shall, during the term of this Agreement only, indemnify the Franchisee and hold him or her harmless from and against all damages, losses, claims, expenses and costs (including his/her attorney and customer costs, travel, investigation and living expenses and witness fees) for which he/she is held liable or which he/she incurs in the defense of any litigation commenced against him/her as a direct result of his/her proper use of the Proprietary Marks in accordance herewith, provided that he/she has timely notified the Franchisor of such litigation or threatened litigation. The Franchisor shall have the right to participate in and to control such litigation or proceeding (including the right to compromise or settle such litigation or proceeding) to the extent that the Franchisor deems necessary or advisable, and the Franchisee shall fully cooperate with the Franchisor and execute such documents and do such acts and things as, in the opinion of the Franchisor, may be necessary.

21.4 **Indemnification by the Franchisee.** The Franchisee shall, during the term of this Agreement and after the termination or expiration of this Agreement and in addition to his/her obligations contained in Article XIV hereof, indemnify the Franchisor and its officers, directors and employees, and hold them harmless from and against all damages, losses, claims, actions, liability, expenses and costs for which they are held liable or which they incur (including solicitor and customer costs, travel, investigation and living expenses of employees and witness fees) in any litigation or proceeding as a result of or arising out of:

(a) a breach of this Agreement, or any other lease, agreement or contract to which the Franchisor and Franchisee are parties, by the Franchisee;

(b) any injury to, or loss of property of, any person in or on the Premises or on any job site;

(c) the Franchisee's taxes, liabilities, costs or expenses of his/her business;

(d) losses, claims or damages incurred by persons, other than the Franchisee, due to errors or omissions contained in financial statements prepared by the Franchisee pursuant to Section 4.8 hereof, even if caused by the negligence of the Franchisee, its employees, agents, contractors, or others for whom it is, in law, responsible;

(e) any negligent or willful act or omission of the Franchisee, improper product and food handling, any equipment failure, vehicular accidents, labor or employment issues or claims, age or sex discrimination, his/her employees, agents, servants, contractors or others for whom he/she is, in law, responsible; and

(f) any advertising or promotional material distributed, broadcast or in any way disseminated by the Franchisee or on his/her behalf, unless such material has been produced or approved in writing by the Franchisor.