

Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (exp. 6/30/2006)

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies)/Execution Date(s):**

FansEdge Incorporated  
Dreams Products, Inc.  
Dreams Franchise Corporation

- Individual(s)                       Association
- General Partnership               Limited Partnership
- Corporation-State
- Other: \_\_\_\_\_

Citizenship: DE; UT; CA

Execution Date(s): 06/03/05; 06/03/05; 06/03/05

Additional names of conveying parties attached?  Yes  No

**3. Nature of conveyance:**

- Assignment                               Merger
- Security Agreement                       Change of Name
- Other \_\_\_\_\_

**2. Name and address of receiving party(ies):**

Additional names, addresses, or citizenship attached?  Yes  No

Name: LaSalle Business Credit, LLC, as Agent for Standard Federal Bank National Association  
Internal Address: \_\_\_\_\_

Street Address: 25 Braintree Hill Office Park, Suite 303

City: Braintree

State: MA

Country: US                              Zip: 02184

- Association                              Citizenship: \_\_\_\_\_
- General Partnership                      Citizenship: \_\_\_\_\_
- Limited Partnership                      Citizenship: \_\_\_\_\_
- Corporation                              Citizenship: \_\_\_\_\_
- Other: Limited Liability Company                      Citizenship: \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

**4. Application number(s) or registration number(s) and identification or description of the Trademark(s):**

A. Trademark Application No.(s):

B. Trademark Registration No.(s):

2,403,840                              2,392,570

Additional sheet(s) attached?  Yes  No

**5. Name and address of party to whom correspondence concerning document should be mailed:**

Name: Christopher E. Kondracki  
Address: 2001 Jefferson Davis Highway  
Suite 1007  
Arlington, Virginia 22202

Phone Number: (703) 415-1555

Fax Number: (703) 415-1557

Email Address: \_\_\_\_\_

**6. Total number of applications and registrations involved:**

2

**7. Total Fee (37 CFR 2.6(b)(6) & 3.41):** \$ 65.00

- Authorized to be charged by credit card
- Authorized to be charged by Deposit Account
- Fees Enclosed

**8. Payment Information:**

Deposit Account Number: 19-3545

Authorized User Name: Christopher E. Kondracki

**9. Signature:**

Christopher E. Kondracki  
Signature

6/30/05  
Date

Christopher E. Kondracki  
Name of Person Signing

Total number of pages including cover sheet, attachments, and documents: 69

CH \$65.00 193545 2403840

## INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "**Agreement**") dated as of June 3rd, 2005 by and among: (i) FansEdge Incorporated, a Delaware corporation with its principal executive offices at 2 South University Drive, Suite 325, Plantation, Florida 33324 ("**Fansedge**"), (ii) Dreams Products, Inc., a Utah corporation with its principal executive offices at 2 South University Drive, Suite 325, Plantation, Florida 33324 ("**DPI**"), (iii) Dreams Franchise Corporation, a California corporation with its principal executive offices at 2 South University Drive, Suite 325, Plantation, Florida 33324 ("**DFC**") (Fansedge, DPI, and DFC collectively hereinafter, the "**Grantor**"), and (iv) LaSalle Business Credit, LLC, as Agent for Standard Federal Bank National Association, acting through its division, LaSalle Retail Finance, with offices at 25 Braintree Hill Office Park, Suite 303, Braintree, Massachusetts 02184 (the "**Lender**"), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

### WITNESSETH:

Reference is made to the Loan and Security Agreement dated of even date herewith (as amended, modified, supplemented or restated hereafter, the "**Loan Agreement**") by and among Dreams, Inc., a Utah corporation (the "**Lead Borrower**"); Dreams Entertainment, Inc., a Utah corporation; Dreams Retail Corporation, a Florida corporation; Dreams Paramus, LLC, a Florida limited liability company; Dreams/Pro Sports, Inc., a Florida corporation; The Greene Organization, Inc., a Florida corporation; and The Sports Collectibles & Auction Company, Inc., a Florida corporation (together with Grantor, hereinafter, the "**Borrowers**"), and the Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Loan Agreement.

The Lender has agreed to make Revolving Credit Loans to the Borrowers and to issue L/C's for the account of the Borrowers, pursuant to, and upon the terms and subject to the conditions specified in, the Loan Agreement. The obligations of the Lender to make Revolving Credit Loans and issue LC's are each conditioned upon, among other things, the execution and delivery by the Grantor of an agreement in the form hereof to secure the Liabilities.

Accordingly, the Grantor and the Lender (and each of their respective successors or assigns), hereby agree as follows:

1. **Definitions:** As used herein, the following terms shall have the following meanings:

"**Copyrights**" shall mean all copyrights and like protections in each work of authorship or derivative work thereof of Grantor, whether registered or unregistered and whether published or unpublished, including, without limitation, the copyrights listed on **EXHIBIT A** annexed hereto and made a part hereof, together with all registrations and recordings thereof and all applications in connection therewith, and any goodwill of the business connected with, and symbolized by, any of the foregoing.

**“Copyright Licenses”** shall mean all agreements, whether written or oral, providing for the grant by or to Grantor of any right to use any Copyright, including, without limitation, the agreements listed on **EXHIBIT A** annexed hereto and made a part hereof.

**“Copyright Office”** shall mean the United States Copyright Office or any other federal governmental agency which may hereafter perform its functions.

**“Intellectual Property”** shall have the meaning assigned to such term in Section 3 hereof.

**“IP Collateral”** shall have the meaning assigned to such term in Section 2 hereof.

**“Licenses”** shall mean, collectively, the Copyright Licenses, Patent Licenses and Trademark Licenses.

**“PTO”** shall mean the United States Patent and Trademark Office or any other federal governmental agency which may hereafter perform its functions.

**“Trademarks”** shall mean all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, trade styles, service marks, designs, logos and other source or business identifiers of Grantor, whether registered or unregistered, including, without limitation, the trademarks listed on **EXHIBIT B** annexed hereto and made a part hereof, together with all registrations and recordings thereof, all applications in connection therewith, and any goodwill of the business connected with, and symbolized by, any of the foregoing.

**“Trademark Licenses”** shall mean those certain license agreements between Grantor and Universal Studios Licensing, Inc., Grantor and the National Football League, Grantor and NASCAR, and Grantor and Major League Baseball each as listed on **EXHIBIT B** annexed hereto and made a part hereof.

2. **Grant of Security Interest:** In furtherance and as confirmation of the security interest granted by the Grantor to the Lender under the Loan Agreement, and as further security for the payment or performance, as the case may be, in full of the Liabilities, Grantor hereby ratifies such security interest and grants to the Lender a continuing security interest, with a power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default), in all of the present and future right, title and interest of the Grantor in and to the following property, and each item thereof, whether now owned or existing or hereafter acquired or arising, together with all products, proceeds, substitutions, and accessions of or to any of the following property (collectively, the **“IP Collateral”**):

- (a) All Copyrights and Copyright Licenses.
- (b) All Patents and Patent Licenses.
- (c) All Trademarks and Trademark Licenses.

- (d) All renewals of any of the foregoing.
- (e) All General Intangibles connected with the use of, or related to, any and all Intellectual Property (including, without limitation, all goodwill of the Grantor and its business, products and services appurtenant to, associated with, or symbolized by, any and all Intellectual Property and the use thereof).
- (f) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all Licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.
- (g) The right to sue for past, present and future infringements and dilutions of any of the foregoing.
- (h) All of the Grantor's rights corresponding to any of the foregoing throughout the world.

3. **Protection of Intellectual Property By Grantor:** Except as set forth below in this Section 3, the Grantor shall undertake the following with respect to each of the items respectively described in Sections 2(a), (b), (c), (d) and (e) (collectively, the "Intellectual Property"):

- (a) Pay all renewal fees and other fees and costs associated with maintaining the Intellectual Property and with the processing of the Intellectual Property and take all other reasonable and necessary steps to maintain each registration of the Intellectual Property.
- (b) Take all actions reasonably necessary to prevent any of the Intellectual Property from becoming forfeited, abandoned, dedicated to the public, invalidated or impaired in any way.
- (c) At the Grantor's sole cost, expense, and risk, pursue the processing of each application for registration which is the subject of the security interest created herein and not abandon or delay any such efforts.
- (d) At the Grantor's sole cost, expense, and risk, take any and all action which the Grantor reasonably deems appropriate under the circumstances to protect the Intellectual Property from infringement, misappropriation or dilution, including, without limitation, the prosecution and defense of infringement actions.

Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, and no Material Adverse Effect would result therefrom, Grantor shall not have an obligation to use or to maintain any Intellectual Property (i) that relates solely to any product that has been discontinued, abandoned or terminated, or (ii) that has been replaced with Intellectual Property substantially similar to the Intellectual Property that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such replacement Intellectual Property is subject to the lien created by this Agreement.

4. **Grantor's Representations and Warranties:** The Grantor represents and warrants that:

- (a) **EXHIBIT A** is a true, correct and complete list of all Copyrights and Copyright Licenses owned by the Grantor as of the date hereof.
- (b) **EXHIBIT B** is a true, correct and complete list of all Trademarks and Trademark Licenses owned by the Grantor as of the date hereof.
- (c) **EXHIBIT C** is a true and correct form of Franchise Agreement executed by and between Dreams Franchise Corporation and various Franchisees (as named therein).
- (d) Except as set forth in **EXHIBITS A** and **B**, or in any executed Franchise Agreement by and among Dreams Franchise Corporation and certain Franchisees, none of the Intellectual Property is the subject of any licensing or franchise agreement pursuant to which Grantor is the licensor or franchisor.
- (e) All IP Collateral is, and shall remain, free and clear of all liens, Encumbrances, or security interests in favor of any Person, other than Permitted Encumbrances and liens in favor of the Lender.
- (f) Grantor owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No material claim has been asserted and is pending by any Person challenging or questioning the use by Grantor of any of its Intellectual Property or the validity or effectiveness of any of its Intellectual Property, nor does Grantor know of any valid basis for any such claim, except as otherwise set forth in the Loan Agreement. The Grantor considers that the use by the Grantor of the Intellectual Property does not infringe the rights of any Person in any material respect. No holding, decision or judgment has been rendered by any governmental authority which would limit, cancel or question the validity of, or Grantor's rights in, any Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect on the business or the property of Grantor.

- (g) The Grantor shall give the Lender written notice (with reasonable detail) within ten (10) days following the occurrence of any of the following:
- (i) The Grantor's obtaining rights to, and filing applications for registration of, any new Intellectual Property, or otherwise acquiring ownership of any newly registered Intellectual Property (other than the Grantor's right to sell products containing the trademarks of others in the ordinary course of the Grantor's business).
  - (ii) The Grantor's becoming entitled to the benefit of any registered Intellectual Property whether as licensee or licensor (other than the Grantor's right to sell products containing the trademarks of others in the ordinary course of the Grantor's business).
  - (iii) The Grantor's entering into any material Licenses.
  - (iv) The Grantor's knowing or having reason to know, that any application or registration relating to any material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the PTO, the Copyright Office or any court or tribunal) regarding the Grantor's ownership of, or the validity of, any material Intellectual Property or the Grantor's right to register the same or to own and maintain the same.

**5. Agreement Applies to Future Intellectual Property:**

- (a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in subsections (i), (ii) and (iii) of Section 4(g), above, all of which shall be deemed to be and treated as "Intellectual Property" within the meaning of this Agreement.
- (b) Upon the reasonable request of the Lender, the Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Lender may request to evidence the Lender's security interest in any Copyright, Patent or Trademark and the goodwill and General Intangibles of the Grantor relating thereto or represented thereby (including, without limitation, filings with the PTO, the Copyright Office or any similar office), and the Grantor hereby constitutes the Lender as its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; *provided, however*, the Lender's taking of such action shall not

be a condition to the creation or perfection of the security interest created hereby.

6. **Grantor's Rights To Enforce Intellectual Property:** Prior to the Lender's giving of notice to the Grantor following the occurrence of an Event of Default, the Grantor shall have the exclusive right to sue for past, present and future infringement of the Intellectual Property including the right to seek injunctions and/or money damages, in an effort by the Grantor to protect the Intellectual Property against encroachment by third parties, *provided, however:*

- (a) The Grantor first provides the Lender with written notice of the Grantor's intention to so sue for enforcement of any Intellectual Property.
- (b) Any money damages awarded or received by the Grantor on account of such suit (or the threat of such suit) shall constitute IP Collateral.
- (c) Following the occurrence of any Event of Default, the Lender, by notice to the Grantor may terminate or limit the Grantor's rights under this Section 6.

7. **Lender's Actions To Protect Intellectual Property:** In the event of

- (a) the Grantor's failure, within ten (10) Business Days of written notice from the Lender, to cure any failure by the Grantor to observe or perform any of the Grantor's covenants, agreements or other obligations hereunder; and/or
- (b) the occurrence and continuance of any other Event of Default,

the Lender, acting in its own name or in that of the Grantor, may (but shall not be required to) act in the Grantor's place and stead and/or in the Lender's own right in connection therewith.

8. **Rights Upon Default:** Upon the occurrence of any Event of Default, the Lender may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in the Commonwealth of Massachusetts, with respect to the Intellectual Property, in addition to which the Lender may sell, license, assign, transfer, or otherwise dispose of the Intellectual Property. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of Default has occurred and that the Lender is authorized to exercise such rights and remedies.

9. **Lender As Attorney In Fact:**

- (a) The Grantor hereby irrevocably constitutes and designates the Lender as and for the Grantor's attorney in fact, effective following the occurrence and during the continuance of any Event of Default:
- (i) To supplement and amend from time to time Exhibits A, B and C of this Agreement to include any new or additional Intellectual Property of the Grantor.
  - (ii) To exercise any of the rights and powers referenced herein.
  - (iii) To execute all such instruments, documents, and papers as the Lender determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Intellectual Property.
- (b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Lender.
- (c) The Lender shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9(a), but if the Lender elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to Grantor for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Lender has had an opportunity to be heard), which determination includes a finding that the subject act or omission to act had been grossly negligent or in bad faith.

10. **Lender's Rights:**

- (a) Any use by the Lender of the Intellectual Property, as authorized hereunder in connection with the exercise of the Lender's rights and remedies under this Agreement and under the Loan Agreement shall be coextensive with the Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges.
- (b) None of this Agreement, the Loan Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Lender any rights in and to the Intellectual Property, which rights are effective only following the occurrence of any Event of Default.



11. **Intent:** This Agreement is being executed and delivered by the Grantor for the purpose of registering and confirming the grant of the security interest of the Lender in the IP Collateral with the PTO and the Copyright Office. It is intended that the security interest granted pursuant to this Agreement is granted as a supplement to, and not in limitation of, the Security Interest granted to the Lender under the Loan Agreement. All provisions of the Loan Agreement shall apply to the IP Collateral. The Lender shall have the same rights, remedies, powers, privileges and discretions with respect to the security interests created in the IP Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall control with respect to the IP Collateral and the Loan Agreement with respect to all other Collateral.

12. **Choice of Laws:** It is intended that this Agreement take effect as a sealed instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of the Commonwealth of Massachusetts.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor and the Lender respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**GRANTOR:**

FANSEGE INCORPORATED

By: David M. Greene  
Name: DAVID M. GREENE  
Title: Senior VP

DREAMS PRODUCTS, INC

By: David M. Greene  
Name: DAVID M. GREENE  
Title: Senior VP

DREAMS FRANCHISE CORPORATION

By: David M. Greene  
Name: DAVID M. GREENE  
Title: Senior VP

**LENDER:**

LASALLE BUSINESS CREDIT, LLC, AS AGENT  
FOR STANDARD FEDERAL BANK NATIONAL  
ASSOCIATION, ACTING THROUGH ITS DIVISION,  
LASALLE RETAIL FINANCE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Grantor and the Lender respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

GRANTOR:

FANSEGE INCORPORATED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DREAMS PRODUCTS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DREAMS FRANCHISE CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LENDER:

LASALLE BUSINESS CREDIT, LLC, AS AGENT  
FOR STANDARD FEDERAL BANK NATIONAL  
ASSOCIATION, ACTING THROUGH ITS DIVISION,  
LASALLE RETAIL FINANCE

By: Barbara Anderson  
Name: Barbara Anderson  
Title: SVP

**EXHIBIT A  
TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

(List of Copyrights and Copyright Licenses)

Copyright Registrations and Applications

None.

Copyright Licenses

None.

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**EXHIBIT B**  
**TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

(List of Trademarks and Trademark Licenses)

Trademark Registrations and Applications

- 1) "Fansedge" registered with U.S. Patent and Trademark Office on November 14, 2000, Serial No. 75774999, Registration No. 2,403,840, owner of record: Fansedge Incorporated.
- 2) "Mounted Memories" registered with U.S. Patent and Trademark Office on October 10, 2000, Serial No. 75490459, Registration No. 2,392,570, assigned to Dreams Products, Inc. (assignment submitted to U.S. Patent and Trademark Office June 1, 2005).

Trademark Licenses

- 1) Merchandising License Agreement between Universal Studios Licensing, Inc. and Dreams Franchise Corporation, dated June 1, 1990, as amended, for "Field of Dreams".
- 2) License Agreement between NFL Properties, Inc. and Dreams Products, Inc.
- 3) License Agreement between MLB and Dreams Products, Inc.
- 4) License Agreement between National Association for Stock Car Auto Racing, Inc. and Dreams, Inc., d/b/a Mounted Memories, dated September 1, 2002.

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**EXHIBIT C  
TO INTELLECTUAL PROPERTY SECURITY AGREEMENT**

(Form of Franchise Agreement)

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- Exhibit A: Guarantee, Indemnification, And Acknowledgment
- Exhibit B: Authorization Agreement For Prearranged Payments (Direct Debits)
- Exhibit C: List Of Principals

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## DREAMS FRANCHISE CORPORATION

### FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the "Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the "Effective Date"), by and between:

- DREAMS FRANCHISE CORPORATION, a California corporation, having its principal place of business at 5009 Hiatus Road, Sunrise, Florida 33351 ("Franchisor"); and
- \_\_\_\_\_ a \_\_\_\_\_  
[resident ] [corporation] [limited liability company] ("Franchisee").

#### RECITALS:

A. WHEREAS, Franchisor and its parent, Dreams, Inc. (f/k/a StratAmerica Corporation), as the result of the expenditure of time, skill, effort and money have developed and own a unique system (the "System"), identified by the mark "FIELD OF DREAMS", relating to the establishment, development and operation of stores physically located in malls and other retail establishments, which stores specialize in the retail sale of sports-related merchandise and celebrity-oriented merchandise, sports collectibles, memorabilia, trading cards and related merchandise and products that Franchisor has authorized and approved, and which stores utilize Franchisor's System and Marks (collectively, this refers to an "FOD Store"), all of which Franchisor may periodically change, improve, and/or further develop;

B. WHEREAS, the distinguishing characteristics of the System include, without limitation, procedures, techniques, and methods for merchandising activities; distinct inventory specifications and standards; an operating manual; as well as methods and techniques for inventory and cost controls, record keeping and reporting, personnel management, purchasing, sales promotion, marketing and advertising; all of which may be changed, improved and further developed by Franchisor from time to time;

C. WHEREAS, "FIELD OF DREAMS" is a service mark of Universal City Studios, Inc., licensed to Franchisor by Universal Studios Licensing, Inc. ("USL");

D. WHEREAS, Franchisor has obtained from USL, pursuant to a license agreement dated June 1, 1990 and all amendments thereto (the "USL License"), the exclusive right and license in the United States, excluding properties owned or controlled by USL, to utilize the mark "FIELD OF DREAMS®" (the "USL Mark") as the name, and in the design, of retail stores as described above as well as the exclusive right to sublicense others to use the USL Mark in the development and operation of franchised retail stores; and Franchisor has also obtained a nonexclusive right from USL to utilize the USL Mark upon or in connection with the manufacture, sale and distribution of sports and celebrity memorabilia and paraphernalia by Franchisor and its franchisees

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E. WHEREAS, Franchisor identifies FOD Stores by the USL Mark and such other proprietary marks as Franchisor may periodically designate in writing (together, the "Proprietary Marks");

F. WHEREAS, Franchisor grants to qualified persons franchises to own and operate FOD Stores offering and selling sports-related merchandise and celebrity-oriented merchandise, sports collectibles, memorabilia, trading cards and related merchandise and products authorized and approved by Franchisor and utilizing Franchisor's System and Proprietary Marks; and

G. WHEREAS, Franchisee desires to operate an FOD Store using Franchisor's System and Proprietary Marks and has applied for a franchise, which application has been approved by Franchisor in reliance upon all of the representations made therein.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, hereby agree as follows:

1. APPOINTMENT AND FRANCHISE FEE

a. *Grant and Acceptance.* Upon the terms and conditions set forth in this Agreement, Franchisor hereby grants to Franchisee the right and franchise, and Franchisee accepts and undertakes the obligation, to: (a) operate a single FOD Store under the System; (b) use, only in connection with the FOD Store, the Proprietary Marks and the System as they may be changed, improved, or further developed from time to time by Franchisor; and (c) to use the Proprietary Marks and System and to operate the FOD Store only at the Approved Location (as defined in Section 1.2 below).

b. *Approved Location.* The street address of the location approved hereunder is:

\_\_\_\_\_ (the "Approved Location"). Franchisee shall not relocate the FOD Store without Franchisor's prior written consent. Franchisor shall have the right to grant or withhold any approvals under this Section 1.2; and if approval is granted, such approval shall not be deemed to be a guarantee, representation, or assurance by Franchisor that Franchisee's FOD Store shall be profitable or successful.

c. *Protected Territory.* During the term of this Agreement, Franchisor shall not establish, nor license any other person to establish, another FOD Store at any location within the interior space of the shopping mall within which the Approved Location is located (the "Protected Territory"), except as otherwise provided in this Agreement. Franchisor retains all other rights, and may, among other things, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights therein:

i. to establish, and license others to establish, FOD Stores at any location outside the Protected Territory notwithstanding their proximity to the Protected Territory or

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- the Approved Location or their actual or threatened impact on sales at Franchisee's FOD Store;
- ii. to establish, and license others to establish, stores under other systems and/or other marks, which stores may offer or sell products that are the same as, similar to, or different from the products offered at or from the FOD Store, and which stores may be located within or outside the Protected Territory, notwithstanding such stores' proximity to the Approved Location or their actual or threatened impact on sales at Franchisee's FOD Store;
- iii. to sell and distribute, directly or indirectly, or license others to sell and distribute, directly or indirectly, any Products, from any location or to any purchaser (including, but not limited, to sales made at retail locations, catalog and mail order, and on the Internet), so long as such sales are not conducted from a FOD Store that is physically located inside the Protected Territory.
- d. *Limit on Sales.* Franchisee shall offer and sell products only from the FOD Store, only in accordance with the requirements of this Agreement and the procedures set forth in the Manuals, and only to end-user customers (and not to wholesale customers). Franchisee shall not offer or sell Products through any other means, including without limitation, satellite locations, sales or mail order catalogs, temporary locations, carts or kiosks, the Internet, or through any other electronic or print media.
- e. *Initial Franchise Fee.* In consideration of the rights granted under this Agreement, Franchisee shall pay Franchisor an initial franchise fee of Thirty Two Thousand Five Hundred Dollars (\$32,500) (the "Initial Franchise Fee"). A credit shall be applied, if one is available, from the development fee paid by the Franchisee (or the Franchisee's affiliate) under a separate development agreement entered into with Franchisor, pursuant to the terms of that development agreement. The Initial Franchise Fee is due, and shall be paid in full, upon execution of this Agreement and shall be non-refundable (except as otherwise provided in Sections 3.5 and 4.3 below) in consideration of administrative and other expenses incurred by Franchisor in granting this franchise and for Franchisor's lost or deferred opportunity to franchise others.
- f. *Variation of Standards.* Franchisee acknowledges and agrees that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor shall have the right to vary standards for any FOD Store (based, among other things, upon Franchisor's right to determine that as to the circumstances applicable to any particular site, such as density of population, business potential, population of trade area, existing business practices, and/or any other condition that Franchisor deems to be of importance to the successful operation of any particular FOD Store). Franchisee shall have no right to require Franchisor to disclose or grant to Franchisee a like or similar variation hereunder; further, nothing in connection with Franchisor's grant of a franchise, or the nature of the franchise relationship with any other franchisee, shall have an effect upon, or constitute a breach of, any obligations under this Agreement (provided that this

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clause shall not supercede Franchisor's obligations with respect to the Protected Territory as specified in Section 1.3 above).

## 2. TERM AND RENEWAL

- a. *Term.* This Agreement shall be effective and binding from the date of its execution for an initial term equal to ten (10) years commencing on the date of execution of this Agreement. The term of this Agreement is unaffected by the terms of any agreement other than the lease or sublease for the premises of the FOD Store.
- b. *Renewal.* Franchisee may, at its option, renew this Agreement for one (1) additional term of ten (10) years, subject to the following conditions, each of which must be met prior to renewal:
  - i. Franchisee maintains possession of the Approved Location and before the expiration date of this Agreement has brought the FOD Store into full compliance with the specifications and standards then applicable for new or renewing FOD Stores (and Franchisee shall comply with its obligations under Section 12.4 below), and Franchisee presents evidence satisfactory to Franchisor that it has the right to remain in possession of the FOD Store premises for the duration of any renewal term (or, if Franchisee is unable to maintain possession of the Approved Location, Franchisee secures substitute premises (as to which Franchisor has given its prior written approval with respect to the proposed relocation, in the manner specified in Section 1.2 above), and Franchisee has furnished, stocked and equipped such new premises to bring the FOD Store at those premises into full compliance with Franchisor's then-current specifications and standards for a new FOD Store before the expiration date of this Agreement);
  - ii. Franchisee shall give Franchisor written notice of Franchisee's election to renew no fewer than six (6) months nor more than twelve (12) months prior to the end of the initial term;
  - iii. Franchisee shall not be in default of any provision of this Agreement, any amendment to this Agreement, any successor to this Agreement, or any other agreement between Franchisee and Franchisor or its subsidiaries and affiliates; and, in Franchisor's reasonable judgment, Franchisee shall have substantially complied with all the terms and conditions of this Agreement, such other agreements, as well as the operating standards prescribed by Franchisor during the term of this Agreement;
  - iv. Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its subsidiaries and affiliates and shall have timely met those obligations throughout the term of this Agreement;

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- v. Franchisee shall pay, in lieu of an initial franchise fee, a renewal fee equal to twenty-five percent (25%) of Franchisor's then-current initial franchise fee for a new FOD Store, or Eight Thousand One Hundred and Twenty-Five Dollars (\$8,125), whichever is greater;
- vi. Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its subsidiaries and affiliates, and their respective officers, directors, agents, and employees;
- vii. Franchisee and its personnel shall comply with Franchisor's then-current qualification and training requirements;
- viii. Franchisee shall be current with respect to its obligations to its lessor, vendors, and any others with whom it does business;
- ix. Franchisee has executed upon renewal Franchisor's then-current form of Franchise Agreement (with appropriate modifications to reflect the fact that the agreement relates to the grant of a renewal franchise), which agreement shall supersede in all respects this Agreement, and the terms, conditions, and provisions of which, and the obligations of the parties thereto, may differ from the terms, conditions, provisions and obligations of this Agreement, including, without limitation, a higher percentage royalty fee, Advertising Commitment, and/or a different Protected Territory; provided, however, Franchisee shall not be required to pay the then-current initial franchise fee or its equivalent;

### 3. STORE LOCATION

- a. *Finding a Site.* Franchisee shall be responsible for purchasing or leasing a suitable site for the FOD Store. Within three (3) months after the date of this Agreement, Franchisee shall submit a letter of intent or other evidence satisfactory to Franchisor, which confirms Franchisee's favorable prospects for obtaining the proposed site. Franchisor shall provide Franchisee written notice of approval or disapproval of the proposed site within fifteen (15) business days after receiving Franchisee's written proposal. Franchisee acknowledges that any site selection assistance or approval provided by Franchisor shall not be construed or interpreted as a guarantee of success for said location nor shall any location recommendation or approval made by Franchisor be deemed a representation that any particular location is available for use as a FOD Store.
- b. *Leasing or Purchasing the Site.* If Franchisor or its affiliates identify an acceptable site for use as a FOD Store, Franchisor may lease or sublease such site to Franchisee. However, unless Franchisor has agreed in a separate written agreement to purchase or acquire by lease the property in which the FOD Store is to be located, Franchisor shall have no obligation to enter into a lease or sublease with Franchisee and shall only be obligated to act in an advisory capacity to assist Franchisee in acquiring a location. Any real estate and improvement costs associated with the development of the location of the

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FOD Store shall be the responsibility of Franchisee and may be included in determining the lease or sublease rental payments.

- c. *Lease Conditions.* After receiving Franchisor's written approval of the location of the FOD Store as provided in Section 3.1 above, Franchisee shall, subject to the prior approval of terms by Franchisor, execute a lease (if the premises are to be leased) for, or a binding agreement to purchase, the site. Franchisor's approval of the lease or purchase agreement shall be conditioned upon inclusion in the lease of terms acceptable to Franchisor, and at Franchisor's option, the lease shall contain such provisions, including, but not limited to:
- i. A provision reserving to Franchisor the right, at Franchisor's election, to receive an assignment of the leasehold interest upon termination or expiration of the franchise grant;
  - ii. A provision that expressly requires the lessor of the premises to provide Franchisor all sales and other information lessor may have related to the operation of the FOD Store, as Franchisor may request;
  - iii. A provision which requires the lessor concurrently to provide Franchisor with a copy of any written notice of deficiency under the lease sent to Franchisee and which grants to Franchisor, in its sole discretion, the right (but not obligation) to cure any deficiency under the lease within fifteen (15) business days after the expiration of the period in which Franchisee had to cure any such default should Franchisee fail to do so;
  - iv. A provision that evidences Franchisee's right to display the Proprietary Marks in accordance with the specifications required by the Manual, subject only to the provisions of applicable law;
  - v. A provision that the premises be used solely for the operation of a franchised FOD Store; and
  - vi. A provision which expressly states that any default under the lease shall constitute a default under the Franchise Agreement, and any default under the Franchise Agreement shall constitute a default under the lease.
- d. *Preparing the Site.* Franchisee agrees that, promptly after obtaining possession of the approved site for the FOD Store, it shall:
- i. cause to be prepared and submit for approval by Franchisor a description of any modifications to Franchisor's specifications for a FOD Store (including requirements for dimensions, exterior design, materials, interior design and layout, equipment, fixtures, furniture, signs and decorating materials) required for the development of a FOD Store at the site leased or purchased therefor, provided that Franchisee may modify Franchisor's specifications only to the extent required

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- to comply with all applicable ordinances, building codes and permit requirements and with prior notification to and approval by Franchisor;
- ii. obtain all required zoning permits, all required building, utility, health, sanitation, sign permits and licenses, and any other required permits and licenses;
  - iii. purchase or lease equipment, fixtures, furniture and signs as required under this Agreement;
  - iv. complete the construction and/or remodeling, equipment, fixture, furniture and sign installation and decorating of the FOD Store in full and strict compliance with plans and specifications therefor that Franchisor has approved in writing, as well as all applicable ordinances, building codes and permit requirements;
  - v. obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services; and
  - vi. otherwise complete development of and have the FOD Store ready to open and commence the conduct of its business in accordance with Section 12.3 hereof.
- c. *Failure to Find a Site; Refund.* If a lease is not executed and Franchisee fails to open the FOD Store within three (3) months after submission of the letter of intent specified in Section 3.1 above, then effective immediately upon written notice from one party to the other party (which must be given within the ten (10) day period immediately following the end of said three (3) month period), this Agreement shall be terminated. Provided that Franchisee made a good faith *bona fide* effort to find a suitable site and obtain the right to operate an FOD Store at that site, then Franchisor shall refund to Franchisee the Initial Franchisee Fee that Franchisee has actually paid to Franchisor. The Initial Franchise Fee shall be refunded to Franchisee, less the sum of Five Thousand Dollars (\$5,000), which Franchisor shall retain as compensation for its costs, expenses, personnel time, and for lost development opportunities elsewhere; and further provided that Franchisee and its principals shall first execute and deliver to Franchisor a written release, in such form as Franchisor may reasonably provide, of any and all claims or causes of action Franchisee and/or its principals may have against Franchisor, Franchisor's affiliates, and their respective officers, directors, agents, and employees.
- f. *Use of the Premises.* Franchisee may use the Approved Location only for the purpose of operating the FOD Store and for no other purpose.

#### 4. TRAINING AND ASSISTANCE

- a. *Initial Training.* Franchisor shall make training available to Franchisee, Franchisee's designated manager and to a reasonable number of Franchisee's employees. Franchisee and/or its designated manager is required to attend and successfully complete to Franchisor's satisfaction prior to opening for business a training and familiarization course of two (2) weeks or ten (10) calendar days in duration to be conducted at

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- Franchisor's headquarters or at such other place as Franchisor shall designate. Such training programs shall cover material aspects of the operation of an FOD Store, including financial controls; general bookkeeping procedures; procedures and techniques regarding the retail sale of sports and celebrity related merchandise, collectibles, memorabilia, trading cards and related merchandise and products; customer relations techniques; inventory and cost control methods; service and operational techniques; marketing and advertising techniques; training and deployment of labor; and maintenance of quality standards. All expenses incurred by Franchisee and its employees in attending such programs, including without limitation, travel costs, room and board expenses and employees' salaries, shall be the sole responsibility of Franchisee.
- b. *Opening Training.* For five (5) days during start up of operations of Franchisee's FOD Store, Franchisor will furnish to Franchisee, at Franchisee's premises and at Franchisor's expense, one (1) of Franchisor's representatives for the purpose of facilitating the opening of Franchisee's FOD Store. During this period, such representative will also assist Franchisee in establishing and standardizing procedures and techniques essential to the operation of a FOD Store and shall assist in training personnel; however, Franchisee acknowledges that Franchisor shall not be responsible for training or offering guidance with respect to compliance with any laws, ordinances or other legal matters. Should Franchisee request additional assistance from Franchisor in order to facilitate the opening of the FOD Store, and should Franchisor deem it necessary and appropriate to comply with the request, Franchisee shall reimburse Franchisor for an agreed upon fee plus the expenses of Franchisor in providing such additional assistance.
- c. *Failure to Satisfactorily Complete Training; Refund.* Franchisor shall have the right to: (a) determine that Franchisee is unable to satisfactorily complete the training program described above; and (b) terminate this Agreement in the manner provided in this Section 4.3 by giving written notice of termination to Franchisee. If this Agreement is terminated pursuant to this Section 4.3, then, provided that Franchisee made a good faith *bona fide* effort to attend and complete training, Franchisor shall refund to Franchisee fifty percent (50%) of the Initial Franchise Fee that has actually been paid to Franchisor, and Franchisor shall retain the balance as compensation for its costs, expenses, training expenses, personnel time, for lost development opportunities elsewhere; and further provided that Franchisee and its principals first execute and deliver to Franchisor a written release, in such form as Franchisor may reasonably provide, of any and all claims or causes of action Franchisee and/or its principals may have against Franchisor, Franchisor's affiliates, and their respective officers, directors, agents, and employees.
- d. *New or Additional Managers.* If Franchisee designates new or additional managers after the initial training program, Franchisor shall provide training to such managers to the extent Franchisor can reasonably accommodate such managers in Franchisor's regularly scheduled training course. Franchisor shall provide such training at no charge to Franchisee, except that Franchisee shall pay all employee salaries and travel and living expenses incurred by Franchisee's managers or employees in attending such training programs.

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- e. *Refresher Training.* Franchisor from time to time may provide, and if it does may require that previously trained and experienced Franchisees or their managers or employees attend and successfully complete, refresher training programs or seminars to be conducted at such location as may be designated by Franchisor. Attendance at such refresher training programs or seminars shall be at Franchisee's sole expense; provided, however, that attendance will not be required at more than two (2) such programs in any calendar year and which shall not collectively exceed four (4) business days in duration during any calendar year.

5. PROPRIETARY MARKS

a. The USL Mark

- i. Franchisee acknowledges that USL and its affiliates are the owners of all right, title and interest together with all the goodwill of the USL Mark and that Franchisor has been licensed the right, and the right to sublicense others, to use such USL Mark. Franchisee further acknowledges that Franchisee's right to use the USL Mark is derived solely from this Agreement and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by Franchisor from time to time during the term of the Franchise. Any unauthorized use of the USL Mark by Franchisee shall constitute a breach of this Agreement and an infringement of the rights of USL and Franchisor in and to the USL Mark.
- ii. Franchisor makes no representation or warranty, express or implied, as to the use, exclusive ownership, validity or enforceability of the USL Mark.
- iii. Franchisee acknowledges and agrees that all usage of the USL Mark by Franchisee and any goodwill established by Franchisee's use of the USL Mark shall inure to the exclusive benefit of USL and its affiliates and that this Agreement does not confer any goodwill or other interests in the USL Mark upon Franchisee. Franchisee acknowledges, further, that it acquires no right, title or interest in any of the marks or any additional trademark which may be developed unless specifically granted such pursuant to the terms of a separate license agreement. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of the USL Mark or assist any other person in contesting the validity or ownership of the USL Mark.
- iv. Franchisee understands and acknowledges, however, that in the event Franchisor's right to use the Proprietary Marks is terminated for any reason whatsoever, Franchisee shall be obligated to discontinue its use of the USL Mark and any associated logos or commercial symbols immediately upon the direction of Franchisor or USL. Franchisor shall have no liability or obligation whatsoever with respect to Franchisee's modification or discontinuance of the USL Mark, or

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the costs associated with changing signs and other indicia at or in connection with the FOD Store..

- v. Franchisee agrees to take or refrain from taking, as applicable, any action that Franchisor is obligated to take or refrain from taking pursuant to the provisions of the USL License between Franchisor and USL, or that shall be necessary in Franchisor's judgment in order for Franchisor to fulfill its obligations to USL pursuant to such USL License. Franchisee further acknowledges further that the USL License may include requirements concerning the posting of public notices by Franchisee with respect to its use of the USL Mark, and Franchisee agrees to comply with such requirements. Franchisee acknowledges and agrees that Franchisee is not an intended third party beneficiary of any such USL License and that USL shall have no obligation, liability or responsibility to Franchisee under any circumstances.
- b. *The Proprietary Marks.* Except as otherwise provided in Section 5.1 above:
- i. Franchisee acknowledges that Franchisor owns all right, title and interest, together with all the goodwill, of the Proprietary Marks. Franchisee further acknowledges that Franchisee's right to use the Proprietary Marks is derived solely from this Agreement and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by Franchisor from time to time during the term of the Franchise. Any unauthorized use of the Proprietary Marks by Franchisee shall constitute a breach of this Agreement and an infringement of Franchisor's rights in and to the Proprietary Marks.
- ii. Franchisor makes no representation or warranty, express or implied, as to the use, exclusive ownership, validity or enforceability of the Proprietary Marks.
- iii. Franchisee acknowledges and agrees that all usage of the Proprietary Marks by Franchisee and any goodwill established by Franchisee's use of the Proprietary Marks shall inure to the exclusive benefit of Franchisor and its affiliates and that this Agreement does not confer any goodwill or other interests in the Proprietary Marks upon Franchisee. Franchisee acknowledges, further, that it acquires no right, title or interest in any of the marks or any additional trademark which may be developed unless specifically granted such pursuant to the terms of a separate license agreement. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Proprietary Marks or assist any other person in contesting the validity or ownership of the Proprietary Marks.
- c. *Usage of the Proprietary Marks.* Franchisee shall not use the Proprietary Marks or any portion of any Proprietary Mark as part of its corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Franchisee in any electronic medium, or with any prefix, suffix, or other modifying words, terms, designs, or symbols,

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or in any modified form. Franchisee shall not use any Proprietary Mark in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized in writing by Franchisor. Franchisee agrees to properly attribute the ownership of the Proprietary Marks to USL and/or Franchisor, or their respective affiliates, in such manner, and including such notices of trademark and service mark registrations, as Franchisor may periodically specify in writing. Franchisee shall obtain and maintain such fictitious or assumed name registrations as may be required under applicable law.

- d. *Actions involving the Proprietary Marks.* Franchisee shall promptly notify Franchisor of any attempt that Franchisee knows of, or should know of, by any other person, firm, or corporation to use the Proprietary Marks or any colorable imitation thereof. Upon receipt of timely notice of such infringement, USL and/or Franchisor shall have the sole right to determine whether or not any action shall be taken on account of any such infringements or imitations. USL and/or Franchisor shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Proprietary Marks and shall exercise such right in their sole discretion. Franchisee shall not institute any suit or take any actions with regards to the Proprietary Marks. In any defense or prosecution of any litigation relating to the Proprietary Marks or components of the System undertaken by Franchisor or USL, Franchisee shall cooperate with Franchisor and/or USL, in the manner and to the extent requested, and shall execute any and all documents and take all actions as may be desirable or necessary in the opinion of counsel, to carry out such defense or prosecution.
- e. *Substitution of Proprietary Marks.* If it becomes advisable at any time, in Franchisor's sole discretion, for Franchisor to modify or discontinue use of any Proprietary Mark, and/or use one or more additional or substitute trade names, trademarks, service marks, or other commercial symbols, Franchisee agrees to comply with Franchisor's directions within a reasonable time after notice to Franchisee by Franchisor, and Franchisor shall have no liability or obligation whatsoever with respect to Franchisee's modification or discontinuance of any Proprietary Mark, or the costs associated with changing signs and other indicia at or in connection with the FOD Store.
- f. *Right to Inspect FOD Store.* In order to preserve the validity and integrity of the Proprietary Marks and copyrighted material licensed herein and to assure that Franchisee is properly employing the same in the operation of its FOD Store, Franchisor or its agents shall have the right of entry and inspection of Franchisee's premises and operating procedures at all reasonable times. Franchisor shall have the right to observe the manner in which Franchisee is rendering its services and conducting its operations, to confer with Franchisee's employees and customers, to inspect service techniques and procedures, to inspect inventory mix, and to select sports-related merchandise, celebrity-oriented merchandise, collectibles, memorabilia, trading cards and related merchandise, products, supplies, accessories and other items for and evaluation purposes to make certain that the services, products, materials and supplies are satisfactory and meet the quality control provisions and performance standards established by Franchisor.

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## 6. MANUAL

- a. *The Manual.* Franchisor shall provide to Franchisee, as set forth in Section 6.2 below, the FOD Confidential Operations Manual ("Manual"). Franchisor shall have the right to amend and modify the Manual periodically, as Franchisor deems appropriate, to reflect additions to, deletions from, and modifications to, the specifications of those services and products that comprise a part of the System. The Manual shall delineate reasonable and mandatory specifications, standards, operating procedures, and rules prescribed periodically prescribed by Franchisor for FOD Stores, the products and services that Franchisor deems to comprise a part of the System, and other guidelines and recommendations with respect to operational procedures. Franchisor shall have the right to add to and otherwise modify the Manual from time to time to reflect changes in the specifications, standards, operating procedures and rules prescribed by Franchisor for FOD Stores, provided that no such addition or modification shall alter Franchisee's fundamental status and rights under this Franchise Agreement.
- b. *Furnishing the Manual to Franchisee.* Franchisor shall loan to Franchisee one (1) copy of the Manual for Franchisee's use only in connection with the FOD Store during the term of this Agreement. Franchisor shall have the right to provide the Manual in any format it determines is appropriate, including without limitation paper format or by making the Manual available to Franchisee in electronic form (such as through an internet website). If Franchisor elects to provide the Manual electronically, Franchisee shall immediately return to Franchisor any and all physical copies of the Manual.
- c. *Manual Remains Franchisor's Property.* The Manual shall at all times remain the sole property of Franchisor and shall promptly be returned upon the expiration or other termination of this Agreement.
- d. *Manual is Proprietary and Confidential.* The Manual contains proprietary information of Franchisor and shall be kept confidential by Franchisee both during the term of the franchise and subsequent to the expiration and/or termination of the franchise. Franchisee shall at all times insure that its copy of the Manual be available at the FOD Store premises in a current and up-to-date manner. Franchisee shall not make any unauthorized use, disclosure or duplication of any portion of the Manual. At all times that the Manual is not in use by authorized personnel, Franchisee shall maintain the Manual in a locked receptacle at the premises of the FOD Store, and shall only grant authorized personnel, as defined in the Manual, access to the key or lock combination of such receptacle. In the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's home office shall be controlling.

## 7. CONFIDENTIAL INFORMATION

- a. *Acknowledgement and Agreement with respect to Confidentiality.* Franchisee acknowledges that its entire knowledge of the operation of a FOD Store, including

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without limitation the Manual, the method of marketing, pricing and dispensing of sports-related merchandise, celebrity-oriented merchandise, collectibles, memorabilia, trading cards and related merchandise and products, services, standards and retail store operating procedures of a FOD Store, customer names and addresses, is derived from information disclosed to Franchisee by Franchisor and that such information is proprietary, confidential and the trade secret of Franchisor. Franchisee agrees that it will maintain the absolute confidentiality of all such information during and after the term of the franchise and that it will not use any such information in any other business or in any manner not specifically authorized or approved in writing by Franchisor.

- b. *Limits on Disclosing Confidential Information.* Franchisee shall divulge such confidential information only to such of its employees as must have access to it in order to operate the FOD Store.
- c. *What is Confidential.* Unless designated otherwise in writing by Franchisor, any and all information, knowledge and know-how, including, without limitation, drawings, materials, computer equipment, other equipment, specifications, techniques, retail store systems, and other data, shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention prior to disclosure thereof by Franchisor; or which, at the time of disclosure by Franchisor to Franchisee, had become a part of the public domain, through non-wrongful publication or communication by others; or which, after disclosure to Franchisee by Franchisor, becomes a part of the public domain, through non-wrongful publication or communication by others.
- d. *Remedies for Breach.* Due to the special and unique nature of the confidential information, Proprietary Marks, and Manual of Franchisor, Franchisee hereby agrees and acknowledges that Franchisor shall be entitled to seek immediate equitable remedies, including but not limited to, restraining orders and injunctive relief in order to safeguard such proprietary, confidential, unique, and special information of Franchisor and that money damages alone would be an insufficient remedy with which to compensate Franchisor for any breach of the terms of Sections 5 and 6 of this Agreement. All employees of Franchisee having access to the confidential and proprietary information agreements or other proprietary information of Franchisor shall be required to execute confidential information agreements in the form acceptable to Franchisor.

## 8. MODIFICATION OF THE SYSTEM

Franchisee recognizes and agrees that from time to time hereafter Franchisor may change or modify the System presently identified by the Proprietary Marks, including, without limitation, the adoption and use of new, different or modified trade names, trademarks, service marks or copyrighted materials, new products, new equipment or new techniques. Upon direction of Franchisor, Franchisee shall immediately discontinue its use of any part of the System and accept, use and display for the purpose of this Agreement any additions to the System, as if they were part of this Agreement at the time of execution hereof. Franchisee shall make such expenditures as are reasonably required by such

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changes or modifications in the System. Franchisee shall not change, modify or alter the System in any way.

9. ADVERTISING

- a. *Franchisee's Advertising Commitment.* For each Week during the term of this Agreement, Franchisee shall contribute an amount which, in the aggregate, is equal to one and one-half percent (1.5%) of the Gross Revenues of the FOD Store during the preceding Week (the "Advertising Commitment"). The Advertising Commitment shall be paid by Franchisee in the manner required under Section 9.2 below (and as otherwise provided in this Section 9). In addition to the Advertising Commitment, Franchisee shall undertake and complete the Grand Opening Advertising Program, as provided in Section 9.8 below.
- b. *Allocation of the Advertising Commitment.* Franchisee's Advertising Commitment shall be paid to the Advertising Fund, or to any Regional Ad Fund established pursuant to Section 9.4 below, or on local advertising and promotion, in such proportions as Franchisor shall have the right to designate from time-to-time; provided that Franchisee shall not be required to contribute or expend, in total, more than the amount of the Advertising Commitment.
- c. *Advertising Fund.* The Advertising Fund shall be maintained and administered by Franchisor or its designee, as follows:
- i. Franchisor or its designee shall have the right to direct all advertising programs, as well as all aspects thereof, including without limitation, the concepts, materials, and media used in such programs and the placement and allocation thereof. Franchisee agrees and acknowledges that the Advertising Fund is intended to maximize general public recognition, acceptance, and use of the System; and that Franchisor and its designee are not obligated, in administering the Advertising Fund, to make expenditures for Franchisee which are equivalent or proportionate to Franchisee's contribution, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the Advertising Fund.
  - ii. The Advertising Fund, all contributions thereto, and any earnings thereon, shall be used exclusively (except as otherwise provided in this Section 9.3) to meet any and all costs of maintaining, administering, directing, conducting, and preparing advertising, marketing, public relations and/or promotional programs and materials, and any other activities which Franchisor believes will enhance the image of the System, including, among other things, the costs of preparing and conducting media advertising campaigns; direct mail advertising; marketing surveys and other public relations activities; employing advertising and/or public relations agencies to assist therein; purchasing promotional items, conducting and administering visual merchandising, point of sale, and other merchandising programs; and providing promotional and other marketing materials and services

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to the FOD Stores operated under the System. The Advertising Fund may also be used to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, approved in advance by Franchisor, which products, services, or improvements Franchisor shall have the right to determine will promote general public awareness and favorable support for the System.

- iii. Franchisee shall contribute to the Advertising Fund in the manner specified in Section 9.1 above. All sums paid by Franchisee to the Advertising Fund shall not be used to defray any of Franchisor's expenses, except that ten percent (10%) of the monies in the Advertising Fund shall be paid to Franchisor as compensation for such reasonable costs and overhead as Franchisor may incur in activities reasonably related to the direction and implementation of the Advertising Fund and advertising programs for franchisees and the System, including, among other things, costs of personnel for creating and implementing, advertising, merchandising, promotional and marketing programs. The Advertising Fund and its earnings shall not otherwise inure to the benefit of Franchisor. Franchisor or its designee shall maintain separate bookkeeping accounts for the Advertising Fund.
  - iv. The Advertising Fund is not and shall not be an asset of Franchisor, nor a trust, and Franchisor does not assume any fiduciary obligation to Franchisee for maintaining, directing or administering the Advertising Fund or for any other reason. A statement of the operations of the Advertising Fund as shown on the books of Franchisor shall be prepared annually by Franchisor and shall be made available to Franchisee.
  - v. Although the Advertising Fund is intended to be of perpetual duration, Franchisor maintains the right to terminate the Advertising Fund. The Advertising Fund shall not be terminated, however, until all monies in the Advertising Fund have been expended for advertising and/or promotional purposes.
- d. *Regional Ad Fund.* Franchisor shall have the right to designate any geographical area for purposes of establishing a regional advertising fund ("**Regional Ad Fund**"). If a Regional Ad Fund for the geographic area in which the FOD Store is located has been established at the time Franchisee commences operations hereunder, Franchisee shall immediately become a member of such Regional Ad Fund. If a Regional Ad Fund for the geographic area in which the FOD Store is located is established during the term of this Agreement, Franchisee shall become a member of such Regional Ad Fund within thirty (30) days after the date on which the Regional Ad Fund commences operation. In no event shall Franchisee be required to be a member of more than one (1) Regional Ad Fund. The following provisions shall apply to each such Regional Ad Fund:
- i. Each Regional Ad Fund shall be organized and governed in a form and manner, and shall commence operations on a date, approved in advance by Franchisor in writing. Unless otherwise specified by Franchisor, the activities carried on by each Regional Ad Fund shall be decided by a majority vote of its members. Any

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FOD Stores that Franchisor operates in the region shall have the same voting rights as those owned by its franchisees. Each FOD Store owner shall be entitled to cast one (1) vote for each FOD Store owned.

- ii. Each Regional Ad Fund shall be organized for the exclusive purpose of administering regional advertising programs and developing, subject to Franchisor's approval, standardized promotional materials for use by the members in local advertising and promotion.
  - iii. No advertising or promotional plans or materials may be used by a Regional Ad Fund or furnished to its members without the prior approval of Franchisor, pursuant to the procedures and terms as set forth in Section 9.7 below.
  - iv. Franchisee shall submit its required contribution to the Regional Ad Fund at the time required under Section 10.2 below, together with such statements or reports as may be required by Franchisor or by the Regional Ad Fund with Franchisor's prior written approval. If so requested by Franchisor in writing, Franchisee shall submit its payments and reports to the Regional Ad Fund directly to Franchisor for distribution to the Regional Ad Fund.
  - v. Although once established, each Regional Ad Fund is intended to be of perpetual duration, Franchisor maintains the right to terminate any Regional Ad Fund. A Regional Ad Fund shall not be terminated, however, until all monies in that Regional Ad Fund have been expended for advertising and/or promotional purposes.
- c. *Standards for Advertising.* All local advertising and promotion by Franchisee shall be in such media, and of such type and format as Franchisor may approve; shall be conducted in a dignified manner; and, shall conform to such standards and requirements as Franchisor may specify. Franchisee shall not use any advertising or promotional plans or materials unless and until Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in Section 9.7 below.
- f. *Advertising Materials.* Franchisor shall make available to Franchisee from time to time, at Franchisee's expense, advertising plans and promotional materials, including newspaper mats, coupons, merchandising materials, sales aids, point-of-purchase materials, special promotions, direct mail materials, community relations programs, and similar advertising and promotional materials for use in local advertising and promotion.
- g. *Franchisor's Approval of all Proposed Advertising Plans and Materials.* For all proposed advertising, marketing, and promotional plans, Franchisee (or the Regional Ad Fund, where applicable) shall submit samples of such plans and materials to Franchisor (by means described in Section 23 below), for Franchisor's review and prior written approval (except with respect to prices to be charged by Franchisee). If written approval is not received by Franchisee or the Regional Ad Fund from Franchisor within fifteen (15) days of the date of receipt by Franchisor of such samples or materials, Franchisor

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shall be deemed to have disapproved them. Franchisee acknowledges and agrees that any and all copyright in and to advertising and promotional materials developed by or on behalf of Franchisee shall be the sole property of Franchisor, and Franchisee agrees to execute such documents (and, if necessary, require its independent contractors to execute such documents) as may be deemed reasonably necessary by Franchisor to give effect to this provision.

- h. *Grand Opening Advertising Program.* Franchisee shall develop and submit to Franchisor, for Franchisor's prior written approval, a grand opening marketing plan; however, if Franchisor does not approve Franchisee's proposed plan, or if Franchisee does not submit a plan, Franchisor shall have the right (but not the obligation) to prepare a grand opening marketing plan for Franchisee (either way, the "Opening Plan"). In addition to (and not in place of) the Advertising Commitment, Franchisee shall expend a minimum of Two Thousand Five Hundred Dollars (\$2,500) for grand opening advertising and promotional programs in conjunction with the FOD Store's initial grand opening, in accordance with the Opening Plan (the "Grand Opening Advertising Program"). Franchisee shall execute and complete the Grand Opening Advertising Program within three (3) months after the FOD Store commences operation. For the purposes of this Agreement, the Grand Opening Advertising Program shall be considered local advertising and promotion, as provided under Section 9.10 below.
- i. *Minimum Standards Only.* Franchisee understands and acknowledges that the required contributions and expenditures are minimum requirements only, and that Franchisee may, and is encouraged by Franchisor to, expend additional funds for local advertising and promotion of a local nature which will focus on disseminating advertising directly related to Franchisee's FOD Store.
- j. *Local Advertising and Promotion.* As used in this Agreement, the term "local advertising and promotion" shall consist only of the direct costs of purchasing and producing advertising materials (including, but not limited to, camera-ready advertising and point of sale materials), media (space or time), and those direct out-of-pocket expenses related to costs of advertising and sales promotion spent by Franchisee in its local market or area, advertising agency fees and expenses, postage, shipping, telephone, and photocopying; however, the parties expressly agree that local advertising and promotion shall not include costs or expenses incurred by or on behalf of Franchisee in connection with any of the following:
- i. Salaries and expenses of any employees of Franchisee, including salaries or expenses for attendance at advertising meetings or activities, or incentives provided or offered to such employees, including discount coupons;
  - ii. Charitable, political, or other contributions or donations;
  - iii. The value of discounts provided to consumers;
  - iv. The cost of products; and

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- v. Specialty items (e.g., cups, banners, t-shirts, and premiums), unless such items are a part of a market-wide advertising and sales promotion program, but only to the extent that the cost of such items is not recovered by the promotion.
- k. *No Franchisee Websites.* Franchisee specifically acknowledges and agrees that any Website (as defined below) shall be deemed "advertising" under this Agreement, and will be subject to (among other things) Franchisor's approval under Section 9.7 above. (As used in this Agreement, the term "Website" means an interactive electronic document, contained in a network of computers linked by communications software. The term Website includes, but is not limited to, Internet and World Wide Web home pages.) In connection with any Website, Franchisee agrees to the following:
- i. If required by Franchisor, Franchisee shall not establish a separate Website. Franchisor shall have the right, but not the obligation, to designate one or more web page(s) to describe Franchisee and/or the FOD Store, such web page(s) to be located within Franchisor's Website;
  - ii. If Franchisor approves, in writing, a separate Website for Franchisee, then each of the following provisions shall apply:
    - a) Franchisee shall not establish or use the Website without Franchisor's prior written approval.
    - b) Before establishing the Website, Franchisee shall submit to Franchisor, for Franchisor's prior written approval, a sample of the proposed Website domain name, format, visible content (including, but not limited to, proposed screen shots), and non-visible content (including, but not limited to, meta tags) in the form and manner Franchisor may reasonably require; and Franchisee shall not use or modify such Website without Franchisor's prior written approval as to such proposed use or modification.
    - c) In addition to any other applicable requirements, Franchisee shall comply with Franchisor's standards and specifications for Websites as prescribed by Franchisor from time to time in the Manual or otherwise in writing.
    - d) If required by Franchisor, Franchisee shall establish such hyperlinks to Franchisor's Website and others as Franchisor may request in writing.
    - e) Franchisor may revoke its approval at any time, in writing, and require that Franchisee discontinue use of a separate Website.
- l. *Special Advertising Programs.* Franchisor may, from time to time, develop and market special advertising or promotional programs designed to increase consumer awareness of the sports and celebrity related merchandise, collectibles, memorabilia, trading cards and

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related merchandise and products available at each Franchise Store, and Franchisee shall have the right, but not the obligation, to participate therein. Franchisor shall notify Franchisee of the creation of all such advertising or promotional programs and shall advise Franchisee with respect to all of the elements thereof. Within five (5) days after receipt of such notice, Franchisee shall advise Franchisor as to whether or not Franchisee wishes to participate in such programs. If Franchisee notifies Franchisor that it wishes to participate, Franchisee shall in all respects, adhere to all elements of said program. If Franchisee elects to be excluded from such program or programs, Franchisor shall have the right to advise consumers, by advertising, sales solicitation or otherwise, that Franchisee is not a participant in such program, and Franchisee shall not be entitled to the benefits thereof. Franchisor shall have the right to establish all such programs and shall not consult or confer with Franchisee or any other franchisee of Franchisor with respect to the nature, content or amount of any discount, prices or service established pursuant to any such program. The expenditures that Franchisee may make under this Section shall be in addition to the requirements with respect to the Advertising Commitment.

- m. *Yellow Page Listings.* Franchisee shall maintain a business phone and advertise continuously in the classified or Yellow Pages of the local telephone directory under listings deemed appropriate by Franchisor using mats of the type and size approved in advance by Franchisor. When more than one (1) FOD Store serves a metropolitan area, classified advertisements shall list all FOD Stores operating in compliance with their franchise agreements (as of the date the advertisement is placed) within the distribution area of such classified directories, and Franchisee shall contribute its equal share in the cost of such advertisement. The requirements of this Section shall be in addition to the requirements with respect to the Advertising Commitment.

## 10. ROYALTY FEE

- a. *Royalty Fee.* For each Week during the term of this Agreement, Franchisee shall pay Franchisor a continuing royalty fee in an amount equal to six percent (6%) of the Gross Revenues of the FOD Store, without offset, credit or deduction of any nature. As used in this Agreement, the following terms shall have the following meanings:
- i. The term "**Gross Revenues**" means all revenue from the sale of all merchandise, products and services and all other income of every kind and nature related to, derived from, or originating from the FOD Store, including proceeds of any business interruption insurance policies, whether at retail or wholesale (whether such sales are permitted or not), whether for cash, check, or credit, and regardless of collection in the case of check or credit; provided, however, that "Gross Revenues" shall exclude any customer refunds, discounts given, sales taxes, and/or other taxes collected from customers by Franchisee and actually transmitted to the appropriate taxing authorities.
  - ii. The term "**Week**" means the period starting with the commencement of business on Monday and concluding at the close of business on the following Sunday (or,

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if the FOD Store is not open on a Sunday, the immediately preceding business day); however, Franchisor shall have the right to designate in writing any other period of not less than seven days to constitute a "Week" under this Agreement.

- b. *When Payments Due.* All payments required by this Section 10 and by Section 9 above shall be paid by the close of business on Monday of each Week based on the Gross Revenues for the preceding Week (if Monday is a bank holiday that prevents payment being made on that day, then payment may be made on the next business day). Franchisee shall establish an arrangement for electronic funds transfer or deposit of any payments required under Sections 4 or 10 or, at Franchisor's written request, by credit card arrangement. If required by Franchisor, Franchisee shall execute Franchisor's current form of "Authorization Agreement for Prearranged Payments (Direct Debits)," a copy of which is attached to this Agreement as Exhibit B, and Franchisee shall comply with the payment and reporting procedures specified by Franchisor in the Manual.
- c. *No Subordination.* Franchisee shall not subordinate to any other obligation its obligation to pay Franchisor the royalties and/or any other fee or charge payable to Franchisor, whether under this Agreement or otherwise.
- d. *Overdue Payments and Reports.* Any payment or report not actually received by Franchisor (or the appropriate advertising fund) on or before such date shall be deemed overdue. If any payment is overdue, Franchisee shall pay Franchisor, in addition to the overdue amount, interest on such amount from the date it was due until paid, at the rate of one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less. Entitlement to such interest shall be in addition to any other remedies Franchisor may have. Franchisee acknowledges that nothing contained in this Agreement constitutes Franchisor's agreement to accept any payments after same are due or a commitment by Franchisor to extend credit to or otherwise finance Franchisee's operation of the FOD Store. Further, Franchisee acknowledges that its failure to pay all amounts when due shall constitute a material default, and grounds for termination, of this Agreement.
- e. *Allocation of Payments.* Notwithstanding any designation by Franchisee, Franchisor shall have the right to apply any payments by Franchisee to any past due indebtedness of Franchisee for Royalty Fees, Advertising Commitments, purchases from Franchisor and its affiliates, interest or any other indebtedness.
- f. *Additional Payments.* Franchisee shall pay to Franchisor, within fifteen (15) days of any written request by Franchisor which is accompanied by reasonable substantiating material, any monies which Franchisor has paid, or has become obligated to pay, on behalf of Franchisee, by consent or otherwise under this Agreement.
- g. *Sales Reports.* On or before Monday of each Week, Franchisee shall submit to Franchisor, on a form approved by Franchisor, a correct statement, signed by Franchisee, of Franchisee's Gross Revenues for the preceding Week ended Sunday.

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## 11. ACCOUNTING AND RECORDS

- a. *Books and Records.* Franchisee shall maintain during the term of this Agreement, and shall preserve for the time period specified in the Manual, full, complete, and accurate books, records, and accounts in accordance with the standard accounting system prescribed by Franchisor in the Manual or otherwise in writing. Franchisee shall retain during the term of this Agreement and for three (3) years thereafter all books and records related to the FOD Store, including without limitation, sale checks, purchase orders, invoices, payroll records, customer lists, check stubs, sales tax records and returns, cash receipts and disbursement journals and general ledgers.
- b. *Franchisee's Reports to Franchisor.* In addition to the requirements of Section 10.7 above, Franchisee shall:
- i. Provide to Franchisor on or before the end of each preceding calendar month, in the form approved by Franchisor, a balance sheet and profit and loss statement and an activity report for the last preceding calendar month.
  - ii. Submit to Franchisor within ninety (90) days after the end of each fiscal year during the term of this Agreement, a profit and loss statement for such fiscal year and a balance sheet as of the last day of such fiscal year, prepared on an accrual basis in accordance with Generally Accepted Accounting Principles including all adjustments necessary for fair presentation of the financial statements. Such financial statements will be certified to be true and correct by Franchisee. Franchisor reserves the right to require annual financial statements, prepared in accordance with generally accepted accounting standards, audited by an independent certified public accountant.
  - iii. Submit to Franchisor such other periodic reports, forms and records as specified, and in the manner and at the time as specified in the Manual or as Franchisor shall otherwise require in writing from time to time (including without limitation the requirement that Franchisee provide or make available to Franchisor certain sales and financial information in electronic format and/or by electronic means).
- c. *Cash Registers.* Franchisee shall record all sales on electronic cash registers approved by Franchisor or on such other types of cash registers as may be designated by Franchisor in the Manual or otherwise in writing ("**Cash Register Systems**"), which shall deemed part of the Franchisee's Computer Systems (as specified in Section 12.11 below). Franchisee shall utilize computer-based point-of-sale cash registers which are fully compatible with any program or system which Franchisor, in its discretion, may employ, and Franchisee shall record all Gross Revenues and all sales information on such equipment.
- d. *Franchisor's Right to Inspect and Audit.* Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at Franchisor's expense, the books, records, and sales and income tax returns of Franchisee. Franchisor shall also have the right, at any time, to have an independent audit made of the books of Franchisee. If an

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inspection should reveal that any payments have been understated in any report to Franchisor, then Franchisee shall immediately pay Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of one-and-one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less. If an inspection is necessitated because Franchisee fails to provide sales reports or if an inspection discloses an understatement in any report of two percent (2%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wages expenses, and reasonable accounting and legal costs). The foregoing remedies shall be in addition to any other remedies Franchisor may have.

## 12. STANDARDS OF QUALITY AND PERFORMANCE

- a. *Details of Operation.* Franchisee understands and acknowledges that every detail of operating the FOD Store is important to Franchisee, Franchisor, and other franchisees in the System in order to develop and maintain high operating standards, to increase the demand for the services and products sold by all franchisees, and to protect Franchisor's reputation and goodwill.
- b. *Comply with the Agreement, including the Manual.* Franchisee shall comply with all requirements set forth in this Agreement, the Manual, and other written policies supplied to Franchisee by Franchisor. The specifications, standards, operating procedures, and rules that Franchisor prescribes periodically in the Manual or otherwise in writing shall constitute provisions of this Agreement as if fully set forth in the text of this Agreement; consequently, all references to "the Agreement" in this Agreement shall include all such mandatory specifications, standards, and operating procedures and rules.
- c. *Opening of the FOD Store.* Franchisee shall commence operation of the FOD Store not later than one hundred eighty (180) days after the execution of this Agreement. Before opening its FOD Store, Franchisee shall have complied with all of Franchisor's pre-opening standards and specifications. If Franchisee for any reason fails to commence operation within the period of time required in this Section 12.3, such failure shall be considered a default and Franchisor may terminate this Agreement as provided in Section 17 below.
- d. *Maintenance and Renovation of the FOD Store.*
  - i. Franchisee shall at all times maintain the FOD Store in a high degree of sanitation, repair, and condition, and in connection therewith shall make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment, display cases and racks, and other decor as Franchisor may reasonably direct. If at any time in Franchisor's judgment the general state of repair or the appearance of the premises of the FOD Store or its equipment,

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fixtures, signs or decor does not meet Franchisor's quality control and standards therefor, Franchisor shall so notify Franchisee, specifying the action to be taken by Franchisee to correct such deficiency. If Franchisee fails or refuses to initiate within thirty (30) days after receipt of such notice, and thereafter continue, a *bona fide* program to complete any required maintenance, Franchisor shall have the right (but not the obligation), in addition to all other remedies, to enter upon the premises of the FOD Store and effect such repairs, painting, maintenance or replacements of equipment, fixtures or signs on behalf of Franchisee and Franchisee shall pay the entire costs thereof on demand.

- ii. Franchisee shall refurbish the FOD Store at its expense to conform to the interior and exterior store design, trade dress, signage, furnishings, decor, color schemes, and presentation of the Proprietary Marks in a manner consistent with the image then in effect for new FOD Stores, including without limitation remodeling, redecoration, and modifications to existing improvements, as Franchisor may require in writing as well as replacement of worn out or obsolete fixtures, floor coverings and signs, and repair to the exterior and interior of the FOD Store (collectively, "**Facilities Remodeling**").
  - iii. In addition to Facilities Remodeling, Franchisee shall make such Computer Upgrades as may be required by Franchisor pursuant to Section 12.11 below.
  - iv. Franchisee shall have six (6) months after receipt of Franchisor's written notice within which to complete Facilities Remodeling.
  - v. Franchisee shall make no material alterations to the premises of the FOD Store nor shall Franchisee make material replacements of or alterations to the equipment, fixtures or signs of the FOD Store without Franchisor's prior written approval.
- e. *Merchandise Offered for Sale.* Recognizing that the goodwill and value of the System and the Proprietary Marks are inextricably linked to the character and integrity of the products offered for sale by Franchisee and other franchisees under the Proprietary Marks, Franchisee agrees that it shall maintain the highest standards of care with respect to the identity, nature, character, and provenance of all merchandise that Franchisee offers for sale. In particular, and without limiting the generality of the foregoing, Franchisee agrees that it shall comply with the following requirements:
- i. Franchisee shall offer for sale and sell at the FOD Store all types, categories and quantities of sports-related merchandise celebrity-related merchandise, collectibles, memorabilia, trading cards and related merchandise and products that Franchisor periodically authorizes in writing.
  - ii. Franchisee shall not offer for sale or sell at the FOD Store or any other premises Franchisee occupies any products that Franchisor has not specifically approved in writing.

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- iii. Franchisee shall at all times maintain a representative inventory of sports-related merchandise, collectibles, memorabilia, trading cards and related merchandise and products, and other products, materials and supplies of such quantities and quality that will permit operation of the FOD Store at maximum capacity as prescribed by Franchisor.
- iv. Any items bearing trademarks, likenesses, copyrighted material, or other proprietary material must be licensed from the proper owner or agent of the owner and evidence of a valid license must be available for inspection by the Franchisor and/or law enforcement authorities.
- v. Franchisee shall maintain in sufficient supply, and to use and/or sell at all times only such products, materials, supplies, and paper goods as conform to Franchisor's written standards and specifications, and to refrain from deviating therefrom by the use or offer of any nonconforming items without Franchisor's specific prior written consent.
- vi. Franchisee shall sell or offer for sale only the items set forth in this Section 12.5; shall refrain from making any changes to the items offered at the FOD Store without Franchisor's prior written approval; shall refrain from any deviation from Franchisor's standards and specifications which shall be set forth in the Manual or otherwise in writing, without Franchisor's prior written consent; and shall discontinue selling and offering for sale any items, products, or services which Franchisor may, in its discretion, disapprove in writing at any time. If Franchisee deviates or proposes to deviate from Franchisor's standards and specifications, whether or not such deviation is approved by Franchisor, such deviation shall become the property of Franchisor. With respect to the offer and sale of all items, and products, Franchisee shall have sole discretion as to the prices to be charged to customers.
- vii. Franchisee shall purchase and install, at Franchisee's expense, all fixtures, furnishings, equipment, decor, and signs as Franchisor shall specify; and to refrain from installing or permitting to be installed on or about the FOD Store premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved as meeting Franchisor's standards and specifications.
- viii. Franchisee shall purchase all Items, as well as supplies, materials, and other products used or offered for sale at the FOD Store solely from approved vendors (including manufacturers, distributors, and other sources) in accordance with Section 13.1 below. If Franchisee wishes to purchase any products (other than Trademarked Products) from an unapproved vendor, Franchisee shall submit to Franchisor a written request for such approval in accordance with Section 13.1 below. In addition, and without limiting the foregoing, Franchisee shall purchase Trademarked Products only from Franchisor or Franchisor's designee, as set forth in Section 13.3 below.

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- ix. Franchisee shall be solely responsible for the quality of products that are sold by Franchisee.
- x. Franchisee shall require all advertising and promotional materials, signs, decorations, paper goods (including without limitation disposable food and beverage containers, bags, napkins, menus, and all forms and stationery used in the FOD Store), and other items which may be designated by Franchisor to bear the Proprietary Marks in the form, color, location, and manner prescribed by Franchisor.
- xi. Franchisee grants Franchisor and its agents the right to enter upon the FOD Store premises at any time for the purpose of conducting inspections. Franchisee shall cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from Franchisor or its agents and without limiting Franchisor's other rights under this Agreement, Franchisee shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Franchisee further agrees that Franchisee will reimburse Franchisor for its representative's time and travel expenses if an additional inspection at the FOD Store is required when a violation has occurred and Franchisee has not corrected the violation.
- xii. If at any time Franchisor questions the authenticity of any item offered for sale by Franchisee, Franchisor may require Franchisee to deliver such item to Franchisor or its representative for authentication. If the results of the authentication indicate that the item is not authentic, Franchisor may retain and/or destroy the item, Franchisee will immediately remove any similar items from its inventory, and Franchisee shall immediately pay to Franchisor the reasonable cost of the authentication process.
- xiii. Franchisor shall have the right to determine that any particular items offered for sale at the FOD Store do not enhance the Proprietary Marks or the System and/or are incompatible with the standards of the System, and Franchisee shall discontinue the offer, sale, and display of any items so designated by Franchisor in writing.
- xiv. Franchisee agrees to refrain from any merchandising, advertising or promotional practice which is unethical, deceptive, fraudulent, or which may be injurious to the business of Franchisor and/or other FOD Stores or to the goodwill associated with the Proprietary Marks.
- xv. Franchisee shall meet all quality assurance and product authenticity standards and requirements as prescribed by Franchisor in this Agreement (including without limitation Section 13 below) and/or in the Manual, including without limitation the requirement that uniform procedures be followed for authenticating merchandise. Franchisor shall not, however, require Franchisee to use or purchase "Field of Dreams Guarantee of Authenticity" certificates.

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- f. *Licenses and Permits.* Franchisee shall secure and maintain in force and effect all required licenses, permits and certificates relating to the operation of the FOD Store and shall operate the FOD Store in full compliance with all applicable laws, ordinances and regulations, including, without limitation, all government regulations relating to occupational hazards and health, consumer protection, trade regulation, worker's compensation, unemployment insurance and withholding and payment of Federal and State income taxes and social security taxes and sales, use and property taxes.
- g. *Supplies.* Franchisee shall maintain in sufficient supply, and use and/or sell at all times only such items, supplies, packaging, displays, boxes, bags, labels, forms, other paper products, and materials as conform to Franchisor's written standards and specifications, and to refrain from deviating therefrom by the use or offer of any nonconforming items without Franchisor's specific prior written consent.
- h. *Trained Staff; Full Efforts.* The FOD Store shall at all times be under the direct, on-premises supervision of Franchisee (or a trained and competent employee). Franchisee shall keep Franchisor informed at all times of the identity of any employee(s) acting as manager(s) of the FOD Store. Franchisee shall at all times faithfully, honestly and diligently perform its obligations hereunder and shall not engage in any business or other activities that will conflict with its obligations hereunder.
- i. *No Machines.* Franchisee shall not install or maintain on the premises of the FOD Store any newspaper racks, video games, jukeboxes, gaming machines, gum machines, games, rides, vending machines or other similar devices without Franchisor's prior written approval.
- j. *Legal Actions.* Franchisee shall notify Franchisor in writing within five (5) days of the commencement of any action, suit, or proceeding, and of the issuance, against Franchisee, any of its principals or employees, or the FOD Store, of any subpoena, order, writ, injunction, award or decree of any court, agency, or other governmental instrumentality.
- k. **Computer Systems and Required Software.**
- i. Franchisor shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware to be used by, between, or among FOD Stores, including without limitation: (a) back office and point of sale systems, data, audio, video, and voice storage, retrieval, and transmission systems for use at Franchisee's FOD Store, between or among FOD Stores, and between and among Franchisee's FOD Store and Franchisor and/or Franchisee; (b) Cash Register Systems; (c) physical, electronic, and other security systems; (d) printers and other peripheral devices; (e) archival back-up systems; and (f) internet access mode and speed (collectively, the "Computer System").

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- ii. Franchisor shall have the right, but not the obligation, to develop or have developed for it, or to designate: (a) computer software programs that Franchisee must use in connection with the Computer System ("**Required Software**"), which Franchisee shall install; (b) updates, supplements, modifications, or enhancements to the Required Software, which Franchisee shall install; (c) the tangible media upon which such Franchisee shall record data; and (d) the database file structure of Franchisee's Computer System.
- iii. Franchisee shall make, from time to time, such upgrades and other changes to the Computer System and Required Software as Franchisor may request in writing (collectively, "**Computer Upgrades**").
- iv. Franchisee shall comply with all specifications issued by Franchisor with respect to the Computer System and the Required Software, and with respect to Computer Upgrades. Franchisee shall also afford Franchisor unimpeded access to Franchisee's Computer System and Required Software as Franchisor may request, in the manner, form, and at the times requested by Franchisor.
- v. All data provided by Franchisee, uploaded to Franchisor's system from the Franchisee's system, and/or downloaded from the Franchisee's system to Franchisor's system is and will be owned exclusively by Franchisor, and Franchisor will have the right to use such data in any manner that Franchisor deems appropriate without compensation to Franchisee. In addition, all other data created or collected by Franchisee in connection with the System, or in connection with Franchisee's operation of the business, is and will be owned exclusively by Franchisor during the term of, and following termination or expiration of, the Agreement. Copies and/or originals of such data must be provided to Franchisor upon Franchisor's request.

### 13. FRANCHISEE'S OBLIGATIONS TO PURCHASE FROM APPROVED SOURCES

- a. *Approved Vendors List.* From time to time, Franchisor shall provide to Franchisee a list of approved manufacturers, vendors and distributors ("**Approved Vendors List**"). Such list shall specify the manufacturer, vendor and distributor and the inventory products, fixtures, furniture, equipment, and signs which Franchisor has approved to be carried or used in the System. Franchisor may revise the Approved Vendors List from time to time in its sole discretion and such list shall be submitted to Franchisee as Franchisor deems advisable. If Franchisee proposes to offer for sale at the FOD Store any brand of product, or to use in the operation of the FOD Store any other inventory item or other material or supply which is not then approved by Franchisor as meeting its minimum specifications and quality standards, or to purchase any product from a vendor that is not then designated by Franchisor as an approved vendor, Franchisee shall first notify Franchisor and shall upon request by Franchisor submit samples and such other information as Franchisor requires for examination and/or testing or to otherwise determine whether such product, material or supply, or such proposed vendor meets its specifications and

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

- b. *Conformity to Standards.* All inventory, products and materials, and other items and supplies used in the operation of the FOD Store which are not specifically required to be purchased in accordance with Franchisor's Approved Vendors List shall conform to the specifications and quality standards established by Franchisor from time to time. Any items bearing trademarks, likenesses, copyrighted material or other proprietary material must be licensed from the proper owner or agent. Evidence of a valid license must be available for inspection by the Franchisor.
- c. *Trademarked Products.* Franchisor shall have the right, but not the obligation, to develop and own a proprietary line of sports-related merchandise and products ("**Trademarked Products**"). If Franchisor does so, Franchisee acknowledges that it shall purchase Trademarked Products only from Franchisor or such vendor(s) that Franchisor may designate in writing, and that the Trademarked Products shall be carried by Franchisee in the manner required of all other products, as set forth in Section 12.5 above.

#### 14. FRANCHISOR'S OPERATIONS ASSISTANCE

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

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- i. Provide to Franchisee a comprehensive list of established sources of sports-related and celebrity-related merchandise, collectibles, memorabilia, trading cards and related merchandise and products, equipment and supplies necessary for the operation of the FOD Store and provide specifications for such products;
  - ii. Coordinate product distribution and purchasing for local, regional and national vendors as Franchisor deems necessary; and
  - iii. Attempt to negotiate volume discounts for purchases of sports-related merchandise, collectibles, memorabilia, trading cards and related merchandise and products made by stores within the System.
- c. *Advice.* Franchisor, or its representative, may advise Franchisee of problems arising out of the operation of the FOD Store as disclosed by reports submitted to Franchisor, or its representative, by Franchisee or by inspections conducted by Franchisor of the FOD Store. Franchisor, or its representative, may furnish Franchisee with such assistance in connection with the operation of the FOD Store as is reasonably determined to be necessary by Franchisor from time to time. Operations assistance may consist of advice and guidance with respect to:
  - i. Proper procedures to be utilized by the FOD Store with respect to routines regarding the sale of all sports-related and celebrity-related merchandise, collectibles, memorabilia, trading cards and related merchandise and products as approved by Franchisor;
  - ii. Additional products and services authorized for sale from the franchised FOD Stores;
  - iii. Purchase of sports-related and celebrity related merchandise, collectibles, memorabilia, trading cards and related merchandise and products, materials and supplies;
  - iv. The institution of proper administrative, bookkeeping, accounting, inventory control, supervisory and general operating procedures for the effective operation of the FOD Store; and
  - v. Advertising and promotional programs.
- d. *Visits.* Franchisor, or its representative, may make periodic visits to the FOD Store for the purposes of consultation, assistance, and guidance of Franchisee in all aspects of the operation and management of the FOD Store. Franchisor, or Franchisor's representatives, who attend at the FOD Store will prepare, for the benefit of both Franchisor and Franchisee, written reports with respect to such visits outlining any suggested changes or improvements in the operations of the FOD Store and detailing any defaults in such operations which become evident as a result of any such visit, and a copy

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of each such written report shall be provided to both Franchisor, or its representative, and Franchisee.

- e. *Delivery.* All of the specifications, Approved Vendors List, and Manuals to be provided by Franchisor to Franchisee pursuant to this Agreement shall be delivered to Franchisee at the initial training program described in Section 4 above.

## 15. INSURANCE

- a. *Insurance for the FOD Store.* Franchisee shall procure at its expense and maintain in full force and effect during the term of this Agreement, an insurance policy or policies protecting Franchisee, Franchisor and USL, and their officers, directors, partners and employees against any loss, liability, personal injury, death, or property damage or expense whatsoever arising or occurring upon or in connection with the FOD Store, as Franchisor may reasonably require for their own and Franchisee's protection. Franchisor and USL and such of their respective affiliates shall be named additional insured in such policy or policies.
- b. *Coverages.* Such policy or policies shall be written by an insurance company satisfactory to Franchisor in accordance with standards and specifications set forth in the Manual or otherwise in writing, and shall include, at a minimum (except as different coverages and policy limits may reasonably be specified for all Franchisees from time to time by Franchisor in the Manual or otherwise in writing) the following:
- i. All risks coverage insurance on the FOD Store and all fixtures, equipment, supplies and other property used in the operation of the FOD Store, for full repair and replacement value of the equipment, improvements and betterments, without any applicable co-insurance clause, except that an appropriate deductible clause shall be permitted.
  - ii. Worker's compensation and employer's liability insurance as well as such other insurance as may be required by statute or rule of the state in which the FOD Store is located and operated.
  - iii. Comprehensive general liability insurance and product liability insurance with limits of Three Million Dollars (\$3,000,000) combined single limit including the following coverages: personal injury (employee and contractual inclusion deleted); products/completed operation; and fire legal; insuring Franchisor and Franchisee against all claims, suits, obligations, liabilities and damages, including attorneys' fees, based upon or arising out of actual or alleged personal injuries or property damage resulting from, or occurring in the course of, or on or about or otherwise relating to the FOD Store, provided that the required amounts herein may be modified from time to time by Franchisor to reflect inflation or future experience with claims.

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- iv. Automobile liability insurance, including owned, hired and non-owned vehicle coverage, with a combined single limit of at least One Million Dollars (\$1,000,000).
  - v. Such insurance and types of coverage as may be required by the terms of any lease for the FOD Store, or as may be required from time to time by Franchisor.
  - vi. Business interruption insurance for actual losses sustained.
- c. *Certificates of Insurance.* The insurance afforded by the policy or policies respecting liability shall not be limited in any way by reason of any insurance which may be maintained by Franchisor. Within one hundred twenty (120) days of the signing of this Agreement, but in no event later than the date on which Franchisee acquires an interest in the real property on which it will develop and operate the FOD Store, a Certificate of Insurance showing compliance with the foregoing requirements shall be furnished by Franchisee to Franchisor for approval. Such certificate shall state that said policy or policies will not be canceled or altered without at least twenty (20) days prior written notice to Franchisor and shall reflect proof of payment of premiums. Maintenance of such insurance and the performance by Franchisee of the obligations under this Paragraph shall not relieve Franchisee of liability under the indemnity provision set forth in this Agreement. Franchisee acknowledges that minimum limits as required above may be modified by Franchisor in its sole discretion from time to time, by written notice to Franchisee.
- d. *Franchisor's Right to Obtain Insurance for Franchisee.* Should Franchisee, for any reason, not procure and maintain such insurance coverage as required by this Agreement, Franchisor shall have the right and authority (without, however, any obligation to do so) immediately to procure such insurance coverage and to charge same to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

## 16. COVENANTS

- a. *Coverage.* Unless otherwise specified, the term "Franchisee" as used in this Section 16 shall include, collectively and individually, all officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of Franchisee, and of any corporation directly or indirectly controlling Franchisee, if Franchisee is a corporation; and the general partners and any limited partner (including any corporation and the officers, directors, and holders of a beneficial interest of five percent (5%) or more of securities, of a corporation which controls, directly or indirectly, any general or limited partner), if Franchisee is a partnership.
- b. *Full Time, Energy, and Best Efforts.* Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (if Franchisee is an individual), a shareholder of a beneficial interest of ten percent (10%) or

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more of the securities of Franchisee (if Franchisee is a corporation), a general partner of Franchisee (if Franchisee is a partnership), or Franchisee's approved Manager shall devote full time, energy, and best efforts, to the management and operation of the FOD Store.

- c. *During the Agreement Term.* Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for himself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation:
- i. Divert or attempt to divert any business or customer of the FOD Store to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System.
  - ii. Employ or seek to employ any person who is at that time employed by Franchisor or by any other franchisee of Franchisor, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat.
  - iii. Own, maintain, engage in, consult with, or have any interest in any business (including any business operated by Franchisee prior to entry into this Agreement) specializing in whole or in part, in selling, offering or providing through any channel of distribution whatsoever sports-related or celebrity related merchandise, collectibles, memorabilia, trading cards, and related merchandise and products the same as or similar to that provided or sold through the System.
- d. *During or After the Agreement, and After a Transfer.* Franchisee covenants that, except as otherwise approved in writing by Franchisor, Franchisee shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the FOD Store; and shall not for a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 19 below; (b) expiration or termination of this Agreement (regardless of the cause for termination); or (c) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Section; either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any persons, partnership, or corporation, own, maintain, operate, engage in, or have any interest in any Competitive Business (defined below) which business is, or is intended to be, located within an eighteen (18) mile radius of either the Approved Location or any other FOD Store operating at the time that the obligations under this Section commence. The term "Competitive Business" is agreed to mean any business specializing in whole or in part, in selling, offering or providing through any channel of distribution whatsoever sports-related or celebrity-related merchandise, collectibles, memorabilia, trading cards and/or related merchandise and

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products, and/or any other business which sells or offers to sell products or services the same as or similar to those sold in the System.

- e. *Covenants as Independent Clauses.* The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 16 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 16.
- f. *Franchisor's Right to Reduce Scope of the Covenants.* Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Section 16, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 26 below.
- g. *Public Entities.* Sections 16.3 and 16.4 shall not apply to ownership by Franchisee of less than five percent (5%) beneficial interest in the outstanding equity securities of any corporation which is registered under the Securities Exchange Act of 1934.
- h. *Personal Covenants.* Franchisor shall have the right to require all of Franchisee's personnel performing managerial or supervisory functions and all personnel receiving training from Franchisor to execute similar covenants in a form satisfactory to Franchisor.

## 17. DEFAULT AND TERMINATION

Except as otherwise provided in Sections 3.5 and 4.3 above, the parties agree as follows:

- a. *Automatic Termination.* Franchisee shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Franchisee, if Franchisee shall become insolvent or makes a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed by Franchisee or such a petition is filed against and not opposed by Franchisee; or if Franchisee is adjudicated bankrupt or insolvent; or if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless unappealed or a supersedeas bond is filed); or if Franchisee is dissolved; or if execution is levied against

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Franchisee's business or property; or if suit to foreclose any lien or mortgage against the FOD Store premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of Franchisee's FOD Store shall be sold after levy thereupon by any sheriff, marshal, or constable.

- b. *Termination Upon Notice.* Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon the delivery of written notice to Franchisee by Franchisor (in the manner set forth under Section 23 below), upon the occurrence of any of the following events:
- i. If Franchisee fails to construct and open the FOD Store within the time limits as provided in Section 12.3 of this Agreement, and in accordance with the requirements set forth in Section 3 of this Agreement;
  - ii. If Franchisee at any time ceases to operate for two (2) or more consecutive business days (when the mall is open, if the Approved Location is in a mall), or otherwise abandons, the FOD Store, loses the right to possession of the premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the FOD Store is located; provided, however, that if, through no fault of Franchisee, the premises are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within ninety (90) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the premises, which approval shall not be unreasonably withheld;
  - iii. If Franchisee or any Principal is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;
  - iv. If a threat or danger to public health or safety results from the construction, maintenance, or operation of the FOD Store;
  - v. If Franchisee or any Principal purports to transfer any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of Section 19 of this Agreement;
  - vi. If Franchisee fails to comply with the covenants in Section 16 hereof or fails to obtain execution of the covenants required under Section 16.8 hereof;
  - vii. If, contrary to the terms of Sections 6 or 7 above, Franchisee discloses or divulges the contents of the Manual or other confidential information provided to Franchisee by Franchisor;

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- viii. If an approved transfer of an interest in Franchisee is not effected within a reasonable time, as required by Section 19.3 and/or 19.4 below;
  - ix. If Franchisee knowingly maintains false books or records, or submits any false reports (including, but not limited to, information provided as part of Franchisee's application for this franchise) to Franchisor;
  - x. If Franchisee submits to Franchisor on two (2) or more separate occasions at any time during the term of the franchise any reports or other data, information or supporting records which understate by more than three percent (3%) the Gross Revenues of the FOD Store, or the Royalty Fees due, for any period of, or periods aggregating, three (3) or more weeks, and Franchisee is unable to demonstrate that such understatements resulted from inadvertent error;
  - xi. If Franchisee fails on two (2) or more separate occasions within any period of twelve (12) consecutive months to submit when due reports or other information or supporting records, to pay when due the Royalty Fees, Advertising Commitments, amounts due for purchases from Franchisor and its affiliates or other payments due to Franchisor and its affiliates, or otherwise fails to comply with this Agreement, whether or not such failures to comply are corrected after notice thereof is delivered to Franchisee;
  - xii. If on three (3) or more occasions Franchisee offers for sale products which bear a false autograph or otherwise violate the rights of a third party or violate state or federal law;
  - xiii. If, on four (4) or more occasions during any twenty-four (24) month period, Franchisee fails to maintain in the FOD Store authenticity documentation as required by the Manual;
  - xiv. If Franchisee, after curing a default pursuant to this Section 17, commits the same default again within a twelve (12) month period of the previous default, whether or not cured after notice; or
  - xv. If Franchisee repeatedly is in default under this Section 17 for failure substantially to comply with any of the requirements imposed by this Agreement, whether or not cured after notice.
- c. *Notice and Opportunity to Cure.* Except as otherwise provided in Sections 3.5, 4.3, 17.1, and 17.2 above, upon any other default by Franchisee, Franchisor may terminate this Agreement only by giving written notice of termination (in the manner set forth under Section 23 below) stating the nature of such default to Franchisee at least:
- i. Ten (10) days prior to the effective date of termination if the default relates to failure to pay Franchisor monies due; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing

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- it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the ten-day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the ten (10) day period or such longer period as applicable law may require.
- ii. Except with respect to financial defaults, thirty (30) days prior to the effective date of termination; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the thirty-day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require.
- d. *Operation During Pendency of a Default.* In addition to Franchisor's right to terminate this Agreement, and not in lieu of Franchisor's rights under this Agreement, if Franchisee shall not have cured a default under this Agreement within the thirty-day period after written notice to cure from Franchisor, Franchisor shall have the right (but not the obligation) to enter upon the premises of the FOD Store and exercise complete authority with respect to the operation of said business until such time as Franchisor determines that Franchisee's defaults have been cured and that the Franchisee and FOD Store comply with the requirements of this Agreement.
- i. Franchisee specifically agrees that a designated representative of Franchisor may take over, control, and operate said business, and that Franchisee shall pay Franchisor reasonable compensation and expenses for Franchisor's representative (including all travel expenses, room and board, and other expenses) reasonably incurred by such representative so long as it shall be required by the representative to enforce compliance herewith.
- ii. Franchisee further agrees that if, as herein provided, Franchisor temporarily operates for Franchisee the business licensed herein, Franchisee shall indemnify and hold harmless Franchisor and any representative of Franchisor who may act hereunder, respecting any and all acts and omissions which Franchisor and/or its representative may perform, or fail to perform as regards the interests of Franchisee or third parties (including without limitation negligence on the part of Franchisor and/or its representative).
- iii. Franchisor shall not be deemed liable if it decides not to exercise its rights under this Section 17.4.
- e. *Default Under Other Agreements.* Default by Franchisee (or any affiliate of Franchisee) pursuant to the terms of any other agreement by and between Franchisee (or any affiliate of Franchisee) and Franchisor shall also be deemed to be a default pursuant to this

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Agreement. After default by Franchisee upon such other agreement and after the lapse of any applicable cure period within the applicable agreement, an uncured default by Franchisee pursuant to any such other agreement between Franchisee and Franchisor shall also constitute a default under this Agreement and Section 17.2 above shall be applicable.

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

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

- a. *Stop Operating.* Franchisee shall immediately cease to operate the FOD Store under this Agreement, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor.
- b. *The Premises.* Franchisor shall have the right to request that Franchisee assign to Franchisor any interest which Franchisee has in the lease or sublease for the Approved Location.
  - i. If Franchisor does not elect or is unable to exercise its option to acquire, or to acquire the lease or sublease for the Approved Location, then Franchisee shall make such modifications or alterations to the premises operated hereunder (including, without limitation, the changing of the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of said premises from that of other FOD Stores, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose.
  - ii. If Franchisee fails or refuses to comply with the requirements of this Section, Franchisor shall have the right to enter upon the premises of the FOD Store, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.
- c. *Stop Using the Proprietary Marks.* Upon the termination of this Agreement, for any reason, Franchisee's right, license and privilege to use the Proprietary Marks, including without limitation the Proprietary Marks, shall immediately and forever terminate. Franchisee shall immediately and permanently cease to use, by advertising or in any manner whatsoever, any confidential methods, procedures, and techniques associated with the System; the Proprietary Marks and distinctive forms, slogans, signs, symbols, logos, or devices associated with the System. In particular, Franchisee shall cease to use and return to Franchisor, without limitation, all signs, advertising materials, stationery, forms, and any other articles which display the Proprietary Marks associated with the System.

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- d. *Cancel Assumed Names.* Franchisee shall take such action as may be necessary to cancel or assign to Franchisor or Franchisor's designee, at Franchisor's option, any assumed name rights or equivalent registration filed with state, city, or county authorities which contains the name "FIELD OF DREAMS®" or the other Proprietary Marks, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement.
- e. *No Use of the Proprietary Marks in Other Businesses.* Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Proprietary Marks either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake or deception, or which is likely to dilute Franchisor's rights in and to the Proprietary Marks and further agrees not to utilize any designation of origin or description or representation which suggests or represents a past, present, or other association or connection with Franchisor, the Proprietary Marks, the System, USL, the products sold under the Proprietary Marks, or otherwise.
- f. *Pay Franchisor All Amounts Due.* Franchisee shall promptly pay all sums owing to Franchisor, including without limitation sums due for Royalty Fees, Advertising Commitments, amounts due for purchases made from Franchisor or its affiliates, and all other amounts due to Franchisor or its affiliates. In the event of termination for any default of Franchisee, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default.
- g. *Pay Franchisor Damages.* Franchisee shall pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor subsequent to the termination or expiration of the franchise herein granted in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement, including without limitation this Section 18 and/or Section 16 above.
- h. *Return Materials to Franchisor.* Franchisee shall immediately turn over to Franchisor (and Franchisee shall retain and provide no other party with a copy of) all written materials and manuals, including without limitation the Manual, customer lists, records, files, instructions, brochures, agreements, disclosure statements, and any and all other materials provided by Franchisor to Franchisee relating to the operation of the FOD Store (all of which are acknowledged to be Franchisor's property).
- i. *Return Signage.* Franchisor shall have the right, title and interest to any sign or sign faces bearing the Proprietary Marks. Franchisee hereby acknowledges Franchisor's right to access the premises of the FOD Store should Franchisor elect to take possession of any said sign or sign faces bearing the Proprietary Marks.
- j. *Purchase Certain Assets.* Franchisor shall have the right (but not the duty), to be exercised by notice of intent to do so within thirty (30) days after termination or expiration, to purchase for cash any or all assets of the FOD Store, including leasehold

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improvements, equipment, supplies, and other inventory, advertising materials, and all items bearing Franchisor's Marks, at Franchisee's cost or fair market value, whichever is less. If the parties cannot agree on fair market value within a reasonable time, Franchisor and Franchisee shall each designate an independent appraiser, which two (2) appraisers shall designate a third (3rd) independent appraiser, and said third independent appraiser's determination shall be binding. If Franchisor elects to exercise any option to purchase as herein provided, it shall have the right to set off all amounts due from Franchisee under this Agreement, and the cost of the appraisal, if any, against any payment therefor.

- k. *Telephone Numbers.* Franchisee hereby acknowledges that all telephone numbers, e-mail addresses, domain names (if and as permitted), and other means of communication used in connection with operation of the FOD Store (collectively, the "**Contact Numbers**") constitute assets of the FOD Store; and upon termination or expiration of this Agreement, Franchisee shall assign to Franchisor or its designee, all Franchisee's right, title, and interest in and to Franchisee's Contact Numbers and shall notify the telephone company, all listing agencies, and any other party with which a Contact Number is registered of the termination or expiration of Franchisee's right to use any Contact Number, and shall authorize a transfer of same to, or at the written direction of, Franchisor.
- l. *Comply with Covenants.* Franchisee shall comply with the covenants contained in Section 16 above.

## 19. TRANSFERABILITY OF INTEREST

- a. *Franchisor's Transfer.* Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment.
- b. *Principals of Franchisee.* If Franchisee is a corporation or partnership, each principal of Franchisee ("**Principal**"), and the interest of each Principal in Franchisee, is identified in Exhibit C to this Agreement. Any person or entity which owns a direct or indirect interest in Franchisee may be designated as a Principal by Franchisor in its sole discretion, and Exhibit C shall be so amended automatically upon notice thereof to Franchisee. Franchisor shall have a continuing right to designate as a Principal any person or entity which owns a direct or indirect interest in Franchisee.
- c. *No Transfers Without Franchisor's Prior Written Approval.* Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee's or Franchisee's Principals' business skill, financial capacity, and personal character. Accordingly:

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- i. Franchisee shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber: (a) the rights and obligations of the Franchisee under this Agreement; or (b) any material asset of Franchisee or the FOD Store.
  - ii. If Franchisee is a corporation, Franchisee shall not, without the prior written consent of Franchisor, issue any voting securities or securities convertible into voting securities, and the recipient of any such securities shall become a Principal under this Agreement, if so designated by Franchisor.
  - iii. If Franchisee is a partnership, the partners of the partnership shall not, without the prior written consent of Franchisor, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner. Each general partner shall automatically be deemed a Principal of Franchisee.
  - iv. A Principal shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Franchisee as shown in Exhibit C.
- d. *Conditions on Transfers.* Franchisor shall not unreasonably withhold any consent required by Section 19.3; provided, if Franchisee proposes to transfer its obligations hereunder or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Franchisee, Franchisor shall have absolute discretion to require any or all of the following as conditions of its approval:
- i. The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Franchisee and Franchisor or its affiliates, and federal, state, and local laws and rules;
  - ii. The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Franchisee; and, if the obligations of Franchisee were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor;
  - iii. After the transfer, the Principals of the Franchisee shall meet Franchisor's educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the FOD Store, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the FOD Store;

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- iv. If a proposed transfer would result in a change in control of the Franchisee, at Franchisor's option, the Franchisee shall execute, for a term ending on the expiration date of this Agreement the form of franchise agreement then being offered to new System franchisees, and such other ancillary agreements required by Franchisor for the business franchised hereunder, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher royalty and advertising fee;
  - v. If so requested by Franchisor, the Franchisee, at its expense, shall upgrade the FOD Store to conform to the then-current standards and specifications of new stores then-being established in the System, and shall complete the upgrading and other requirements within the time specified by Franchisor;
  - vi. The transferor shall remain liable for all of the obligations to Franchisor in connection with the FOD Store that arose prior to the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;
  - vii. The transferee shall operate the FOD Store only as an FOD Store, and only in accordance with the terms and conditions of this Agreement (or, if required under Section 19.4.4, a new franchise agreement);
  - viii. At Franchisee's expense, one Principal designated by Franchisor shall successfully complete all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require;
  - ix. Franchisee shall pay a transfer fee of Six Thousand Five Hundred Dollars (\$6,500) or twenty percent (20%) of Franchisor's then-current initial franchise fee, whichever is greater, for Franchisor's legal, accounting, training, and other expenses incurred in connection with the transfer; and
  - x. The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Sections 16.3 and 16.4 above.
- e. Right of First Refusal.
- i. If Franchisee or any Principal desires to accept any *bona fide* offer from a third party to purchase Franchisee, any material assets of Franchisee, or any direct or indirect interest in Franchisee, Franchisee or such Principal shall promptly notify Franchisor of such offer and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of all such information, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third

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party. If Franchisor elects to purchase the seller's interest, the closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by Franchisor.

- ii. Any material change in the terms of the offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 19.5 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 19, with respect to a proposed transfer.
  - iii. If the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they must attempt to appoint a mutually-acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Franchisee, which two (2) appraisers shall, in turn, promptly designate a third (3<sup>rd</sup>) appraiser; all three (3) appraisers shall promptly confer and reach a single determination, which determination shall be binding upon Franchisor and Franchisee. The cost of any such appraisal shall be shared equally by Franchisor and Franchisee. If Franchisor elects to exercise its right under this Section 19.5, Franchisor shall have the right to set off all amounts due from Franchisee, and one-half (½) of the cost of the appraisal, if any, against any payment to the seller.
- f. *Principal's Death.* Upon the death of a Principal, the deceased's executor, administrator, or other personal representative shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the deceased's death.
- g. *Controlling Principal's Permanent Disability.* Upon the permanent disability of any Principal with a controlling interest in Franchisee, Franchisor may, in its sole discretion, require such interest to be transferred to a third party in accordance with the conditions described in this Section 19 within six (6) months after notice to Franchisee. "**Permanent Disability**" shall mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) consecutive months from the date of determination of disability is unlikely. Permanent

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disability shall be determined by a licensed practicing physician selected by Franchisor upon examination of such person or, if such person refuses to be examined, then such person shall automatically be deemed permanently disabled for the purposes of this Section 19.7 as of the date of refusal. Franchisor shall pay the cost of the required examination.

- h. *No Waiver.* Franchisor's consent to a transfer which is the subject of this Section 19 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.
- i. *Bankruptcy.* If Franchisee or any person holding any interest (direct or indirect) in Franchisee becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of Franchisee, Franchisee's obligations and/or rights hereunder, any material assets of Franchisee, or any indirect or direct interest in Franchisee shall be subject to all of the terms of this Section 19, including without limitation the terms of Sections 19.3, 19.4, and 19.5.
- j. *Securities Offerings.* All materials for an offering of stock or partnership interests in Franchisee or any affiliate of Franchisee which are required by federal or state law shall be submitted to Franchisor for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. No offering by Franchisee or any affiliate of Franchisee shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of the securities of Franchisee or Franchisee's affiliates; and Franchisor's review of any offering shall be limited solely to the relationship between Franchisor and Franchisee and any subsidiaries and affiliates, if applicable. Franchisor may, at its option, require the offering materials to contain a written statement prescribed by Franchisor concerning the limitations stated in the preceding sentence. Franchisee (and the offeror if not Franchisee), the Principals, and all other participants in the offering must fully indemnify Franchisor, its subsidiaries, affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, Franchisee shall pay Franchisor a non-refundable fee of Two Thousand Five Hundred Dollars (\$2,500) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering. Franchisee shall give Franchisor written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 19.10 commences. Any such offering shall be subject to all of the other provisions of this Section 19, including without limitation the terms set forth in Sections 19.3, 19.4, and 19.5; and further, without limiting the foregoing, it is agreed that any such offering shall be subject to Franchisor's approval as to the structure and voting control of the offeror (and Franchisee, if Franchisee is not the offeror) after the financing is completed.

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20. **OPERATION IN THE EVENT OF ABSENCE, DISABILITY OR DEATH.**  
In order to prevent any interruption of the FOD Store which would cause harm to the FOD Store and thereby depreciate the value thereof, Franchisee authorizes Franchisor, in the event that Franchisee is absent or incapacitated by reason of illness or death and is not, therefore, in the sole judgment of Franchisor, able to operate the FOD Store, to operate the FOD Store for so long as Franchisor deems necessary and practical, and without waiver of any other rights or remedies Franchisor may have under this Agreement. Provided, however, that Franchisor shall not be obligated to so operate the franchise. All monies from the operation of the business during such period of operation by Franchisor shall be kept in a separate account and the expenses of the FOD Store, including reasonable compensation and expenses for Franchisor's representative, shall be charged to said account. If, as herein provided, Franchisor temporarily operates for Franchisee the FOD Store, Franchisee agrees to indemnify and hold harmless Franchisor and any representative of Franchisor who may act hereunder, from any and all claims arising from the operation of the FOD Store, including, without limitation, the acts and omissions of Franchisor and its representative.

21. **INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

- a. *No Fiduciary Relationship.* This Agreement does not create a fiduciary relationship between the parties, nor does it constitute Franchisee as an agent, legal representative, joint venturer, partner, employee, or servant of Franchisor for any purpose whatsoever; and it is understood between the parties hereto that Franchisee shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of Franchisor, to incur any debt, or to create any obligation, express or implied, on behalf of Franchisor.
- b. *Public Notice.* Franchisee shall prominently display, by posting of a sign within public view, on or in the premises of the franchised location, a statement that clearly indicates that the FOD Store is independently owned and operated by Franchisee as a FIELD OF DREAMS® franchisee of Franchisor and not as an agent thereof.
- c. *Indemnification.* Franchisee agrees to defend at its own cost and to indemnify and hold harmless Franchisor, its shareholders, directors, officers, employees and agents, from and against any and all loss, costs, expenses (including, without limitation, reasonable accountants', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses), damages and liabilities, however caused, resulting directly or indirectly from or pertaining to the use, condition, or construction, equipping, decorating, maintenance or operation of the FOD Store, including the sale of sports-related and celebrity-related merchandise, collectibles, memorabilia, trading cards and related merchandise and products sold from the FOD Store. Such loss, claims, costs, expenses, damages and liabilities shall include, without limitation, those arising from latent or other defects in the FOD Store, whether or not discoverable by Franchisor, and those arising from the death or injury to any person or arising from damage to the property of Franchisee or Franchisor, their agents or

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employees, or any third person, firm or corporation, whether or not such losses, claims, costs, expenses, damages, or liabilities were actually or allegedly caused wholly or in part through the active or passive negligence of Franchisor or any of its agents or employees or resulted from any strict liability imposed on Franchisor or any of its agents or employees. All such indemnification shall survive the termination of this Agreement.

- d. *No Assumption of Liability.* Franchisor shall not, by virtue of any approvals, advice or services provided to Franchisee, assume responsibility or liability to Franchisee or any third parties to which Franchisor would not otherwise be subject.

## 22. NON-WAIVER

No failure of Franchisor to exercise any power reserved to it hereunder, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms hereof. Waiver by Franchisor of any particular default by Franchisee shall not be binding unless in writing and executed by the party sought to be charged and shall not affect or impair Franchisor's right with respect to any subsequent default of the same or of a different nature; nor shall any delay, waiver, forbearance, or omission of Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants hereof, affect or impair Franchisor's rights nor shall such constitute a waiver by Franchisor of any right hereunder or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

## 23. NOTICES

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

## 24. COST OF ENFORCEMENT OR DEFENSE

In the event of litigation between Franchisor and Franchisee, the prevailing party shall be entitled to recover the amount of all reasonable attorney's fees and all other expenses and costs associated with such litigation. In the event that one party to this Agreement is required to employ legal counsel or to incur other expenses to enforce any obligation of the second party hereunder, or to defend against any claim, demand, action, or proceeding by reason of the second party's failure to perform any obligation imposed upon the second party by this Agreement, and provided that legal action is filed and such

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action or the settlement thereof establishes the second party's default hereunder, then the first party shall be entitled to recover from the second party the amount of all reasonable attorney's fees of such counsel and all other expenses incurred in enforcing such obligation or in defending against such claim, demand, action, or proceeding, whether incurred prior to, or in preparation for, or in contemplation of the filing of such action or thereafter.

25. **ENTIRE AGREEMENT**

This Agreement, any Exhibit attached hereto, and the documents referred to herein, shall be construed together and constitute the entire, full and complete agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersede all prior agreements. No other representation has induced Franchisee to execute this Agreement, and there are no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied in this Agreement that are of any force or effect with reference to this Agreement or otherwise. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

26. **SEVERABILITY AND CONSTRUCTION**

- a. *Severable Parts.* Each Section, part, term and/or provision of this Agreement shall be considered severable, and if, for any reason, any paragraph, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, sections, parts, terms and/or provisions of this Agreement, and the latter will continue to be given full force and effect and bind the parties hereto; and said invalid sections, parts, terms and/or provisions shall be deemed not part of this Agreement; provided, however, that if Franchisor determines that said finding of illegality adversely affects the basic consideration of this Agreement, Franchisor may, at its option, terminate this Agreement.
- b. *No Rights on Any Party other than Franchisor and Franchisee.* Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Franchisee and such of their respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under or by reason of this Agreement.
- c. *Scope of Promises.* Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is contained within the terms of any provision hereof, as though it were separately stated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision

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to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

- d. *Captions Only for Convenience.* All captions in this Agreement are meant only for the convenience of the parties, and no caption shall be deemed in any manner whatsoever to affect the meaning or construction of any provision of this Agreement. The singular usage includes the plural, where appropriate in the context, and the masculine and neuter usages include the other and the feminine.
- e. *Recitals.* The recitals set forth in this Agreement are specifically incorporated into the terms of this Agreement and hereby constitute a part thereof.

## 27. APPLICABLE LAW AND DISPUTE RESOLUTION

- a. *Governing Law.* This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State of Florida, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Florida choice-of-law rules); provided, however, that if the covenants in Section 16 of this Agreement would not be enforceable under the laws of Florida, and the FOD Store is located outside of Florida, then such covenants shall be interpreted and construed under the laws of the state in which the FOD Store is located. Nothing in this Section 27.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Florida to which this Agreement would not otherwise be subject.
- b. *Where to Bring Suit; No Class Actions.* The parties agree that any action brought by Franchisee against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Franchisee in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this Section 27.2 shall not be construed as preventing either party from removing an action from state to federal court. Franchisee hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.
- c. *No Rights are Exclusive.* No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.
- d. *Rights With Respect to Injunctions.* Nothing herein contained shall bar either party's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

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- e. *Waiver of Trial By Jury.* Franchisor and Franchisee irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding.
- f. *Claims to be Brought Within Two Years.* Any and all claims and actions arising out of or relating to this Agreement, the relationship of Franchisee and Franchisor, or Franchisee's operation of the FOD Store, brought by any party hereto against the other, shall be commenced within two (2) years from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred.
- g. *No Punitive or Exemplary Damages.* Franchisor and Franchisee hereby waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.

## 28. GUARANTY

By their signatures hereto, all partners, shareholders, officers and directors of the entity that signs this Agreement as Franchisee acknowledge and accept the duties and obligations imposed upon each of them, individually, by the terms of this Agreement. All partners of the entity that executes this Agreement, in the event said entity is a partnership and all shareholders, officers and directors of the entity that executes this Agreement, in the event said entity is a corporation, shall execute the Guaranty in the form appended to this Agreement as Exhibit A and made a part hereof.

## 29. FORCE MAJEURE

- a. *Instances of Force Majeure.* Neither party shall be responsible to the other for nonperformance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing: (a) acts of God; (b) acts of war, terrorism, or insurrection; (c) strikes, lockouts, boycotts, fires and other casualties; and/or (d) the inability of Franchisor or its affiliates to purchase, deliver, and/or manufacture any products for which it is the sole source under this Agreement.
- b. *Inability to Remit Funds.* The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of Section 29.1 above. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost; provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay; and further provided, however, that Franchisee shall remain obligated to promptly pay all fees owing and due to Franchisor hereunder, without any such delay or extension.
- c. *No Extension of the Agreement.* Nothing in this Section 29 shall be construed to result in an extension of the term of this Agreement.

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### 30. ACKNOWLEDGMENTS

- a. *Franchisee's Investigation of the Business Possibilities.* Franchisee acknowledges that it has conducted an independent investigation of the business franchised hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Franchisee and if a corporation or a partnership, its owners as independent businesspersons. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.
- b. *Receipt of UFOC and Complete Agreement.* Franchisee acknowledges that it received a copy of this Agreement, the exhibit(s) hereto, and agreements relating hereto, if any, with all of the blank lines therein filled in, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it received the uniform franchise offering circular required by the Federal Trade Commission Franchise Rule (the "UFOC") at least ten (10) business days prior to the date on which this Agreement was executed.
- c. *Franchisee Read the Agreement and Consulted.* Franchisee acknowledges that it has read and understood the UFOC, this Agreement, and the exhibits to this Agreement, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement. Franchisee acknowledges that it has no knowledge of any representations by Franchisor, or anyone purporting to act on Franchisor's behalf, that are contrary to the statements made in the UFOC or contrary to the terms of this Agreement.
- d. *No Conflicting Obligations.* Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: (a) negotiating and entering into this Agreement; (b) exercising its rights under this Agreement; and/or (c) fulfilling its responsibilities under this Agreement.
- e. *Franchisee's Responsibility for the Choice of the Approved Location.* Franchisee acknowledges that it shall have sole and complete responsibility for the choice of the Approved Location; that Franchisor has not (and shall not be deemed to have, even by Franchisor's approval of the site that is the Approved Location) given any representation, promise, or guarantee of Franchisee's success at the Approved Location; and that Franchisee shall be solely responsible for its own success at the Approved Location.
- f. *Franchisee's Responsibility for Operation of the FOD Store.* Although Franchisor retains the right to establish and periodically modify System standards, which Franchisee has agreed to maintain in the operation of the FOD Store, Franchisee retains the right and sole responsibility for the day-to-day management and operation of the FOD Store and the implementation and maintenance of system standards at the FOD Store.

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- g. *Different Franchise Offerings to Others.* Franchisee acknowledges and agrees that Franchisor may modify the offer of its franchises to other franchisees in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.
- h. *Success Depends on Franchisee.* Franchisee acknowledges that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon Franchisee's ability as an independent businessperson, his/her active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as well as other factors. Franchisor does not make any representation or warranty express or implied as to the potential success of the business venture contemplated hereby.
- i. *No Guarantees.* Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received nor relied upon, any warranty or guaranty, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement.

*[signatures appear on next page]*

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

Dreams Franchise Corporation

\_\_\_\_\_  
Franchisee

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

Address for Notices:

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

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

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

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**DREAMS FRANCHISE CORPORATION  
FRANCHISE AGREEMENT  
EXHIBIT A  
GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT**

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

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

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

The undersigned hereby acknowledge and agree to be individually bound by all of the covenants contained in Sections 5.2, 7, 16, and 18 of the Agreement. The undersigned acknowledge and agree that this Guarantee does not grant the undersigned any right to use the "Field of Dreams®" marks or system licensed to Franchisee under the Agreement.

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

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with Section 24 of the Agreement. This Guarantee shall be interpreted and construed under the laws of the State of Florida. In the event of any conflict of law, the laws of the State of Florida shall prevail (without regard to, and without giving effect to, the application of Florida conflict of law rules).

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

Guarantor(s)

Percentage of Ownership in Franchisee

Signed: \_\_\_\_\_ (Seal)  
(In his/her individual capacity)

\_\_\_\_\_

Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ (Seal)  
(In his/her individual capacity)

\_\_\_\_\_

Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ (Seal)  
(In his/her individual capacity)

\_\_\_\_\_

Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ (Seal)  
(In his/her individual capacity)

\_\_\_\_\_

Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

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DREAMS FRANCHISE CORPORATION  
FRANCHISE AGREEMENT  
EXHIBIT B

AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS (DIRECT DEBITS)

\_\_\_\_\_  
(Name of Person or Legal Entity)  
\_\_\_\_\_  
(ID Number)

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

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

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

\_\_\_\_\_  
Depositor  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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