

## Chapter Eight

# **The Franchise Option**

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## The Franchise Option

### I. INTRODUCTION

Franchising is a very popular distribution method used by a wide variety of businesses. According to a major industry study released in 2004 using data from 2001, all together franchised businesses directly employed almost 10 million people in the United States, representing about 7.5% of all private sector jobs, and were responsible for the employment of an additional 18 million people, or another almost 14% of all private sector jobs, in businesses supporting the franchised businesses, such as food suppliers to restaurants. Sales directly by franchised businesses were \$625 billion, and the businesses supporting them had sales of \$1.5 trillion in 2001, representing 4% and 9.5% of private sector sales, respectively. There were almost 770,000 restaurants, stores, hotels, gas stations, offices and other businesses operating in all franchise systems, of which about 75% were owned by franchisees and 25% were company operated. *Economic Impact of Franchised Businesses – Policymaker Digest*, International Franchise Association (2004) (available at <http://franchise.timberlakepublishing.com/files/Policymaker%20Digest%20Web.pdf>). Franchising's importance has only grown in the past ten years.

There are two forms of franchises, the “business format” franchise, also called the “package” franchise, and the “product” franchise. The business format franchise is the more common form of franchise system and is the focus of these materials.

The business format franchise is a way to duplicate the business. It enables someone other than the franchisor to establish additional business outlets offering the same goods and/or services under the franchisor's trademarks and trade dress, following a system of operation designed to achieve uniform quality standards and make sure the “package” of goods or services delivered to the customer, whether it is a sandwich, ice cream or Italian ice, an oil change or junk removal services, provides the same customer experience everywhere. Examples of business format franchises are easily recognizable, including the Rita's Italian Ice<sup>®</sup>, Subway<sup>®</sup>, McDonald's<sup>®</sup>, AAMCO<sup>®</sup> and 1-800-GOT-JUNK?<sup>®</sup> systems. The economic impact study identified quick service restaurants and business services as by far making up the two top categories in terms of the number of units, people employed and aggregate sales. The other main categories used in the study were full service restaurants, personal services, retail food, lodging, retail products and services, commercial and residential services, real estate and automotive services. Whatever type of business you are interested in pursuing, there is probably already a franchise system offering it. FRANdata, an industry research group, has catalogued over two hundred subcategories of businesses engaged in franchising. FRANdata's category listing is available at <http://www.frandata.com/products/industries.asp>.

The second form of franchising, product franchising, enables the franchisor to distribute its goods by licensing business outlets to sell the goods using the franchisor's trademarks. The product franchise focuses on the sale of the franchisor's products and not the establishment of a uniform system of outlets. Examples of product franchises are car and truck dealerships, gasoline stations and beverage bottlers.

The more common business format franchise lends itself to utilization by a wide spectrum of entrepreneurs interesting in starting their own businesses. These materials will explore the advantages and disadvantages of starting your own business by purchasing a business format franchise and what to look for in the franchise disclosure document franchisors are required to provide to you. A sample franchise agreement is attached to show typical franchise agreement provisions you can expect to see.

These materials do not cover “business opportunities.” Business opportunities include worm farm, vending machine, display rack, pay phone, medical billing, work-at-home, and some Internet-related business which often don’t involve the use of a trademark, usually promise big payoffs with little investment in time and money but are often no more than scams. You should proceed with caution when the sales pitch sounds too good to be true. The FTC offers warnings on business opportunities on its website at <http://business.ftc.gov/selected-industries/franchises-and-business-opportunities>.

## **II. ADVANTAGES AND DISADVANTAGES OF PURCHASING A FRANCHISE**

Investing in a franchise is a long-term commitment. The typical franchise agreement term ranges between 5 to 20 years, not including any renewal options, and without a right for the franchisee to terminate the relationship early. The franchising model definitely offers advantages to the franchisee, but also has disadvantages which have to be weighed based on each individual’s unique situation, preferences and needs.

The Federal Trade Commission, the federal agency that regulates franchises on the national level, has published *A Consumer’s Guide to Buying a Franchise*, which is available on the FTC’s website at <http://business.ftc.gov/documents/inv05-buying-franchise-consumer-guide>. The International Franchise Association, the primary trade association for franchisors, franchisees, and vendors serving the franchise industry, posts the FTC’s consumer guide and other helpful information and tools on its website at <http://www.franchise.org/AboutFranchising.aspx>. There are numerous publications on franchising and selecting the right franchise which can be found on the International Franchise Association website, or by searching for the key word “franchise” on Amazon.com and BarnesandNoble.com, for example, and reviewing the top results.

The principal advantages and disadvantages of purchasing a franchise are summarized below. A close review of the franchise disclosure document (the next section of these materials) will help determine how well a particular franchise system will deliver the potential advantages and help quantify the costs and potential disadvantages:

### **Advantages of Purchasing a Franchise**

The advantages of purchasing a franchise include:

**1. Turnkey System.** A franchisor should not be offering franchises and taking entrepreneurs' hard earned savings until the franchisor has developed and documented the steps needed to develop, build out, open and then operate a business. Ideally, a franchisor (or an affiliated company) should operate at least one unit of the business for several years, validate the business model, and then open and operate at least one other unit under a different manager for at least a year to confirm that the model can be duplicated, that success is not due to the characteristics of a particular geographic area, the personality and skills of the operator/founder, or the popularity of a fad, and that the instructions for building and running the business, usually in the form of what is referred to as an "operations manual," have been documented clearly and in sufficient detail for someone else to follow to achieve similar results. The more units and the longer they have operated, the more solid the validation, assuming the units are profitable. If the business is in an evolving area, for example one that offers green technology, there may not be the luxury of time to test the concept and whether it can be easily duplicated according to the traditional rules of thumb without risking the loss of the opportunity to be the first in the field and the market leader.

A primary benefit of purchasing a franchise is the license to use and the training in all of the information needed to construct, outfit, open, and operate the business, without the need for the entrepreneur to reinvent the wheel. In this sense, "turnkey" means that all of the blueprints, plans, equipment lists, vendor lists, recipes, business methods and forms, advertising and marketing slicks and templates are provided, not necessarily that all of the pre-opening development and construction steps have been completed by the franchisor and all the franchisee has to do is commence operation, although there are some franchise systems that do offer a "turnkey" system in the true sense where the unit is already built.

**2. Name Brand Recognition.** The other primary benefit of purchasing a franchise is becoming part of a system that is identified by a recognizable brand name. If the franchise system is already established either nationally or regionally in the area where the entrepreneur wants to operate, buying a franchise is like starting a new business but with built-in customers due to the name recognition and goodwill associated with the franchise system's brand. If the franchise system is new or expanding into new geographic areas, the brand may not be known or well known in the local area when the franchise is purchased, but the goal is always to achieve a level of brand recognition and customer acceptance the major franchise systems enjoy. Of course, the franchisor must police and maintain system standards so that the association with the brand has a positive impact on consumers. If the brand is tarnished, association with the brand will negatively impact the units of the franchise system.

Being an independent unit and not part of a chain may appeal to some consumers, or may not be as important for certain niche retail or for some service businesses, but for the most part being a unit of a well-known franchise system that has positive consumer acceptance is advantageous in many or most fields. The pooled advertising dollars of the franchisees are able to have a significant impact on building and maintaining name recognition.

**3. Franchise Support.** In addition to pre-startup training, most franchise systems offer on-going support and refresher training, though sometimes for a fee. Many will also have annual conventions and/or regional meetings where new products and business and operational issues are discussed. These meetings are usually mandatory. Most franchisors also conduct periodic inspections of the franchised businesses or engage secret shoppers to determine how well the franchisee is following system standards and procedures. Advertising is another area where being part of a franchise system saves the business owner time, if not money. Most franchise systems establish national advertising funds and/or regional advertising funds or cooperatives. The fund is often controlled by the franchisor and run in-house or outsourced to an ad agency, although in some franchise systems franchisees have a larger say in the use of the advertising monies. Franchisees have to pay a certain amount, usually a percentage of gross sales, into the fund or cooperative, which is often able to purchase advertising, including television advertising, that a single business alone could not afford. The advertising fund may also establish and maintain a website for the brand, a centralized customer call center for ordering, reservations or support, and develop marketing campaigns and associated materials, ad slicks and broadcast media tapes which can be individualized and used by the individual business units. Franchisors should also be constantly researching new products for the businesses to offer, operational procedures, equipment and vendors. Many franchisors like to describe buying a franchise as being “in business for yourself, but not by yourself.”

**4. Bulk Buying Power.** Because franchisors usually require or recommend that certain core equipment and ongoing inventory items must be purchased from only one or sometimes several alternative required suppliers with whom the franchisor will negotiate, the franchise system members can benefit from the combined purchasing power of the franchisees as a whole and obtain more favorable prices and terms. Purchasing items imprinted with the logo of the business also becomes more affordable because a single business will not have to order months’ or years’ supplies of items to meet the minimum order quantities or obtain a unit cost that is reasonable. Some larger franchise systems have established their own purchasing cooperative, and in some cases, franchise systems have combined to form a purchasing cooperative, where the cooperative, which is independent of the franchisor, negotiates contracts with vendors to seek the best possible price.

**5. Financial Assistance.** Though not as prevalent in recent years due to the tightening of credit during and following the economic recession, some franchisors offer financing either directly or through referral sources. Many franchisors have pre-qualified their franchise agreements as meeting the Small Business Administration’s requirements to make their franchisees eligible to participate in the loan guaranty programs offered by the Small Business Administration (“SBA”). FRANDATA administers the SBA Franchise Registry program which is described on its website at <http://www.frandata.com/products/registry.asp>. Even though a franchisor may have satisfactorily demonstrated to the SBA that its franchise agreement does not contain any provisions that undermine the franchise business owner’s beneficial rights in its franchise in a way the SBA considers inappropriate, both the franchise system and the individual franchisee must meet new stricter loan underwriting requirements.

## **Disadvantages of Purchasing a Franchise**

The disadvantages of purchasing a franchise are often the mirror side of an advantage. The disadvantages include:

**1. Loss of Control.** The flip-side of the franchisor providing a turnkey system is that the franchisee must strictly adhere to the franchisor's requirements. While franchisees themselves are entrepreneurs, they must to a large degree accept that they are subordinate to the franchisor. Franchising has become a successful business model worldwide based on one critical principle – the ability of independent business owners to offer consumers a consistent product or service in multiple similar locations. Regardless of a particular franchise's ownership or location, the franchise network's branded goods and services must be presented to and experienced by the consumer in a consistent manner. Standard product and service offerings, quality control, uniformity of supply, and consistency of experience and message are essential elements of any franchise system. The consistency of the franchised network is achieved, in large part, through the establishment, application and enforcement of the franchisor's system standards. Through their initial and recurring experiences, consumers form expectations regarding a franchise system's branded goods and services. Whether it's a certain hotel chain, restaurant, or automobile repair facility, the consumer develops its own buying pattern based on its expectations of the goods or services available at that branded location – no matter where the outlet is located. When a franchise system's offerings are uniform from location to location and operational standards are developed and executed properly to support the quality of those offerings, the desired result of a consistent product and consumer experience leads to brand identity and, over time, brand power.

When consumers experience services or products at a franchised location that are not consistent with their prior experiences and with the franchisor's approved offerings and system standards, damage occurs not only to that specific location's reputation, but to the overall integrity of the franchise system. Over time, the erosion of the consumers' trust in what to expect at any location, in terms of what is offered, the quality of the items offered, and the level of compliance with operational standards which affect the consumer's experience, will result in financial difficulties for every location, whether a particular location is guilty of failing to follow the system standards or not. A franchise system's consistency in its product offerings and the level of each location's compliance with operational standards and procedures in delivering the consistent product offerings therefore define and protect the system's brand. Franchisors must enforce system standards for the good of the entire system.

**2. Entry Fee.** Access to the franchisor's turnkey business system and right to display the brand name comes with an initial cost. Franchisors typically charge initial fees when the franchise agreement is signed and in any event due before the business opens. These fees can be significant but should be designed to recapture for the franchisor the costs to recruit, train, and assist the franchisee to commence business, as well as to develop the infrastructure to support the franchise system, and not to be a major profit center. See

the discussion under Item 5 of the franchise disclosure document to see how to compare the initial franchise fees charged by different franchisors. Comparing the initial fees and ongoing fees charged by a franchisor versus the cost of creating and operating an independent business is a much harder task.

**3. On-Going Fees and Costs.** Franchisors typically charge on-going royalties and advertising fees which can equal a significant portion of gross sales. Franchisors also impose other requirements that may not require that the franchisee pay money to the franchisor but may require the franchisee to make payments the franchisee might not need to make if the business was independent. For example, franchisors often require a minimum amount be paid on local advertising and marketing, even if there is a national or regional advertising fund or cooperative. Some franchisors may require the franchisee to provide audited financial statements, or to do a substantial remodel every five years or so to update the business to the franchise system's current signage and trade dress. Attending and sending employees to training and conventions are other franchisor-imposed costs. These somewhat hidden or contingent costs must be included in any cash flow and profit and loss forecast.

**4. Collective Risk.** By carrying on business under the franchisor's brand name, the business is subject to events impacting positively or negatively the image and reputation of the brand. As noted above, failure of a franchise unit to comply with system standards can have a lasting impact on consumers who may not give other units of the system a second chance. Also, if a unit of the franchise system becomes notorious for an outbreak of disease or a horrific crime at the unit, or a critical vendor is discovered using unfair labor practices in its overseas plants, the units of the system may be affected.

### **III. THE FRANCHISE DISCLOSURE DOCUMENT**

Under the FTC's Franchise Rule (16 CFR Part 436) which applies on a nationwide basis, as well as the franchise disclosure and registration laws of fifteen states, and under exemptions permitted for franchise offerings under several states' business opportunity laws, franchisors must provide prospective franchisees with a prospectus called a franchise disclosure document (the "FDD"). The requirement to provide the FDD, except in instances where the offering is exempt, is similar to the regulation of investment securities and the requirement that issuers of securities must provide purchasers with a stock prospectus. The FDD contains information about the franchise offered, the franchisor, its management, parent companies and companies under common control that also offer franchises or sell goods or services to franchisees of the franchise system or that guarantee the franchisor's obligations to its franchisees. The disclosure in the FDD is according to a framework required under the FTC Rule that lends itself to comparing offerings of different franchisors. The FTC Franchise Rule is available at <http://www.ftc.gov/os/2007/01/R511003FranchiseRuleFRNotice.pdf>, together with the accompanying Statement of Basis and Purpose.

The materials in this part III are designed to help attorneys who are counseling clients considering purchasing a franchise in their review of the FDD. Review of the FDD is an essential due diligence step prior to the purchase of a franchise and should ideally be performed by counsel and the client interactively after each has read the FDD. The FDD includes as exhibits the franchise agreement and the other principal documents the franchisee must sign as well as the franchisor's audited financial statements (subject to a right to phase in the audit requirement for new franchisors). Under the amendments to the FTC Rule adopted in 2007, franchisors are no longer able to employ a merger clause in the franchise agreement to disavow representations in the FDD.

Due diligence on a franchise system is not complete unless the client calls existing and former franchisees of the franchise system(s) under consideration requesting information on their experience with the franchisor, including financial information on the operation of the franchise.

In addition to analyzing the franchise documents and addressing the legal issues that are present, counsel should also help the client perform a business review to determine whether the offered franchise is viable where and how the client intends to operate and whether the client, the franchisor, and the franchise opportunity are well matched. Some considerations are whether the franchisor requires that the franchised business be owner-operated, preventing the client from maintaining current employment and limiting the potential for developing multiple franchises. The client must also have the right temperament to be a team player and not be someone who must be in control who will constantly challenge the franchisor's decisions and authority.

Some familiarity with franchise agreements is helpful to spot whether a provision is unreasonable or standard. Prospective franchisees are entitled to try to negotiate the terms of the franchise agreement, but many franchisors will not negotiate either because of the added expense involved in closing the sale, the requirement to disclose the negotiated term, depending on what the change is (e.g., non-uniform initial franchise fees during the past year must be disclosed, potentially leading more prospects to request similar changes, further complicating the franchisor's sales process and knowledge of the terms of its franchise agreements). Newer and/or smaller franchise systems are more motivated to negotiate in order to close a franchise sale, even on financial terms such as the franchise fee, royalty rate and advertising requirements. But even these franchisors have to take care regarding making negotiated changes because if they permit a particular negotiated change often enough, then it is evidence that their offering has changed and they need to revise their FDD to match the offer they actually make. Some states (Hawaii, Illinois, Indiana, Minnesota and Washington) prohibit franchisors from discriminating in the terms granted franchisees without a reasonable basis, which also discourages franchisors from negotiating.

Clients should be encouraged to obtain a FDD from franchisors they are speaking with early on in the sales process to provide adequate time for client review of the document. If the client is investigating several franchise systems, it would be expensive to

have counsel review the FDDs of all of the potential franchisors, and it would be better for counsel to examine an FDD in depth only after the client has narrowed its choice to one.

Franchisors must amend their FDD for the annual updates required within 120 days of their fiscal year end, adding their new audited financial statements, updating the information tables tracking open, closed and transferred units in Item 20, lists of current and former franchisees, and updating other information reported on an annual basis. Franchisors must also amend their FDD during the year if there are any material changes in the information provided in the FDD. In non-registration states like Pennsylvania, New Jersey, and Delaware, franchisors may not routinely provide the amended FDD to prospects who are in the sales process who had already received a FDD, because it is not required under the FTC Rule, even though it would be a good precaution to limit claims for fraud. Under the 2007 amendments to the FTC Rule, franchise prospects are entitled to receive the latest version of the FDD or an amendment at least once before if they make a request before entering into the franchise agreement. Counsel should always request to see the latest version of the FDD or amendment, if any, before allowing the client to close on the purchase of the franchise. Counsel should ask the franchisor to provide a marked copy showing the changes from the version counsel originally reviewed to expedite counsel's review and keep costs down for the client. The franchisor is not required to provide a marked copy but may do so.

Many franchisors as a matter of policy will not provide a copy of their FDD to anyone who makes a request. Usually the person must be in the sales process. Under the 2007 amendment to the FTC Rule, prospects in the sales process are entitled to receive the FDD earlier than the franchisor would normally provide it to them if the prospect makes a request to receive the FDD earlier. Obtaining FDDs from several potential franchisors would allow comparison of the principal terms at the appropriate time. If the franchisor declines to provide its FDD because the client is not yet in the sales process, most FDDs can be downloaded from a service like FRANdata (website at <http://www.frandata.com>) for a fee (currently around \$220.00). Many FDDs can be obtained for free, however, from the California Department of Corporations website, which posts all franchise and securities law filings, provided the franchisor files for registration in California and is not exempt under the large franchisor exemption (net worth of more than \$5 million and at least 25 franchisees (in any state(s)) during each of the last five years). Most of the best known franchise brands will file for exemption in California but the site is still useful for finding sample FDDs, including the franchise agreement and other documents attached as exhibits. The FDDs are posted at <http://www.corp.ca.gov/CalEASI/caleasi.asp>. The search for a franchisor's filings must be made using the franchisor's legal name rather than the trademark. The legal name can usually be obtained from the franchisor's website or by using the listings on the FRANdata website, and then returning to the CalEASI website.

Information on franchisor's systems may also be found for free on the franchisor's website and any number of franchise referral sites (such as <http://www.franchisegator.com>) which receive a commission for sending prospects to a franchisor. If the client has worked with a franchise consultant or coach that matches prospects to the right franchisor, it is important to remember that the consultant or coach is a franchise broker and receives a

commission from the franchisor and does not represent your client. Entrepreneur magazine maintains information on franchisors on its website, and each October publishes a list of the top 500 franchisors, as ranked by it, as well as information on the list of top 25 new franchisors. These reports are available at <http://www.entrepreneur.com/franchise500/index.html> and at <http://www.entrepreneur.com/franzone/listings/topnew/0,5837,,00.html>.

Below is listing of the 23 Items of information that must be included in the FDD with notes on each Item that counsel should consider when reviewing the FDD.

#### ITEM 1 THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

a. This Item will disclose franchise companies that are under common control with the franchisor. For example, it is becoming common for equity firms to acquire multiple franchise systems. Focus Brands, an affiliate of equity firm Roark Capital Group, which already owns the Schlotzsky's, Carvel, Cinnabon, and Moe's Southwest Grill franchise systems, announced in October 2010 that it was also acquiring the Auntie Anne's franchise system. Does it positively or negatively impact the franchisees of these franchise systems to be part of an organization with competing and complimentary brands, or is the impact neutral? More information on how competing brands operate is required to be disclosed in Item 12 Territory. The extent of overlapping management could also be determined by examining Item 2 Business Experience.

b. This Item will also disclose whether companies under common control with the franchisor are suppliers to the franchise system. It is not unusual for the franchisor and/or its affiliates to be suppliers, but this type of arrangement could lead to abuses, and is a potential discussion topic with existing franchisees.

c. If the franchise is being offered to the client by a subfranchisor, you should investigate the relationship between the franchisor and the subfranchisor and who has the obligation to provide training to your client and on-going support? What happens if the subfranchise relationship ends? Must the franchisor assume the obligations of the subfranchisor under the franchise agreements?

d. Item 1 contains a description of the franchise business. Is the business distinctive?

e. Item 1 also contains an overview of any laws and regulations that specifically apply to the franchised business.

#### ITEM 2 BUSINESS EXPERIENCE

The five year work experience of key members of management is provided in this Item. What is management's experience and do they have the experience to lead the franchisor company? Is the founder still involved or has the company been acquired?

### ITEM 3 LITIGATION

a. Pending and completed litigation against the franchisor and its management is detailed in Item 3. While the presence of some litigation can be expected, depending on the size and age of the franchise system, is there a common theme in the claims against the franchisor or management members and does the franchisor consistently lose or settle on generous terms?

b. Is there any litigation that could be “bet the company” litigation that would severely impact the company if the company lost? If any particular litigation is of concern, you could obtain copies of the court pleadings. Your client could also contact franchisees who are involved in the litigation and get their view of the litigation and the franchise system.

c. The amendments to the FTC Rule in 2007 added a requirement for a listing in summary form in Item 3 of all litigations or arbitrations by type of claim (e.g., collection of royalties, enforcement of system standards) the franchisor brought against franchisees in the prior fiscal year involving the franchise relationship. This disclosure is designed to show how litigious the franchisor is and the level of need to resort to litigation to enforce its rights.

### ITEM 4 BANKRUPTCY

Bankruptcies involving management members of the franchisor in their personal lives or with other companies may not be too meaningful. Bankruptcies of the franchisor or its predecessors operating the franchise system would be of more concern.

### ITEM 5 INITIAL FEES

a. How are the initial fees calculated? Are the fees a flat fee or do they depend on a formula based on territory size, population, registered motor vehicles or other criteria? What basis exists to support the fee assessed?

b. Are there multiple initial fees before the business commences which should all be combined to compare against other franchise systems’ “initial franchise fee”?

c. Franchisors must disclose in Item 5 any required purchases franchisees must make to the franchisor or its affiliates before the business opens for equipment, inventory or other products or services. While it is helpful to know whether the franchisor and its affiliates are suppliers to franchisees, thereby creating the potential for abuse, purchases reported in Item 5 for actual goods or services that might in a competing system be purchased from third parties, should be ignored when comparing “initial franchise fees” of different franchisors. They are more appropriately compared in Item 7 Estimated Initial Investment.

d. The franchisor must disclose in Item 5 whether initial franchise fees charged in the prior fiscal year were uniform, or if the fee is based on a formula, the range in dollars of the fees paid based on the formula. Item 5 reveals whether the franchisor is willing to negotiate the initial fees. This is sometimes the case with new and smaller franchisors, where they may grant discounts for purchasing multiple franchises even though the discount is not offered as part of its price structure, or may just grant discounts to get a sale closed. Even experienced franchisors may sometimes grant discounts to get a franchisee to buy an existing distressed location or location that needs substantial investment.

e. The initial fees are typically not refundable, although some franchise systems allow a partial refund if the franchisee cannot find a suitable location in the designated territory or does not pass training. If the territory is well developed you might advise your client to investigate and find a location before signing the franchise agreement to avoid the risk of losing the franchise fee if a location cannot be found. You might also try to negotiate for a full refund in these cases, although franchisors will point to their costs training and assisting in site selection, and the fact that they tied up the territory for a period of time, as reasons not to give a full refund or any refund. The franchisee's diligence in trying to find a location or in pursuing training could also be questioned.

#### ITEM 6 OTHER FEES

The royalty rate and advertising contribution rate are set out in Item 6, together with a list of other fees the franchisee will incur as well as fees that will be assessed only under certain circumstances, such as transfer, renewal, or need for remedial training. Item 6 should be examined carefully to understand the fees that will be required in the ordinary course as well as the potential fees.

#### ITEM 7 ESTIMATED INITIAL INVESTMENT

a. Item 7 contains an important table providing the franchisor's estimate of all of the expenses a franchisee will incur before commencing business, and then a line item for "additional funds," which is both a place for miscellaneous pre-opening expenses and an estimate of required expenses during a reasonable initial period, usually three months. It is necessary to read the footnote describing the additional funds amount to know what is, and what isn't in the estimate, even though the different expenses included in additional funds are not usually stated with the amount, just the description. Royalties and advertising contributions usually are not in the additional funds category, unless the franchisor requires a flat dollar amount or minimum dollar amount per week or month, but even then royalties and advertising contributions are usually not included. If estimates of royalties or advertising contributions are provided, it could constitute an unauthorized financial performance representation because the franchise prospect could then determine the projected gross sales of the business for the time period because the percentages applied to gross sales to calculate royalties and advertising contributions are stated in Item 6 and in the franchise agreement. Item 7 often includes a high and low range of expenses for each line item and may often not give an estimate of the real estate costs. The range

may take into account various options for developing the business, some of which may not apply to your client's business.

b. It is important to read the footnotes to understand what is being shown. For example, sometimes instead of the cash purchase price to acquire a vehicle or equipment, the amount shown in the table may assume the franchisee leases the item instead and shows a much lower amount by stating the down payment (in which case the first three monthly lease payments should be included in the additional funds line item). Your client should research and develop his or her own investment cost estimate based on the specific plans for the business, by further discussions with the franchisor and also by talking to existing franchisees and vendors. Under the amendments to the FTC Rule in 2007, estimates of costs expressed in dollars and not as a percentage of revenue are not unauthorized financial performance representations and franchisors have more leeway to discuss them.

c. In addition to the estimate of costs, the franchisee should plan to have an amount of working capital available to draw on to sustain the business, especially during the start up period. Sometimes franchisors describe additional funds as the amount of working capital they recommend or require the franchisor to have. The franchisor's estimates do not usually include any salary or draw for the franchisee owner-operator, but your client will need to plan for payment of living expenses and other financial obligations.

#### ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

a. A key element of a franchise is the uniformity in presentation to the public, so it is standard for franchisees to have to purchase certain items from either one or more designated suppliers or for the franchisor to recommend suppliers for other items. Limiting the number of suppliers is usually important for the franchisor to maintain quality control and to negotiate pricing using the buying power of the franchise system combined, but it can be abused and used as an additional revenue stream for the franchisor.

b. Franchisors usually expressly reserve the right to designate itself and its affiliates as suppliers to franchisees, and even the sole supplier for certain items. Franchisors may often obtain discounts or rebates from third party vendors based on the vendors' sales to franchisees. Rebates and required purchasers from the franchisor and its affiliates sometimes become areas for franchisee concern. The franchisor is required to disclose in Item 8 the dollar amounts of revenue it and each affiliated company received during the prior fiscal year from required purchases by franchisees and must also describe the basis for rebate payments (e.g., \$x per unit or x% to y% of revenues), though the dollar amount of rebates is not required, even though some franchisors will report the amount.

#### ITEM 9 FRANCHISEE'S OBLIGATIONS

Item 9 is a cross-reference table by principal subject area to sections in the franchise agreement and other primary documents and to the Items in the FDD. You

should read the entire FDD and franchise agreement anyway, but this table may help you find the appropriate sources if you have a question.

#### ITEM 10 FINANCING

It has become harder and harder to secure financing. Franchisors that have programs available may be more attractive, but you need to review whether the loans are actually being made or are blocked by strict underwriting standards, and what the cost of the capital is.

#### ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING

a. Item 11 includes a summary of the franchisor's obligations as stated in the franchise agreement. Unless the obligation is stated in the franchise agreement (or the FDD), it is not binding on the franchisor. You should determine whether representations have been made to your client as to supervision, assistance, or other services beyond what is required in the franchise agreement or FDD.

b. Item 11 does contain additional information beyond the franchise agreement language that is useful, such as the criteria the franchisor uses to approve sites and the length of time between signing the franchise agreement and opening for business.

c. Item 11 contains a description of any advertising funds, how the contributions can be used and who manages the fund, i.e., whether by the franchisor solely or if franchisees have input (or even control). If local advertising cooperatives may be formed, Item 11 describes the mechanics and the potential obligation for the franchisee to pay into another fund, usually as determined by the franchisees on the local level.

d. Item 11 also contains a detailed description on the initial training program required by the franchisor, where it is held, for how long, the subjects taught and how much time is spent on each.

e. The table of contents of the franchisor's operations manual must be included in the FDD, usually as an exhibit but reference in Item 11. Alternatively the franchisor may permit the prospect to view the operations manual, usually subject to a confidentiality agreement, but most franchisors do not offer this option. The level of sophistication of the franchisor can sometimes be reflected in the content and coverage of the operations manual and its training schedule, which can be a basis for comparing different franchisors.

#### ITEM 12 TERRITORY

a. Item 12 is an important Item. It describes any exclusive territory rights the franchisee receives, as well as any carve-outs the franchisor reserves for non-traditional locations or special venues, for example, or sales in other channels of distribution, such as

Internet sales or sales through other retail stores or supermarkets. Item 12 includes other important information such as any limits on marketing or selling to customers outside of the franchisee's territory.

b. Any requirements to maintain an exclusive territory, such as meeting minimum sales levels, must be disclosed in Item 12. The risk of loss of an exclusive territory, if one is granted, and the likelihood the franchisee may not meet the required criteria to preserve exclusivity, should be carefully considered.

c. If the franchisor is part of an affiliated group that offers other franchises, how the separate franchise companies make decisions on who gets a particular location, whether the different companies have separate headquarters and training programs must be stated in Item 12.

#### ITEM 13 TRADEMARKS

a. The registration status of the franchisor's primary trademark(s) and any challenges to the trademarks must be disclosed in Item 13. If the franchisor is new, the mark may not be registered yet, which creates a risk that the mark may have to be changed in the future. Item 13 and the franchise agreement describe whether the franchisor or the franchisee would bear the cost of changing the signs, stationery, etc.

b. The franchisor may not own the trademarks used in the franchise business. The trademarks may still be owned by the founder or an affiliated company. If the right to use the trademarks is licensed to the franchisor, Item 13 must include the terms of the license, including how it may be terminated. You should determine how the franchisee is protected and whether it may continue to use the trademarks if the license terminates or expires.

#### ITEM 14 PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

Most franchise systems do not incorporate a patent in the franchise operations, but if the franchise under consideration by your client does, review of Item 14 is necessary to determine the status of the patent, who owns it, is it being challenged, and how the franchisee's rights to use it are protected.

#### ITEM 15 OBLIGATION OF FRANCHISEE TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISED BUSINESS

a. Many franchise systems permit franchisors to operate through managers and to not have to be involved in the day to day operation of the business, but others do not. Franchise systems that permit the owners to be investors and do not require them to be the actual operator also provide opportunities for multi-unit ownership which may be important to your client's business plan to reach an efficient scale of operations needed to make the return on investment attractive. You should review whether the franchisor's requirements match your client's intentions.

b. Item 15 should also describe any agreements (confidentiality, non-competition, financial guarantees) that the franchisee, and often also the franchisee's spouse, must sign. These requirements should be reviewed to confirm they do not present any conflicts with your client's business plans or situation.

#### ITEM 16 RESTRICTION ON WHAT THE FRANCHISEE MAY SELL

Typically the franchisor will control what the franchised business may offer in order to preserve the uniformity of the system. The franchisor will also reserve the right to change the types of products or services offered. Your client would usually be responsible for the costs to implement any changes, which could require a significant expense. Your client should understand the potential costs from a change.

#### ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

a. Item 17 provides a summary of certain significant terms of the franchise relationship in table format, with a cross-reference to the actual franchise agreement provision. Review of Item 17 is a good place to start to understand these core provisions, such as the term of the franchise agreement, any renewal options and conditions for renewal, the right of the franchisor to terminate without cause (unusual) or with cause and the notice and any cure requirements, conditions on transfer of the franchise by the franchisee and purchase options by the franchisor, non-competition covenants, and any arbitration or mediation requirements and choice of forum and choice of law provisions.

b. You should also review with your client what happens if the franchise agreement expires or is terminated, not only in terms of the covenants not to compete, but also what happens to the premises of the franchised business. Many franchise systems require that a premises lease be subject to the franchisor's right to assume the lease upon termination or expiration, or a default by the franchisee under the lease, in order to preserve the location as a unit of the franchise system. If the franchisee (or an affiliate) owns the premises, the franchisor may require that the franchisee (or affiliate) sign an option to purchase or lease, which would give the franchisor the right to purchase or lease the premises at fair market value. The collateral assignment of lease often leads to a negotiation with the landlord of the premises over the obligations of the franchisor to cure the franchisee's defaults under the lease as a condition of allowing the franchisor to assume the lease, and which party is required to remove a defaulting franchisee/tenant from the premises. Franchisees often object to the option to purchase or lease since it disrupts their investment plans for the real estate.

c. A number of states, New Jersey prominently among them, restrict a franchisor's right to terminate or not renew a franchise except for good cause and upon advanced notice which is usually longer than the franchise agreement requirement, and often only following an opportunity for cure which may not be required by the franchise agreement or may be longer than what is required under the franchise agreement. (New

Jersey does not require a cure period.) State law will control over any franchise agreement provisions not in compliance with the state requirements. Some states also limit the franchisor's right to obtain a release or waiver of the benefits of state statutes, or forum or choice of law selections. The franchise agreement often does not expressly reference the overriding provisions of a state's law (other than in some registration states), but counsel should review state law for any franchisee protections under a state franchise relationship law or otherwise, if a dispute arises with the franchisor.

#### ITEM 18 PUBLIC FIGURES

Public figures are often used to promote a franchise system's products to consumers. The disclosure requirement however is to report whether a public figure is involved in promoting the sale of franchises to prospective franchisees. This is unusual today. If a public figure is involved, consider how important the public figure's endorsement is to the franchisor's success and the potential harm if the public figure is no longer involved or his or her image is tarnished.

#### ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS

a. Item 19 provides a place for franchisors to answer the primary question prospective franchisee have about a franchise system – “How Much Can I Make?” – by making financial performance representations, formerly called earnings claims, if they choose to. A franchisor may not make financial performance representations, e.g., statements of historical or projected gross sales or income, unless the statements are included in the FDD and presented with the qualifying and explanatory information required by Item 19. (The FTC does not require that franchisors make financial performance representations.) If your client receives financial performance representations that are not in the FDD, other than supplemental financial performance representations following the requirements of Item 19, which a franchisor is permitted to make if the franchisor has a financial performance representation in the FDD, you should discuss with your client what has been told to him or her.

b. If the franchisor makes financial performance representations in the FDD, you should review them and the accompanying notes carefully to be clear what information the franchisor is providing. Financial performance representations do not have to be system-wide units, or all franchisee units, and may be provided in subcategories, for example by geographic region, type of unit (freestanding, mall location, nontraditional, etc.), so you need to determine which information is relevant to your client's proposed business. Even if the franchisor does make financial performance representations, you should still advise your client to speak to existing and former franchisees who are listed in the FDD to obtain whatever financial information they will share concerning their own operations, including information which may not be included in the FDD Item 19, such as expense information, if only gross sales are reported in Item 19.

c. Robert F. Bond publishes a compilation of hundreds of franchisors' financial performance representations from their Item 19 disclosures in their recent FDDs

in a book entitled “**How Much Can I Make?**”, which can be found easily online if not in a local bookstore. This book may be useful as a tool when investigating which franchise systems (or industries) to pursue.

## ITEM 20 OUTLETS AND FRANCHISEE INFORMATION

a. Item 20 includes five important tables of information which help determine the health and direction of a franchise system. Two tables track for three years the number of franchised units and company units by state, beginning with the number of units that are open at the beginning of each year and then adding the number of units opened during the year, and subtracting the number of units closed by category (e.g., terminated, expired, not renewed, or otherwise closed, in the case of franchised units). Another table shows the number of transfers in each state during the past three years. The fifth table shows the status of development plans – the number of franchises sold but not open at the beginning of the year, and the number of franchised units and company units projected for the coming year.

b. Item 20 also requires the disclosure of lists as of the beginning of the current fiscal year of operating franchisees and franchisees that have purchased a franchise but are not yet open with their contact information. Franchisees that have transferred their franchises during the past year and those who were terminated or otherwise had a unit close during the year are also disclosed in lists. The FTC requires these lists so prospective franchisees can contact representatives of each category to obtain an insider’s view of the pros and cons of the franchise system and financial information.

## ITEM 21 FINANCIAL STATEMENTS

a. Another important check on the health of the franchise system is by reviewing the financial statements required to be attached to the FDD. The notes to the financial statements may provide useful information and should be read.

b. The financial statements must be audited, except startup franchisors are allowed a phase-in of the audit requirement in all but a few registration states during the first few years. Assuming no material changes to the financial statements during the year, the financial statements do not need to be updated in the FDD until the following year, so the information may become stale if you are reviewing the FDD many months after the close of the franchisor’s fiscal year.

c. Depending on the level of detail in the statement of operations (e.g., whether there are line items for royalty income and advertising contributions), it is possible to roughly estimate the gross sales per franchise by using the number of franchises operating during the year reported in Item 20 to calculate the average royalties or advertising contributions payable per unit, and then using the royalty and advertising contribution rates in Item 6, determine the average gross sales per unit. The figures should only be considered rough estimates, because you will not know when new units opened during the year or closed units closed, and you will not know whether the franchisor

allowed discounts from the royalty or advertising contribution percentages, or if older agreements required lower percentages.

## ITEM 22      CONTRACTS

Item 22 is merely a listing of the contracts included as exhibits in the FDD. Contracts in addition to the franchise agreement often need to be included and should be reviewed by counsel with your client. These additional agreements are important and could result in financial obligations to your client. Examples are asset purchase agreements if the franchisor offers to sell company units, software licenses for proprietary software the franchisee must use, sample loan documents (promissory note, security agreement, guarantees) if the franchisor offers or arranges financing and discloses loan programs in Item 10, real estate leases or subleases, equipment leases, personal guarantees the owners of a franchisee entity (and their spouses) must sign, confidentiality and noncompetition agreements the owners (and their spouses) and all or certain employees must sign, and sample release language required as a condition of transfer or renewal. Many franchisors also include a document sometimes referred to as a franchise disclosure questionnaire which requires the franchisee to confirm compliance with the disclosure requirements and the absence of any unauthorized financial performance representations or other statements inconsistent with the representations in the FDD.

## ITEM 23      RECEIPTS

Item 23 refers to the Receipt at the end of the FDD. The franchise prospect must sign one copy of the Receipt and return it to the franchisor to evidence the franchisor's compliance with the disclosure laws.

## **IV.      THE FRANCHISE AGREEMENT**

A franchise agreement is a form of license agreement, granting the franchisee the right to use the franchisor's trademark and system, and the promise of the performance of certain services and support, in exchange for certain upfront and ongoing payments and covenants to follow the franchisor's requirements as they exist and may be changed. The franchise agreement contains other common contract provisions, including dispute resolution procedures and boilerplate terms, some of which figure prominently in franchise litigation (e.g., merger, governing law, venue, arbitration, and class action waivers).

A sample franchise agreement is attached as Exhibit A to these materials. In addition, as noted above, entire FDDs, including their franchise agreement and other contract exhibits, can be obtained for free from the website of the California Department of Corporations by accessing the following webpage: <http://www.corp.ca.gov/CalEASI/caleasi.asp> and searching under the franchisor's legal name (not trademark).

## Chapter Eight

# Appendices

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**EXHIBIT A**

**SAMPLE FRANCHISE AGREEMENT**



**LA MANCHA FRANCHISE, LLC**

**FRANCHISE AGREEMENT**

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**LA MANCHA FRANCHISE, LLC**  
**FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (this “*Agreement*”), effective \_\_\_\_\_, 200\_\_ (the “*Effective Date*”), is between **La Mancha Franchise, LLC**, a Delaware limited liability company, with its principal place of business at 12 Tilting Avenue, Plane, New Jersey 07999 (“*we*” or “*us*”), and \_\_\_\_\_, a \_\_\_\_\_ signing below as franchisee(s) with an address at \_\_\_\_\_ (“*you*”).

**BACKGROUND**

A. We and our affiliates have expended substantial resources to develop a system (the “*System*”) for establishing and operating businesses (the “*Businesses*”) providing windmill testing services and related services and products. The System includes the confidential Manual (as defined in Section 10.A.), other proprietary information, proprietary marks, trade dress, design, image, know-how, services and products, trade secrets, market analysis, sales and merchandising methods, training of franchisees and business personnel, advertising techniques, record keeping and business management, which we may change, improve and further develop from time to time.

B. The System includes and is identified by the service mark **LA MANCHA<sup>SM</sup>** we license from our affiliate and other identifying marks and symbols, registered and unregistered, that we use now or may later use as part of the System (the “*Proprietary Marks*”). We intend to further develop and use the Proprietary Marks to identify our services and products and our standards of quality and service to the public.

C. We grant franchises to qualified individuals and business entities to use the System. You have applied for a franchise to operate a Business using the System and the Proprietary Marks and to receive the training, confidential information and other assistance we provide.

D. We have approved your application in reliance on all of the representations you made in your application about yourself and your spouse, or if you are an entity, about the owners of your business entity and their spouses, including representations concerning skill, aptitude, business and financial capacity.

E. By executing this Agreement, you acknowledge the importance of our quality and service standards and agree to operate your business in accordance with those standards and as described in the System. You also acknowledge that adhering to the terms of this Agreement and implementing as we direct the System and any changes to the System, are essential to the operation of your business, to the System and to all our franchisees.

F. We and you **WAIVE ANY RIGHT TO TRIAL BY JURY on any and all claims asserted by any party, as provided in Section 18.J.**

**AGREEMENT**

For valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

**1. GRANT AND ACCEPTANCE; TERRITORIAL RIGHTS**

A. Grant; Acceptance; Designated Area. We grant you and you accept, all subject to the terms of this Agreement, the right to use the System to operate one Business under the Proprietary Marks (the “*Franchised Business*”), to service customers whose facilities are located within the designated area identified in Exhibit 1 to this Agreement (the “*Designated Area*”). This

grant also includes the limited right to service customers whose facilities are located outside the Designated Area as provided in Section 1.B.(2).

B. Geographic Restrictions; Limited Rights Outside Designated Area. The rights we grant to you in this Agreement are limited to the right to operate a single Business under the Proprietary Marks in the Designated Area. You may only provide services to customers whose facilities are located within the Designated Area, except you may provide services outside of the Designated Area as follows:

(1) You may make sales and perform services for customer facilities located outside of the Designated Area and within a reasonable proximity of the Designated Area as long as the facilities are not located within an area serviced by another **LA MANCHA<sup>SM</sup>** Business, either franchised or company or affiliate-owned. You must refer all requests for services to be performed outside the Designated Area and within the territory of another **LA MANCHA<sup>SM</sup>** Business to us, or directly to the franchisee or our affiliate servicing the territory, as we direct. This referral requirement applies even if you were servicing the customer facilities when the territory in which they are located was not assigned if the territory is later assigned to another **LA MANCHA<sup>SM</sup>** Business. If you are solicited to perform services in a territory not serviced by a franchised or company or affiliate-owned Business but the customer's facility is not within a reasonable proximity of the Designated Area, you must refer the request for services to us.

(2) We may request you to provide services to customer facilities located outside of the Designated Area in another territory when necessary in order to maintain the image and standards of the System if: (a) the franchised or company or affiliate-owned Business servicing the territory is not available to service the request within the time requirements we specify, (b) the customer makes a special request which we elect to honor, (c) we determine it is necessary based on the experience and skills necessary to perform the requested services (including the class of customer facility is one you are authorized to service and the franchised or company or affiliate-owned Business servicing the territory is not authorized to service the class of customer facility) or (d) the customer is a House Account (as defined in Section 4.U.) and the franchised or company or affiliate-owned Business servicing the territory is not participating in the House Account program for the customer.

(3) As we otherwise expressly authorize in writing.

C. Class of Facility Restrictions. You are not limited as to class of customer facility you may service, but you must satisfy our criteria for each additional class of facility in order to also service other classes of customer facilities, in addition to free standing windmills. You must employ at least the number of employees we require who have attended and completed to our satisfaction our additional training course to test windmills in these other customer facilities and who have obtained La Mancha Certification (as defined in Section 1.D.) to service these facilities. During your first year of operation of the Franchised Business, you will focus on and will perform services primarily to customers' windmills.

D. La Mancha Certification. We maintain a program to test the ability of an employee to perform certain job functions within the Business according to our standards ("*La Mancha Certification*"). We will establish levels of La Mancha Certification necessary to perform services to customers with different classes of customer facilities. Your trained Operating Principal, General Manager or other trained employee may train, test and retest your employees to grant and maintain La Mancha Certification as provided in Section 4.G., provided we can revoke La Mancha Certification or the right to provide training and testing for La Mancha Certification if we determine the employee fails to maintain standards in performing the job function or training and testing. We may impose a fee for La Mancha Certification testing and training courses we provide to achieve, maintain or reacquire La Mancha Certification. You must pay for transportation and

personal expenses, including food and lodging, for yourself and your employees and pay your employees' salaries in connection with any La Mancha Certification testing and training courses.

E. No Internet, Mail Order or Catalog Sales. You will not solicit sales of products or services offered by the Franchised Business via the Internet or other electronic communication, including websites, webpages, email, texting, blogs and social networking sites, except as we may authorize in writing. You will not engage in any mail order or catalog business.

F. Designated Area Protection. Provided you comply with the terms of this Agreement, we will not own, operate, franchise or license any windmill testing services business operating under the mark **LA MANCHA**<sup>SM</sup> or other Proprietary Marks associated with the System, within the Designated Area, except we may dispatch another franchised or company or affiliate-owned Business or licensee to provide services to a customer in the Designated Area when necessary in order to maintain the image and standards of the System if: (i) you are not available to service the request within the time requirements we specify, (ii) the customer makes a special request which we elect to honor, (iii) we determine it necessary based on the experience and skills necessary to perform the requested services (including you have not satisfied our criteria to service the class of customer facility) or (iv) the customer is a House Account and you are not participating in the House Account program for the customer. If at any time after you have been operating the Franchised Business for at least one year you have not achieved at least a 10% market penetration level of windmill operators in the Designated Area, or if at any time you do not comply with a material term of this Agreement, in addition to any other remedies we may have, including the right to terminate this Agreement, we may temporarily or permanently terminate your primary rights in the Designated Area under this Section 1.F. The market penetration goal is not, and should not be considered, an earnings claim or financial performance representation.

G. Our Rights to Operate other Business Systems; Other Customer Groups; Other Marks. We and/or our affiliates reserve the unrestricted right to own, operate, franchise or license, both within and outside the Designated Area, any business concept, including windmill testing concepts operating under names other than the Proprietary Marks associated with the System, regardless of whether or not these other concepts service the same customer group you service or offer services and products which are similar to or compete with those offered by the Franchised Business. We retain the right, during the Term (as defined in Section 2.C.) of this Agreement to use and to license others to use, the System for the operation and licensing of other Businesses servicing territories outside of the Designated Area, including a limited right to service customers located within the Designated Area as provided in Section 1.F.

H. Alternate Channels of Distribution. Subject to the restrictions in Section 1.F., we and/or our affiliates, reserve the unrestricted right to provide services and distribute products, whether now existing or developed in the future, identified by the Proprietary Marks or other marks we own or license, through any distribution method we may establish, and may franchise or license others to do so, both within and outside the Designated Area, regardless of whether the sale of services or products in the other channels of distribution compete with the Franchised Business. These alternate channels of distribution include sales of services or products by mail order or catalog business or via the Internet, and any similar outlets or distribution methods as we determine. This Agreement does not grant you any rights to distribute products through alternate channels of distribution as described in this Section 1.H. You have no right to share, nor do you expect to share, in any of the proceeds we and/or our affiliates or franchisees or licensees or any other party receives in connection with the alternate channels of distribution.

I. Definition of "Affiliate". In this Agreement, an "affiliate" of a person means, with regard to a business entity, an entity that controls that business entity, is controlled by that business entity, or is under common control with that business entity. With regard to a person that is a natural person, "affiliate" means (i) the spouse; (ii) the parents, children and siblings (biological

and adoptive) of the person and the spouse; and (iii) any other member of that person's household. To simplify the language, where the context permits, references to "we" or "us" will include our affiliates and references to "you" will include your affiliates and the equity owners of your entity, for example, in provisions where "you" must comply with agreements with "us", make payments to "us" and deliver a release to "us".

## 2. **TERM AND SUBSEQUENT AGREEMENT**

A. **Initial Term.** The initial term of this Agreement is five years from the Effective Date (the "*Initial Term*").

B. **Subsequent Agreement.** You can enter into a subsequent agreement to continue in the Franchised Business for up to five additional five year periods (each a "*Subsequent Term*") provided we are still offering franchises and/or managing a franchise system in the state or general area where the Franchised Business is located, and you:

(1) give us written notice of your intent to enter into a subsequent agreement at least six but no more than nine months before the expiration of the Initial Term or current Subsequent Term;

(2) sign our then-current form of Franchise Agreement (modified to limit the term to the applicable Subsequent Term and to reflect the remaining number of Subsequent Terms), which will supersede this Agreement and which may differ materially from the terms of this Agreement and may include higher royalty and advertising contribution requirements and other fees and requirements;

(3) pay at least 30 days before the expiration of the applicable Initial Term or current Subsequent Term our subsequent term fee equal to (i) 25% of the then-current initial franchise fee for a primary franchise (the first franchised Business of a franchisee), or (ii) 25% of the average initial franchise fee paid by the last three franchisees who purchased franchises for Businesses, whichever is lower;

(4) have substantially complied with this Agreement and any other agreement between us and you related to the Franchised Business throughout the applicable Initial Term and Subsequent Term, including making timely payments to us and to your suppliers, vendors, lenders, employees, taxing authorities and others in connection with your operation of the Franchised Business, and you are not in breach of any provision of any of these agreements either at the time you give notice of your intent to enter into a subsequent agreement or at any time after through the last day of the applicable Initial Term or current Subsequent Term;

(5) you continue to have all permits, certifications and licenses required to conduct the operation of the Franchised Business;

(6) complete, and any employees of yours we require complete, at least 30 days before the end of the applicable Initial Term or Subsequent Term, any training that we may require, including any re-certification training to earn La Mancha Certification;

(7) complete, at least 30 days before the end of the applicable Initial Term or Subsequent Term, any repair, replacement or updating of equipment, methods, procedures, policies and decals or items bearing the Proprietary Marks or upgrading of computer equipment, software or communication system that we may require to conform to our then current standards or may be required by law; and

(8) sign a general release, in a form satisfactory to us, releasing us and our subsidiaries and affiliates and our/their respective officers, directors, managers, members, shareholders and employees in our/their corporate/entity and individual capacities (a "General Release").

C. Term. The Initial Term and the applicable Subsequent Terms, subject to any earlier termination or failure to enter into an agreement for a Subsequent Term following expiration of the Initial Term or a Subsequent Term, will be referred to together as the “Term” of this Agreement.

### 3. OFFICE OPERATIONS

A. Office Location. You will own or lease premises suitable to serve as a base for the operation of the Franchised Business (the “Office Location”). A home office will usually be sufficient. You will give us notice of the address of the Office Location. We will provide guidelines for establishing the Office Location at your home, including a list of required computer equipment, software and communication system. We will not provide any site selection, construction assistance or other specifications or assistance if you choose to work from a commercial office location. We will not approve the Office Location. You will exercise your own judgment as to the desirability of the site or regarding compliance with applicable laws, rules and regulations, which are your responsibility.

B. Requirements. You will build-out, if applicable, and furnish the Office Location, and obtain and install all equipment, including computer equipment, software and communication system, according to our specifications and guidelines. You must investigate and comply, at your expense, with all local, state, and federal laws, rules, regulations, ordinances, standards, and directives in effect at any time during the Term related to any build-out or use of the Office Location, performing the services offered by the Franchised Business, storage of materials, and the operation or use of any furniture, fixtures, vehicles, equipment and signs.

C. Relocation. You may relocate the Office Location provided you give us notice of the new location at least 30 days in advance. You will bear all relocation costs, including the costs of terminating the existing lease and building-out the new premises, if applicable, and installing all equipment, including computer equipment, software and communication system, according to our specifications and guidelines.

### 4. YOUR OBLIGATIONS

In addition to complying with all of your other obligations stated elsewhere in this Agreement, you will perform the obligations listed below:

A. Begin Operations. You must begin operation of the Franchised Business within 35 days of the Effective Date. You may not begin operation without our prior written approval, which we will not unreasonably withhold, if you meet our requirements described in this Section 4.A. By the deadline for you to begin operation of the Franchised Business, you must have completed, at your own expense, all of the following to our satisfaction:

- (1) secured all financing to fully develop the Franchised Business;
- (2) obtained all permits, certifications and licensing required to conduct the operation of the Franchised Business, including all business or other licenses and all zoning and building code requirements, and provided us with copies;
- (3) obtained the insurance required under Section 11 and provided us with certificates issued by each of your insurers indicating that all required insurance is in full force and effect;
- (4) signed all agreements required for the opening of the Franchised Business, including this Agreement and any related agreements referred to in this Agreement, and paid all amounts then due to us under this Agreement and any related agreements;

(5) made timely payments to your suppliers, vendors, lenders, employees, taxing authorities and others in connection with your operation of the Franchised Business, and you are not in breach of any agreement with these persons;

(6) obtained all required furniture, equipment, computer system, software, communication system, vehicles, inventories of products, materials and supplies, signs and promotional material;

(7) built-out, if applicable, and equipped the Office Location in accordance with our specifications and guidelines;

(8) completed our training requirements as provided in Section 4.E.;

(9) hired and trained an adequate number of employees, including part-time employees;

(10) commenced the execution of the Market Introduction Plan (as defined in Section 7.A.) and provided us with evidence of advertising, marketing and promotion expenditures and commitments; and

(11) completed all other pre-commencement requirements in this Agreement or any related agreements with us referred to in this Agreement or as we may reasonably require and you are not in default under this Agreement or any related agreements.

B. Compliance with the System and the Manual. You will operate the Franchised Business in accordance with the System and the Manual and implement and comply with all changes to the Manual within the time we specify as provided in Section 10.B.

C. Compliance with Law. You will, at your expense, investigate, keep informed of and comply with, all local, state, and federal laws, Executive Orders, rules, regulations, ordinances, standards, and directives, including the Americans with Disabilities Act, during the Term related to the operation of the Franchised Business, including those relating to windmill equipment maintenance and testing and the use of any office, furniture, equipment, computer system, software, communication system, vehicles, inventories of products, materials and supplies, signs and promotional material, and related to employment and personnel practice and policies. If these legal requirements impose a greater standard or duty than we require in the Manual or elsewhere, you must comply with the greater standard or duty and notify us in writing promptly after you become aware of the discrepancy. You will send us copies of any documents you receive from any federal, state or local agencies within 48 hours of your receipt and notify us within five days of the start of any proceeding or issuance of any order or similar action by any court, agency or tribunal.

D. Operating Principal/General Manager. If more than one individual is signing this Agreement as franchisee, or if the franchisee is a business entity owned by more than one individual, you must nominate, subject to our approval which we will not unreasonably withhold, one of the individuals to receive all notices or communications regarding this Agreement (the "*Operating Principal*"). The Operating Principal will be designated on the signature page of this Agreement and will be authorized and obligated to make and communicate to us all of your decisions regarding this Agreement. The Operating Principal is the only person with whom we must consult regarding the operation of the Franchised Business or this Agreement. You may designate a replacement Operating Principal reasonably acceptable to us in writing signed by all of the individuals signing as franchisee or who have an equity ownership in the business entity. The Operating Principal may serve as the general manager of the Franchised Business, or you may designate an employee with managerial experience to be the general manager (the "*General Manager*"). If the Operating Principal is not also the General Manager, the Operating Principal must still be involved in the daily operation of the Franchised Business. During the Term, you, or if you assign this Agreement to a business entity for convenience of ownership as provided in

Section 12.E. or otherwise operate the Franchised Business principally through a General Manager, the General Manager, will devote substantial time and efforts to the operation of the Franchised Business. You or the General Manager must meet the educational and experience standards we impose for the person having management responsibility for the Franchised Business. We must approve your appointment of the General Manager and any replacement General Manager before the individual assumes responsibility for management of the Franchised Business. The General Manager does not have to have an equity ownership in the Franchised Business, but we do require that any General Manager must enter into an employment agreement with you which contains the General Manager's agreement (i) to comply with the confidentiality, noncompetition and training requirements imposed on the individual under this Agreement, and (ii) to provide you with notice of resignation at least 30 days before the proposed effective date and to continue to perform all responsibilities after notice and before the effective date so that you may continue to operate the Franchised Business under our requirements. If the General Manager does resign, you must designate within 30 days a replacement satisfactory to us and meeting the requirements contained in this Agreement so that at all times the Franchised Business is under the management of an individual with the education, experience and training necessary to the conduct of the operation of the Franchised Business.

E. Initial Training. Up to three individuals signing this Agreement as franchisee, including the Operating Principal, and if you are a business entity or you otherwise operate the Franchised Business principally through a General Manager, any separate General Manager and up to two additional employees (up to a maximum of three persons), must attend and complete to our satisfaction our initial training class at the times and places we designate, before you begin operation of the Franchised Business. We may provide initial training and any other training via intranet or other form of electronic communication. Any replacement Operating Principal or General Manager we approve must attend and satisfactorily complete our initial training class before the individual assumes responsibility for communicating with us and/or management of the Franchised Business. If any designated individual does not complete the initial training class to our satisfaction, the individual will have to repeat the class or portions of it until we are satisfied, or you will have to replace the individual and that replacement will have to attend and complete our initial training class and any mandatory additional training course to our satisfaction. If the designated individuals and any replacements attend but fail to satisfactorily complete training by the date you must begin operation of the Franchised Business under Section 4.A. and we terminate this Agreement, we may refund a portion of the Franchise Fee (as defined in Section 6.A.) as provided in Section 6.A. We will provide initial training during the Term to your employees when space is available in our initial training program. We will provide initial training without a fee for up to three individuals before you begin operation of the Franchised Business. We may charge for any additional persons trained after you begin operation and any person trained above the three person allowance for the pre-opening initial training, at our then current training fee, and we may also charge for materials and other items for any of these additional trainees. You must pay for transportation and personal expenses, including food and lodging, for yourself and your employees and pay your employees' salaries in connection with any initial training, even though we will provide the training course without charge.

F. Supplemental Training. At our request you, the Operating Principal, any separate General Manager and any other individuals we specify will attend supplemental or refresher training programs, sales meetings, operations meetings, advertising meetings and conventions which we may offer, including any additional or specialized mandatory training based on the manner or level of operation of the Franchised Business, at the times, places and in the manner (including intranet or other electronic communication) we designate. We may also offer voluntary events. We may charge for any of these mandatory or voluntary supplemental training programs or other events at our then current training fee and may charge for materials and other items in

connection with any of them. You must also pay for transportation and personal expenses, including food and lodging, for yourself and your employees and pay your employees' salaries in connection with any of these training programs or other events.

G. Employees. You will hire and maintain a staff of employees you train sufficient to operate the Franchised Business to comply with this Agreement. Each employee must be trained and certified for the function the employee is performing, including obtaining any required La Mancha Certification. We offer to provide initial training to your employees when space is available in our initial training program, as described in Section 4.E. and may provide supplemental or refresher training as provided in Section 4.F. The Operating Principal or General Manager and other of your employees who have successfully completed the initial training program and who we have certified to provide specific courses of instruction will be authorized to conduct training of your additional employees and certify and retest them under our La Mancha Certification program. We will provide you with a sufficient number of our initial training materials. We may charge a reasonable fee for the duplication costs for any of these materials. You may only use training materials we provide in training your employees and must upgrade your training program content and materials as we direct. Each employee successfully trained by your certified instructors will be considered a trained employee as if the employee had attended our initial training program and received our training certification. You will not employ any person who is required to complete a training program but who fails or refuses to do so. You will be solely responsible for all employment decisions and functions, including hiring, firing, discipline, supervision, setting terms of employment and compensation and implementing a training program for employees of the Franchised Business in accordance with training standards, procedures and materials we specify in order for you to conduct the business of the Franchised Business at all times in compliance with our requirements. You will never represent or imply to prospective employees and employees that they will be or are employed by us or any affiliate of ours.

H. Services and Products. You will provide all of the services and offer for sale all of the products we specify unless we have consented in writing or the product or service is prohibited by law or regulation. You will not offer or provide any products or services we have not approved in advance. You must follow all procedures provided for in the Manual. We may at any time add, delete or modify any of our requirements or procedures or the services and products you may offer. We may designate certain services and products as optional and you must satisfy the requirements we specify in order to offer these optional services and products. Certain products you will offer may carry the **LA MANCHA**<sup>SM</sup> Proprietary Mark or other Proprietary Marks as a branded product. We may charge you or our approved manufacturers and distributors a license fee for the right to distribute or manufacture any of our branded or proprietary products.

I. Approved Suppliers. You will use only products and services, including equipment, vehicles, System branded products or services, inventory, supplies, accounting and bookkeeping services, software and logo-imprinted products, which we approve, including purchasing from approved suppliers or a designated sole supplier for any items. We or our affiliate may be an approved supplier or designated sole supplier for any purchases of products or services and may obtain revenue from you and make a profit. We may receive fees and other payments from suppliers and others in connection with your purchases and we may use the fees for our own purposes. If we have not designated an approved supplier for a particular product or service, you will purchase these products and services only from suppliers that meet our standards and specifications. You must stop using any products or services within 30 days after we give you notice that the product or service is no longer approved except you must stop using immediately any disapproved item that poses a risk to health or safety. You may request approval of a new product, new equipment or a new supplier under our Manual or other published procedures, which include inspection of the proposed supplier's facilities and testing of product or equipment samples. We or the independent testing facility we designate may charge a fee for the testing. You

or the proposed supplier will pay the test fees. We may also charge you a fee for our services in making a determination on the proposed product, equipment or supplier, including the costs of all travel related expenses including travel to and inspection of the supplier's facilities, evaluation of the test results, and a background check of the supplier. We reserve the right, at our option, to reinspect the facilities and products of any approved supplier, and to revoke our approval if the supplier fails to continue to meet any of our criteria.

J. Call Center. We or the System Brand Fund (as defined in Section 7.B.) may establish a call center (the "*Call Center*") to provide general information about the System and the Businesses, the services and products offered by the Businesses, including windmill testing, take in-coming sales inquiries, close the sale, schedule jobs, pro-actively conduct sales calls and conduct post sales customer satisfaction surveys. We may charge a fee if we manage the Call Center. You must obtain and maintain any communication system and services we designate to communicate with the Call Center.

K. Vendor Programs. You will fully participate in all required national buying or vendor programs.

L. Supplier Records. You authorize the release of all supplier records to us without notice to you. You grant us the right to communicate with your suppliers without notice to you, and to obtain and examine all records of any supplier relating to your purchases from the supplier.

M. Research and Development. We may, from time to time, conduct market research and testing to determine customer trends and likely customer acceptance of new products and/or services. We may also test new equipment, operations, procedures or suppliers. You may not conduct any market research or testing on your own without our prior written consent. You will cooperate in our tests ("*Research and Development*") if we request and provide us with timely reports and other relevant information according to procedures we establish. We may select which Businesses will participate in any test. All information and resulting changes from our Research and Development, whether the idea for the test came from you or another franchisee, will belong solely to us.

N. Maintenance and Renovation. You will, at your expense, repair and replace equipment, vehicles, decals and signs as necessary to maintain the operation of the Franchised Business in first class condition and repair and to meet our then current specifications as we may direct. You must also purchase any additional or replacement equipment, vehicles, decals and signs we specify. There is no limit on the maximum amount you must spend under this Section 4.N.; there is a limitation on your obligation to upgrade the computer system, software and communication system under Section 4.X.

O. Inspection. In addition to our rights to review financial information under Section 8, you grant us or our representatives or agents the right at any time during normal business hours, and without prior notice, to observe and inspect all aspects of the operation of the Franchised Business. You will allow us or our representatives or agents to make extracts from or copies of any of your business records or financial records and to take samples of any supplies and products offered by sale by you and immediately remove any unauthorized items without any payment or other liability to you. We may charge you a fee for our costs of testing samples of products and supplies if the sample does not appear to meet our standards and specifications. You will allow us or our representatives or agents to take photographs, videos or any electronic record of the Franchised Business and to interview employees and customers. We will have the exclusive right to use any photograph, video, electronic record or other material prepared in connection with an inspection and to identify the Franchised Business and we will not have any obligation to obtain your authorization, or to compensate you in any manner, in connection with the use of these materials for advertising, training or other purposes. If we give you notice of any deficiency

detected during an inspection, you will diligently correct the deficiency as soon as possible. If you fail to correct the deficiency within seven days or sooner if required by law or otherwise in this Agreement, or in the case of any correction which you cannot reasonably make within seven days, if you fail to begin corrective action within five days and then proceed diligently to complete the correction, we will have the right, but not the obligation, to correct the deficiency and you will reimburse us for all costs we incurred, including a fee for the time of any of our personnel or agents or representatives.

P. Days and Hours of Operation. You will keep the Franchised Business open and in full operation during the days and hours of operation we specify. You must obtain our authorization for any variation from our standard days and hours of operation and must notify us in the manner and within the time period we specify of any business days or hours you will not be available to respond to customer service requests.

Q. Performance Standard. We have entered into this Agreement with you based on our expectation, and your promise, that you will continuously and diligently use your best efforts to fully develop all available business. You understand that the success of the System, as well as your and our success, depends in part on your pro-active marketing efforts and your maximization of all available business. Consistent with this mutual understanding, you and we agree that if at any time after you have been operating the Franchised Business for at least one year you have not achieved at least a 10% market penetration level of windmill operators in the Designated Area, in addition to any other remedies we may have, we may temporarily or permanently terminate your right to limited exclusivity protection in the Designated Area under Section 1.F. or terminate this Agreement under Section 14.A.(6).

R. Customer Service. You will render prompt, professional, courteous and willing service to all customers and will handle all customer complaints promptly and courteously. You will accept customer payment methods, including specific credit cards, we designate.

S. Customer Warranties. You recognize it is in your and other Businesses' mutual best interest for us to establish uniform guarantees and warranties throughout the System. You agree to offer customers of the Franchised Business the guarantees and warranties we may prescribe, and no others. You acknowledge that *you* make any guarantees and warranties to your customer for services you perform and products you sell and we will not be liable to your customer by reason of your guarantees and warranties nor will we be responsible to any Business for work performed by any other Business (other than a company-owned Business).

T. Pricing. You will have discretion to set prices for services and products you offer from the Franchised Business.

U. House Accounts. We will have the right to identify certain large customers or a group of individual customers controlled by a single decision-making center as a "*House Account*" and to service the House Account our self or, at our option, in conjunction with franchisees. We may establish policies and procedures governing the provision of System services to House Accounts. You will comply with these policies and procedures, including any amendments. We reserve the exclusive right to solicit, enter into and administer national and/or regional contracts with House Accounts. We may, but we are not obligated to seek counsel from franchisees concerning contracts with House Accounts. You may not solicit offices, facilities, services or operations of House Accounts without our written consent. You will have no right to negotiate a national or regional agreement with House Accounts having effect outside of the Designated Area unless we request you to do so on our behalf. If we enter into a contract with a House Account applicable to the Designated Area, you may not arrange any different terms or collect any additional fees. You may service an office, facility, service or operation of the House Account located in the Designated Area (and accept assignments to service a House Account outside of the

Designated Area) only if you have the applicable La Mancha Certification, we offer you the opportunity to participate (which we are not required to do), you agree to participate in the program we establish for the House Account, including the compensation we offer to you and our specifications and standards. If you do not participate in the program for the House Account, we may, without any compensation to you, dispatch another franchised or company or affiliate-owned Business or licensee to service any House Account office, facility, service or operation located in the Designated Area. We may provide a centralized billing system and dispatch service for House Accounts and charge you a fee if you participate based on the Gross Receipts (as defined below) you earned resulting from your performance of services to House Accounts under contracts we administer. The administrative fee will be in addition to, and will be calculated before deduction of, all other fees payable by you under this Agreement with respect to House Accounts. Payment for services performed under any contract for a House Account will be contingent on our receiving payment from the House Account; we do not guaranty payment by the House Account. We may deduct from our payments due to you any amounts you owe to us, including royalty payments, Brand Fund Contributions and administrative fees.

V. Timely Payments. You will make all payments under this Agreement or any other agreement between you and us as and when required. You will also make timely payments of all your obligations to your suppliers, vendors, lenders, employees, taxing authorities and others in connection with your operation of the Franchised Business.

W. Telephone Numbers. If we or the System Brand Fund direct, you will only use the telephone number(s) owned and secured by us or the System Brand Fund in all advertising in any medium, including any toll-free lines. You will not own any toll-free lines without our written approval. You will bear the cost of these telephone number(s) or a proportionate share of the cost if shared with other Businesses. You will, at your expense, obtain and maintain at least the number of telephone lines we specify, including any dedicated data transmission line. All telephone numbers used in any advertising will be listed under the **LA MANCHA**<sup>SM</sup> Business name and not under your individual or business entity name, and must be used exclusively in connection with your operation of the Franchised Business. Upon the expiration, transfer or termination of this Agreement for any reason, you will terminate your use of the telephone lines owned by us and contained in advertising and the telephone directory listings. As between you and us, we have the sole rights to and interest in all telephone numbers and directory listings associated with the Franchised Business and the Proprietary Marks. You will provide us, when you sign this Agreement, with a Conditional Assignment of Franchisee's Telephone Numbers, in the form attached as Exhibit 2 to this Agreement. The Franchised Business will be serviced by a suitable telephone system, including voice mail, that we have approved. You will answer the telephone in the manner set forth in the Manual or otherwise.

X. Computer System. You will obtain a computer system, software and a communication system, infrastructure products, credit card processing equipment and support services, as we specify in the Manual or otherwise. We may charge you a fee if we develop any proprietary software for use in the Franchised Business. You will subscribe to a high speed Internet service provider approved by us. Your computer system must be able to send and receive email and attachments on the Internet and provide access to the World Wide Web and otherwise support our then-current information technology system. We will have the right to access information related to the operation of the Franchised Business, from a remote location, without the need for consent, at the times and in the manner we require. You will install additions, substitutions, and upgrades to the computer system, software and communication system to maintain full operational efficiency and to keep pace with changing technology and updates to our requirements as new updates become available, but not more than once a year, and limited to \$1,500 per update. You will access website(s) and/or intranets we maintain on a regular basis. We

may elect to provide any information and training programs we are required to or desire to communicate to or provide to you solely through our website(s) and/or intranets or other electronic means without any need to provide you with a paper copy or other physical format. We may also authorize vendors and other third parties to communicate to you on our website(s) and/or intranets and you will access their communications if we direct. We may require arrangements for the distribution and purchase of inventory, supplies and other items to be conducted through electronic data interchange or other electronic methods we specify. We may charge you a fee for access to certain electronic or other communication services we provide or make available to you, including an Internet customer scheduling program. You will comply with all of our standards, specifications, policies and procedures related to the use of computers, the Internet and activities conducted over websites.

## 5. OUR OBLIGATIONS

In addition to complying with all of our other obligations set forth elsewhere in this Agreement, we will perform the obligations listed below; we may charge you fees in connection with some services:

A. Training. We will provide an initial training program to you, any Operating Principal, any separate General Manager and others we specify. We will also make other training programs, meetings and conventions available to you, any Operating Principal, any General Manager or your employees on a mandatory or voluntary basis, as we deem appropriate, and may charge you fees, all as described in Section 4.E. and Section 4.F. The location of all training programs, conventions and meetings will be at the times and places we designate or via intranet or other form of electronic communication. We will schedule initial training at our convenience, between the time you sign this Agreement and the time you are scheduled to begin operation of the Franchised Business. We will provide up to one day of on-site training at our expense if the Designated Area is the first territory in which you are beginning operation of a Business under the System.

B. Required Items; Approved Suppliers. We will advise you regarding the items you need to conduct the operation of the Franchised Business, including furniture, equipment, computer system, software, communication system, vehicles, inventories of products, materials and supplies, signs and promotional material. We will provide you with a list of any approved suppliers, including us and any key suppliers with whom we have negotiated special pricing or product availability guarantees and whose products are an integral part of the System, for you to outfit the Franchised Business. We will sell to you those items we require you to purchase from us.

C. Confidential Information. We will provide you with access to certain confidential proprietary information regarding the System, including operating standards, approved suppliers and key suppliers. We will loan you or make available to you electronically or otherwise one copy of the Manual and other confidential proprietary information. We may charge you fees for electronic access and other services as provided in Section 4.X.

D. Protection of Proprietary Marks. We will take reasonable efforts to protect and defend the Proprietary Marks.

E. Market Introduction Plan. We will provide a base Market Introduction Plan and market introduction materials and approve or disapprove your recommended modifications to adapt the Market Introduction Plan and materials to your local market.

F. Continuing Assistance. We will provide initial and continuing advisory assistance in the operation of the Franchised Business, including individual or group counseling in the operation of the Franchised Business, as we deem appropriate in the manner we elect. We may provide different levels of service to different franchisees based on our assessment of each

franchisee's needs. If we deem it necessary or desirable, or if you request, we may, but we are not obligated to, provide specialized assistance or consultation or provide personnel or authorized representatives to observe the operation of the Franchised Business and assist, inspect or otherwise address compliance issues, in addition to any supplemental training we may offer. You will pay all travel related expenses and living expenses for our personnel and authorized representatives. We may also charge you a fee for their services at our then current training fee.

G. La Mancha Certification. We will maintain a program by which we or you certify employees to perform certain job functions under our La Mancha Certification program. We may charge you fees.

H. Administration of System Brand Fund. We will administer the System Brand Fund as described in Section 7.B.

## 6. PAYMENTS

A. Franchise Fee. You will pay us an initial franchise fee (the "*Franchise Fee*") in the following amount when you sign this Agreement:

\$ \_\_\_\_\_

Upon payment, the Franchise Fee will be deemed fully earned and is non-refundable, except if the designated individuals and any replacements attend and use best efforts but fail to satisfactorily complete training as required under Section 4.E. by the date you must begin operation of the Franchised Business under Section 4.A. and we terminate this Agreement, we will refund 50% of the Franchise Fee, minus our expenses incurred in connection with this Agreement, if you sign a General Release.

B. Royalty Payment. You will pay us a monthly royalty payment ("*Royalty Payment*") equal to 10% of the preceding month's Gross Receipts. "*Gross Receipts*" means the total revenues from or related to the Franchised Business, excluding any federal, state, county, or city taxes, excise tax, or other similar tax you collected from customers and paid to governmental entities. Revenues will be recorded in the amount of and at the time you charge your customers. Each charge or credit sale will be treated as received in full at the time of the charge or sale.

C. Time of Payment; Gross Receipts Reporting. The Royalty Payment and any System Brand Fund contributions to be submitted to us under Section 7 will be paid by the third day following the close of the reporting month, or another day of the month we specify, or 60 days after the date you invoice your customer, whichever is sooner. You must report your Gross Receipts each month for the preceding month on the day of the month and in the manner we specify. If you fail to report your Gross Receipts on a timely basis, we may estimate your Gross Receipts and withdraw from your operating account the amounts estimated to be due. Any overpayments from the estimated amount will be forwarded to you or credited to your account; you will reimburse us for any underpayments, with interest. Any payment you physically send to us by check or other means of payment must be accompanied by a report in the form we require.

D. Single Operating Account; Electronic Funds Transfer. You will maintain one operating account to make all payments to us or to our designee in connection with the operation or financing of the Franchised Business. In addition, we may direct you to establish separate accounts for other purposes. You will make payments in the manner we specify including by electronic funds transfer directly from your account and you will sign appropriate pre-authorized draft or other forms and make sufficient funds available in the accounts no later than the due date for any required payments, including Royalty Payments, System Brand Fund contributions and other payments you must make to us. You will bear any costs associated with the account and method of

payment. We may charge you fees to cover amounts we are charged and our administration costs if the electronic funds transfer or other payment attempt is unsuccessful. We will provide you with a written confirmation of electronic funds transfers, which may be made monthly or other period permitted by law.

E. Taxes. You will promptly pay when due all taxes levied or assessed by any tax authority related to the Franchised Business or you. Failure to do so will be a default of this Agreement. If any taxing authority imposes any gross receipts tax or any other tax, levy or assessment on any payment you make to us (other than a tax on our net income), you will, in addition to your payment to us, pay or reimburse us for the tax, levy or assessment.

F. Our Legal Expenses. If we refer any request by you for contract modification, any waiver or approval to outside legal counsel, you will bear the cost of our legal fees.

G. No Withholding of Payments. You will not withhold any payments on any grounds, including allegations of our non-performance.

H. Interest. Any late payment under this Agreement or any other agreement with us will bear interest compounded monthly from the due date until paid at 1.5% per month or the maximum interest rate permitted by law, whichever is lower. Our right to interest is in addition to any other remedies we may have.

I. Application of Payments. We may apply payments to any past due indebtedness or interest you owe us, regardless of your designation of how the payment should be applied.

## 7. **ADVERTISING AND MARKETING**

A. Market Introduction Plan. You will execute, at your expense, a plan for marketing, advertising and promoting the Franchised Business during the period beginning one month before and continuing for a period of six months after you begin operation (the "*Market Introduction Plan*"). We will provide you with a base Market Introduction Plan and market introduction materials and you will adapt the plan and materials to your local market for our review. We must approve all changes you make before you execute the revised Market Introduction Plan. You will keep detailed records of all expenditures and provide these records to us within 15 days if we request them. The Market Introduction Plan will conform to our requirements and specifications and will use the media and advertising formats we designate.

B. System Brand Fund Contribution. We have established the System Brand Fund (the "*System Brand Fund*" or the "*Fund*") to be used to create and implement system advertising, marketing and promotion, public relations materials and to offset the administrative costs of managing the Fund and the advertising program, on a national, regional and/or local level. We will have sole discretion over the operation of the Fund, the creative concepts, materials, endorsements and media used and the placement and allocation of the contributions. You will participate in and contribute to the Fund 3% of Gross Sales (the "*Brand Fund Contribution*") at the same time and collected in the same manner as the Royalty Payment. We may increase the Brand Fund Contribution percentage you must contribute by notice to you but the aggregate percentage you must pay at any time will not exceed 6% of Gross Sales. Any advertising expenditures you make in excess of the Brand Fund Contribution pursuant to another Section of this Agreement or otherwise will not count towards payment of the Brand Fund Contribution. Company and affiliate-owned Businesses will contribute to the Fund on the same basis as comparable franchised Businesses.

C. Administration; No Trust. We may maintain the Brand Fund Contributions in a separate bank account or hold them in our general account and account for them separately, or we may establish separate entities to administer the Fund and the Brand Fund Contributions. Although we would intend the Fund to be of perpetual duration, we maintain the right to terminate the Fund

or to create new accounts or merge accounts. We will not terminate the Fund until all money in the Fund has been expended for advertising and/or marketing purposes or returned to contributors on the basis of their respective contributions. ***The monies contributed to the Fund will not be considered to be trust funds.*** We and any designee will not have to maintain the monies in the Fund in interest bearing accounts or obtain any level of interest on the monies.

D. Uses of the Fund; Annual Report. We will use the Fund for national, regional and/or local advertising and marketing, including development and production of advertising, marketing and promotional programs and materials, purchase of media, field marketing programs and activities, promotion, new product research and development, quality control, market research, talent fees, website development and maintenance, development and operation of the Call Center if established, industry trade shows and other National Windmill Association sponsored activities and for administrative, travel, debt service and operating costs and overhead. Our decisions in all aspects related to the Fund will be final and binding. We may charge the Fund for the costs and overhead, if any, we incur in activities reasonably related to the creation and implementation of the Fund and the advertising and marketing programs for franchisees and the System. These costs and overhead include, among other things, all costs and expenses related to developing, producing and distributing national, regional or local advertising and public relations materials which, in our judgment, promote the services and products offered through the System, as well as the proportionate compensation of our employees who devote time and render services in the conduct, formulation, development and production of advertising, marketing and promotion programs or who administer the Fund. The Fund will *not* be used to pay for any telephone directory advertising we require you to obtain. We will not use the Fund for advertising that is principally a solicitation for the sale of additional franchises, but the Fund may be used for public relations or recognition of the Proprietary Marks and for the creation and maintenance of the website, and we reserve the right to include a message or statement in any advertisement and on the website indicating that franchises are available for purchase and related information. We will prepare annually and have available for System franchisees within 60 days after the close of the fiscal year, a statement of contributions and expenditures of the Fund. The Fund does not have to be independently audited. At your written request, we will provide you with a copy of the statement of contributions and expenditures. The Fund may develop advertising, marketing and other materials and promotional give-away items which the Fund may sell to you at a reasonable cost. Any earnings on the sale of all items sold by the Fund to franchisees, after all costs, including costs and overhead, if any, we incur, will be contributed to the Fund.

E. Timing of Contributions; Expenditures. Through the Fund, we may purchase advertising in advance of your required monthly payment. We will be entitled to full reimbursement of any Fund we advance on your behalf. In the ordinary course of this Agreement, this reimbursement will occur through your payment of your monthly Brand Fund Contributions. If this Agreement is terminated, expires or is transferred before we have been fully reimbursed for any advanced funds, however, you must immediately reimburse us for any outstanding amounts advanced on your behalf. We will spend all Brand Fund Contributions for advertising and marketing as described in this Agreement, but we are not obligated to spend any Brand Fund Contributions in the year in which you pay them. If we have excess monies in the Fund, we will make expenditures in the next year first from monies collected in prior years, next out of any earnings in the prior or current year and then from Brand Fund Contributions collected in the current year. We make no representation regarding the deductibility of the Brand Fund Contributions for tax purposes generally or for any specific tax year.

F. No Proportionate Benefit; No Right to Withhold Contribution. The advertising and promotion that the Fund conducts is intended to maximize general public recognition and patronage of the Businesses generally in the manner that we determine to be most effective. We

are not obligated to insure that the expenditures from the Fund (or regional cooperatives) are proportionate or equivalent to your contributions or that the Franchised Business or any Businesses will benefit directly or pro rata or in any amount from the placement of advertising. You will expend and/or contribute all amounts provided for in this Agreement for advertising and marketing, all Brand Fund Contributions and any regional cooperative contributions without reduction regardless of any perceived benefit by you to the Franchised Business or the amount of contribution by other franchisees operating Businesses or the default of these advertising obligations by any other franchisees.

G. Local Advertising, Marketing and Promotion. You will need to aggressively advertise, market and promote your business locally, which will require that you spend at least \$300 per month in excess of the amounts required elsewhere under this Section 7, with respect to local advertising, marketing and promotion. You will submit a plan annually for marketing, advertising and promoting the Franchised Business locally during the coming calendar year. We must approve your plan and any changes you make during the year. You will execute the plan as approved, and keep detailed records of all expenditures and provide these records to us within 15 days if we request them. All local advertising, marketing and promotion will conform to our requirements and specifications and will use the media and advertising formats we designate.

H. Advertising and Marketing Materials. All advertising, marketing and promotion by you of any type will be conducted in a dignified manner, will coordinate and be consistent with our marketing plans and strategies and will conform to the standards and requirements we prescribe. You will not use any plans or materials without our prior written approval according to our procedures and you will promptly discontinue use of any advertising or marketing plans or materials previously approved, upon notice from us. You will comply with all of our requirements regarding advertising and will not use any advertising or promotional materials in any medium before we have approved them in writing. You will confine your local advertising, marketing and promotion to the Designated Area. We may condition our approval of any plans or materials upon your agreement to provide other **LA MANCHA**<sup>SM</sup> Businesses, either franchised or company or affiliate-owned, whose Businesses operate within the circulation or target area of the proposed advertisement, promotion, trade show or other program, the opportunity to contribute to, on an equal basis based on the number of Businesses participating, and to participate in the advertisement, promotion, trade show or other program. You will submit to us at least 14 days prior to their proposed use, samples of all advertising, marketing and promotion materials which we have not provided to you or previously approved. Your submission will not affect your right to determine the prices at which you sell your services and products. You may not use these materials unless we grant approval in writing. Additionally, you will not use any advertising or promotional material that was provided or approved by us more than 12 months after we provided or approved them unless you resubmit the material and we grant approval. We or our affiliates will design and make available to you advertising, marketing and promotional plans and materials, including signs, stationery, business cards and other items which we or our affiliate may sell to you at a reasonable price, including a reasonable markup.

I. Telephone Directory Advertising. We will have the right to control any telephone directory advertising, including any Internet-based advertising. You will pay directly or reimburse us for the fees for any directory advertisements we may require, which will be in addition to the Brand Fund Contributions and any other payments you must make under this Agreement, except we may require that you include the cost of directory advertisements in your local advertising, marketing and promotion plan. If more than one franchisee shares the directory advertising, the cost will be apportioned among all participating franchisees on an equal basis based on the number of Businesses operated within the area.

J. Website. You will not develop, own or operate any website, webpage, domain name, email address or other identification of the Franchised Business using the Proprietary Marks or otherwise referring to the Franchised Business or the products or services sold under the System (the “Franchisee Website”) without our prior written approval. The restrictions on your advertising in Section 7.E. and this Section 7.F. include any electronic medium for communication, including websites, webpages, email, texting, blogs and social networking sites. All content of the Franchisee Website is deemed to be advertising and must comply with the requirements we establish for websites in the Manual or otherwise. If we require, you will establish the Website as part of the System website(s) we or the Fund or our designee establish. You will establish electronic links to the System website(s) or any other website we designate. We will be the web master of any System website, directly or through a third party provider. We may design and provide a web page to you as part of the System website(s); if we do you must provide any missing information or content we request. We will approve (or disapprove) and execute any changes to your web page included as part of the System website(s).

## 8. **RECORDS AND REPORTING**

A. Records. You will prepare, maintain and preserve for at least seven years from the dates of their preparation (or any longer period required by law), complete and accurate books, records and accounts in the form and manner we prescribe, which may include a required chart of accounts and electronic or written formats. You will purchase, install and upgrade any computer equipment, software and communication system we may require to automate reporting and processing of financial information, as provided in Section 4.X. You will transmit data to us electronically or otherwise make available to us as we direct any original records, information or reports for any time periods and using the format or software we require. You will provide us at all times, through the use of user identifications and passwords, the right and ability to access and retrieve information electronically at any time without notice or further consent. We may use your financial information for any purpose we deem advisable.

B. Business Review. You are solely responsible for the success or failure and profitability of your business and we will not be liable to you or any person for any claim, demand, or damage arising out of our failure to review or comment upon the information we obtain from you or out of the content of any review or comments we do provide.

C. Annual Report and Interim Statements. At your expense, you will submit to us by the 20<sup>th</sup> day of the month following the close of each calendar quarter, an unaudited profit and loss statement and balance sheet of the Franchised Business for the preceding quarter and year-to-date on a calendar year basis, which may include a required chart of accounts and electronic or written formats. If we request, you will also submit an audited profit and loss statement and balance sheet of the Franchised Business on a calendar or fiscal year basis as applicable, at your expense, no later than 90 days following the end of the year. You will use accountants and/or accounting software or services satisfactory to us.

D. Other Reports. You will also provide us, if we request, balance sheets, copies of federal and state income tax returns and other information we specify for you, any entity to which this Agreement has been assigned for convenience of ownership under Section 12.E., and any person guaranteeing your obligations or the entity’s obligations to us. You will also provide us, at our request, for the Franchised Business, sales tax reports, receipts showing payment of sales taxes and any other records, within the time and in the form and manner we prescribe.

E. Audit. We or our designee may examine all of your books, records and correspondence and make copies of them, including all original invoices, sales records, any cash register tapes, bank statements, deposits, inventories and employee records. We or our designee will have the right to enter the Office Location or any other premises where these materials are

maintained upon reasonable prior written notice or we may require you to deliver them to us or our designee at your expense. If any examination or audit reveals that any payments due us have been understated, you will pay us within 10 days of notice the understated amount with interest from the date such amount was due until it is paid at 1.5% per month or the maximum legal interest rate, whichever is lower. If any examination or audit shows that your Gross Receipts for any period have been understated by more than 2%, or if you fail to produce all books and records at the time and place specified by us, you will reimburse us for all costs and expenses arising out of or related to the examination or audit, and any re-examination or re-audit including the charges of any independent accountant, attorneys' fees and all travel related expenses of our or their employees. If any examination or audit shows that your Gross Receipts for any period have been understated by more than 2%, we may also require you to provide audited quarterly and annual profit and loss statements and balance sheets in the future. If any examination or audit shows that your Gross Receipts for any period have been understated by more than 4%, or if more than three examinations or audits within any 24 month period shows that your Gross Receipts have been understated by more than 2% for the periods reviewed, we may terminate this Agreement without providing you any right to cure under Section 14.B.

## 9. PROPRIETARY MARKS AND OTHER PROPRIETARY RIGHTS

A. Ownership. Our affiliate La Mancha Inc., a New Jersey corporation ("La Mancha NJ"), owns all proprietary rights to the System including all Proprietary Marks related to the System and any goodwill associated with them, including any goodwill associated with the Franchised Business. La Mancha NJ has granted our affiliate La Mancha Holdings, LLC, a Delaware limited liability company, a license to use the System, and La Mancha Holdings, LLC has granted us a sublicense to use the System and the Proprietary Marks and to sublicense our franchisees and third parties to use the System and the Proprietary Marks to establish and operate the Businesses. You acknowledge you had no part in the creation or development of the System or the Proprietary Marks or any goodwill associated with the Proprietary Marks. Your right to use the System and the Proprietary Marks is limited to operating the Franchised Business under this Agreement. Except as expressly stated, this Agreement does not give you any right to the System or the Proprietary Marks or convey any goodwill or other interest in the Proprietary Marks to you. At our request or the request of La Mancha NJ or La Mancha Holdings, LLC (jointly or singly, "Licensor"), you will, at your expense, stop using or modify any aspect of the System or the Proprietary Marks and/or start using any additional or different Proprietary Marks. You will not challenge Licensor's or our right to the Proprietary Marks or the System or do anything which is harmful, or potentially harmful, to the Proprietary Marks or the System.

B. Limited License. You will operate the Franchised Business under the service mark **LA MANCHA**<sup>SM</sup> and any other additional or substitute Proprietary Marks we designate. You will not use the Proprietary Marks as part of any business entity name, website or computer URL address or in any unauthorized manner, and you will not make any changes to the Proprietary Marks without our written approval. You will display the Proprietary Marks according to our guidelines and specifications in the Manual or otherwise and will obtain any fictitious or assumed name registrations required by applicable law, noting the fact of your use of the Proprietary Marks "as a licensee of La Mancha Inc." and if appropriate, "La Mancha Franchise, LLC" in the application, and if we direct, in any signs, stationery and other materials.

C. Notice of Infringement; Indemnification; Cooperation. You will promptly notify us of any unauthorized use of the Proprietary Marks or the System or of any colorable imitation of the Proprietary Marks or of the System. You will also cooperate in the prosecution or defense of any action we and/or Licensor undertake related to the Proprietary Marks or the System and will render any assistance we and/or Licensor think is reasonably required to assist in this prosecution or defense, at our and/or Licensor's expense (except the cost of your separate counsel, if any),

unless the action is due to your conduct, acts or omissions, in which case you will reimburse us for the costs and expenses of the action, including attorneys' fees and any damages.

D. Termination of Use. After termination, transfer or expiration of this Agreement, you will not in any way identify yourself or any business with which you are associated as a current or former System franchisee or operator or as otherwise associated with us and you will not use the System, including the Manual and the Proprietary Marks or any colorable imitation of them all as further provided in Section 15 and Section 16.A., except as a System franchisee under an effective Franchise Agreement with us.

## 10. **MANUAL AND OTHER CONFIDENTIAL INFORMATION**

A. Manual; Confidential Information. The System includes the confidential Standards and Operations Manual (the "*Manual*") we license from Licensors, which is a compilation of manuals, books, binders, videos or other electronic media, intranet postings and other materials containing operating data, specifications, standards, operating procedures, checklists, equipment, services and other information relating to the System. The Manual and the other trade secrets, data, copyrighted material, proprietary software, methods, techniques and know-how we license (collectively, the "*Confidential Information*"), are our and/or Licensor's exclusive property and we reveal the Manual and the other Confidential Information to you in confidence solely to assist you in establishing and operating the Franchised Business. We will loan you or make available to you electronically or otherwise one copy of the Manual and other Confidential Information. You will sign a receipt if we request acknowledging receipt of, or access to the Manual, or portions of the Manual. In order to protect our reputation and the goodwill of the Businesses and to maintain uniform standards of operation under the Proprietary Marks, you will locate, build-out, furnish, equip and operate the Franchised Business in accordance with the Manual.

B. Changes to the System. From time to time we may, through changes in the Manual or by other notice to you, change any standard or specification or any of the Proprietary Marks applicable to the operation of the Franchised Business, change all or any part of the System or revoke our approval of previously designated or approved suppliers and designate new or replacement designated or approved suppliers. You will take all actions, at your expense, to implement these changes by the date or dates we direct, as if they were part of the System when this Agreement was signed. We may vary the standards and specifications to take into account unique features of specific locations or types of locations, special requirements and other factors we consider relevant.

C. Duty of Confidentiality. You acknowledge that the System is unique and not available to the general public and that the Confidential Information, including the Manual, constitutes our proprietary information and trade secrets. You will use the Confidential Information only for the purposes and in the manner we authorize in this Agreement or otherwise. You will not use, copy, disclose or divulge any part of the Confidential Information which may be communicated or disclosed to you or which you may learn by being a franchisee of the System except for the purpose of establishing and operating the Franchised Business. You will not communicate or divulge the Confidential Information other than to employees who reasonably require the information to fulfill their employment responsibilities and to your contractors and others who reasonably require any of the information, but only to the extent necessary. You will inform all employees before communicating or divulging any Confidential Information to them of their obligation of confidence. In addition, subject to applicable law, at our request, you will obtain a written agreement, in form and substance satisfactory to us, from Principals, your General Manager and any other employees we designate, contractors, and any other person having access to the Manual or to whom you wish to disclose any Confidential Information that they will maintain the confidentiality of the Confidential Information and they will recognize us and Licensor as third-party beneficiaries with the independent right to enforce the covenants either directly in our or

Licensor's own name as beneficiary or acting as agent. You hereby appoint us and Licensor as your agent with respect to the enforcement of these covenants. In addition to the original Principals agreeing to be bound by this Agreement as evidenced by their signatures, an example of a separate written agreement currently considered satisfactory (and also including noncompetition covenants not required under this Section 10.C.) is the Confidentiality and Noncompetition Agreement attached as Exhibit 3. You will retain all written Confidentiality Agreements with your business records for the time period specified in the Manual. You will enforce all covenants and will give us notice of any breach or suspected breach of which you have knowledge.

D. Protection of Confidential Information. You will promptly notify us of any unauthorized use or misappropriation of the Manual or the other Confidential Information. You will also cooperate in the prosecution or defense of any action related to the Confidential Information and will render any assistance we or Licensor think is reasonably required to assist in this prosecution or defense, at our or Licensor's expense (except the cost of your separate counsel), unless the action is due to your conduct, acts or omissions, in which case you will reimburse us or Licensor for the costs and expenses of the action, including attorneys' fees and any damages. If you are compelled by a court or other body of competent jurisdiction to disclose any of the Confidential Information, you will promptly inform us by written notice and will provide reasonable assistance in obtaining and enforcing a protective order or other appropriate means of safeguarding the Confidential Information required to be disclosed. You may then disclose only so much of the Confidential Information as is legally required to be disclosed.

E. Ownership; Controlling Version. The Manual and our other Confidential Information will at all times remain our and/or Licensor's property. If there is a conflict between versions of the Manual, the Manual maintained at our headquarters will be controlling over the parties' obligations.

F. Ownership of Ideas. You will disclose promptly to us any idea, concept, technique or material concerning the System or the operation of the Franchised Business, including any advertising materials, that you or any of your employees create in the operation of the Franchised Business or using the assets of the Franchised Business, including any aspects of the System or any Confidential Information ("Ideas"). We or Licensor will own all rights in all Ideas. Any copyrightable Ideas prepared by you are "works for hire" under the Copyright Act and we or Licensor will be considered the author and owner of these copyrightable works. If Ideas do not qualify as works made for hire, by signing this Agreement you assign to us and Licensor ownership of any and all rights in Ideas. We and Licensor may use Ideas and any other information provided by you in any manner deemed appropriate without compensation to you. You will, upon request, promptly execute all applications, assignments, or other instruments that we or Licensor deem necessary to apply for and obtain invention rights, patents, patent applications, letters patent, copyrights, trademarks, and reissues of any of these rights in the United States and foreign countries on Ideas and to confirm the assignment to us or Licensor in this Section 10.F. of the sole and exclusive rights, title, and interest in and to your right in and to Ideas.

## 11. **INSURANCE**

A. Mandatory Insurance Coverage. You must obtain prior to or upon signing this Agreement and keep in effect insurance policies providing the type and amounts of coverage we direct in the Manual or otherwise. If you do not have an insurable interest to obtain "All Risks" Property or Workers Compensation coverages at the time you sign this Agreement, for example because you do not have an Office Location or employees, you must obtain the insurance when you qualify to do so and provide us with a certificate of insurance. All policies will be written by companies having a rating of A or better as determined by A.M. Best Company and must be written by companies licensed in the state in which the Franchised Business is operated. All policies must also otherwise meet our standards and specifications and be acceptable to us. We

may at our sole election at any time specify that you maintain additional coverages and/or higher policy limits, including increases in General Liability and Completed Service Insurance. We encourage you to check with your own risk advisors to determine whether you should maintain additional coverages and/or higher policy limits than what we require. You must also obtain and maintain any additional or different insurance which may be required by the state or locality in which the Franchised Business is located. You may, with our prior written consent, elect to have reasonable deductibles in connection with any of the required insurance coverage. The following are the minimum policies which you must carry:

(1) General Liability and Completed Service Insurance, in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(2) Auto (to include trailer and all drivers and hired and non-owned vehicles) general liability coverage in the amount of \$500,000 per occurrence, uninsured motorist coverage of \$500,000, medical and personal injury of \$50,000, collision, towing and labor and property liability;

(3) Employer's Liability and Worker's Compensation Insurance in amounts required under applicable law, or if no amount is specified under applicable law, \$500,000 aggregate and \$100,000 per accident and \$100,000 per employee;

(4) other insurance as may be required by the state or locality in which the Franchised Business is located;

(5) any additional or different insurance which may be required under any lease for the Office Location, or by us.

You also acknowledge that we have also advised you of our strong recommendation that you also obtain an umbrella liability policy to extend over the liability coverage otherwise identified in this Section.

B. Additional Insureds; Waiver of Subrogation. All insurance policies will name you and with the exception of workers' compensation will also name us, our affiliates and our and our affiliates' officers, directors, managers, members, limited partners, general partners, shareholders, independent contractors and employees as additional insureds, and will expressly provide that any interest of an additional insured will not be affected by your breach of any policy provisions or any negligence on the part of an additional insured. All policies will also include a waiver of subrogation in our favor and in favor of the other additional insureds. All policies will contain an endorsement that only actual notice to the insured if an individual or to any executive officer of insured, if a corporation, will constitute knowledge of the insured.

C. Effect of Insurance. Your obligation to obtain the required policies in the amounts specified is not limited in any way by any insurance we maintain. Your obligation to maintain the insurance does not relieve you of any liability under the indemnity provisions of Section 17.D.

D. Evidence of Insurance; Notice of Cancellation. You will provide us and any person we designate, (i) upon the signing of this Agreement, (ii) upon any change in coverage and (iii) 30 days before the expiration of any coverage, but at least annually, certificates issued by each of your insurers indicating that all required insurance is in full force and effect. All policies will contain a statement that the policy will not expire, be terminated or change without at least 30 days prior written notice to us. You will deliver any updated insurance certificate to reflect any changes we require, including any change in coverages or additional insureds and/or a copy of any insurance policies to us within 15 days of our request.

E. Failure to Maintain Insurance. In addition to our other rights and remedies, if you fail to maintain the required insurance, we have the right, but not the obligation, to obtain the

required insurance and charge you for it, together with a fee for our expenses, which will be payable immediately upon notice to you.

## 12. TRANSFERABILITY OF INTEREST

A. Transfer by Us. We may sell, assign or otherwise transfer all or any part of our rights or obligations under this Agreement to any other person or legal entity, including a competitor, provided the assignee assumes all of our assigned obligations. We and our affiliates may sell or pledge all or any assets, including rights in the Proprietary Marks, and/or the System; offer securities; merge; spin-off; acquire other companies or be acquired; and otherwise effect any economic or financial restructuring or reorganization. You specifically waive any claims, demands, or damages against us and our affiliates arising from or related to any transfer or other restructuring or reorganization we or our affiliates may accomplish.

B. Transfer by You. The rights and obligations in this Agreement are personal to you. You will not, directly or indirectly, in whole or in part, sell, assign, transfer, encumber or otherwise dispose of this Agreement or any part of it, or an interest described in Section 12.I. in any entity which is the franchisee, or take any action or enter into any contract that could potentially result in the transfer of any material asset of yours related to the Franchised Business or control of all or part of the operation of the Franchised Business, without our prior written approval. If you do or purport to do anything prohibited by this Section 12.B. without our consent, that action is void and is a material breach of this Agreement.

C. General Requirements for Transfer by You. We will not unreasonably withhold our consent to a transfer but we may require that:

- (1) the Franchised Business is operating at the time of transfer;
- (2) you are not in default, and no event has occurred which, by giving notice or the passage of time would result in a default, under this Agreement, any other agreement with us or any other agreement you have with a third party;
- (3) you have paid or made payment arrangements satisfactory to us to pay all amounts owed to us, the Fund and to all vendors, suppliers, lenders, taxing authorities and any other person to whom you owe money related to the Franchised Business;
- (4) you have complied to our satisfaction, or you or the transferee agree to comply and have made arrangements satisfactory to us to comply, with all obligations to maintain the vehicles, equipment, signs, decals and promotional material or other items bearing the Proprietary Marks of the Franchised Business in first class condition and repair and in compliance with the System, including obligations to repair and replace vehicles, equipment, signs, decals and promotional material or other items as necessary to maintain the operation of the Franchised Business in first class condition and repair, and to upgrade the computer system, software and communication system and to meet our then current specifications as we may direct;
- (5) you sign a General Release;
- (6) the transferee and the owners, and related parties of the transferee meet our then-current requirements for franchisees, including financial, educational and business experience requirements, possess a good moral character, business reputation and credit rating, and have adequate financial resources, capital and ability to operate the Franchised Business;
- (7) you and the transferee prepare appropriate transfer documentation to evidence the transfer, and if you are providing any seller financing to the transferee, you and the transferee will sign documents satisfactory to us providing that payments to you as

seller are subordinate to the obligations of the transferee to pay royalty, advertising and other payments to us and the Fund;

(8) the persons we designate from among the owners and related parties of the transferee, including the proposed Operating Principal and any General Manager, agree to satisfactorily complete training within the time we specify and the transferee pays our then current training fee;

(9) the transferee signs our then-current form of Franchise Agreement and other related agreements, (modified to provide at least a full five-year Initial Term with the number of Subsequent Terms, if any, remaining under this Agreement), which may differ materially from the terms of this Agreement and may include higher or additional fees and other requirements;

(10) you and the transferee and the owners and related parties of the transferee sign any other documents we deem reasonably necessary, including a Guaranty (pursuant to which the individual owners of the transferee (if a business entity) will personally guarantee the full performance of the obligations of the Franchise Agreement by the transferee) and a Confidentiality and Noncompetition Agreement signed by the individual owners of the transferee;

(11) we estimate that the transferee will have sufficient cash flow, working capital and financing capability to meet the transferee's obligations following the transfer based on the purchase price and terms of the transfer;

(12) you disclose to the transferee complete and accurate information about the Franchised Business, its sales and other information related to the proposed transfer (under the transferee's obligations to maintain the confidentiality of the Confidential Information);

(13) you pay our transfer fee, equal to \$10,000, except that you will pay a reduced transfer fee of \$2,000 if the transferee or the owners of an entity transferee are: (a) System franchisees or owners of System franchisees that are in compliance with their franchise agreements and have been System franchisees (or owners) for at least three years; or (b) individuals who have been employees of ours and/or System franchisee(s) for at least five years; or (c) your affiliate (as defined in Section 1.I.); and

(14) you pay our expenses incurred while processing and approving the proposed transfer, including attorneys' fees, to the extent our expenses are not covered by any transfer fee you actually pay for each proposed transfer; we will not refund payment of our expenses whether or not the transfer occurs, except we may estimate the amount of our expenses and require payment in advance, in which case we will refund any overpayment.

We do not have to consent to the use of this Agreement as collateral for a loan. We may condition any consent to the grant of a security interest in this Agreement to the requirement that the lender enter into an inter-creditor agreement with us.

D. Our Right to Interview and Disclose Information. You acknowledge that we have legitimate business interests in the approval of any transfer to an informed party whom we deem capable. Our discussions with and disclosure to the proposed transferee may include your entire sales and operations history, information about the market and any other information we deem relevant. Disclosure of this information by us will not, under any circumstances, be deemed to be interference with the proposed transfer or violation of any privacy or nondisclosure obligation to you. We may, but are not obligated to, provide all or any portion of our files on the Franchised Business to the proposed transferee. Other than any disclosure duty imposed by law, however, we have no duty to disclose any information to any proposed transferee. We will not have any liability to you for any disclosures we make to the proposed transferee. Our review of a proposed transfer

requires a significant amount of time; you should not rely on our completion of the process within any certain time period.

E. Transfer for Convenience of Ownership. If you are individual(s), we will allow you to assign this Agreement to a corporation, limited liability company or other approved form of business entity formed solely for the convenience of ownership if you make a written request and comply with the provisions of this Section 12.E. An approved transfer to an entity under this Section 12.E. will not be subject to our right of first refusal under Section 12.G. We may require the following as a condition of our consent:

(1) you are in full compliance with the terms and conditions of this Agreement;

(2) you satisfy the provisions we specify are applicable of Section 12.C., including the requirement that you, the entity and all owners of the entity sign a General Release and pay all of our fees and expenses incurred while processing and approving the proposed transfer, including attorneys' fees (but no transfer fee will be due);

(3) the entity will be newly organized when it first begins operation of a Business and its organizational documents will provide that its activities are confined exclusively to the operation of Businesses and you provide us with copies of the documentation we specify;

(4) the equity holders of the entity are limited to your original ownership group (the signatories to this Agreement);

(5) the organizational documents of the entity will recite that the issuance or transfer of any shares or securities in the entity is restricted by the terms of this Agreement;

(6) each stock certificate, certificate of membership interest or other evidence of equity ownership will state the following conspicuously on its face: "The transfer of this [stock/membership interest/other] is subject to the terms and conditions of the Franchise Agreement between this [corporation/limited liability company/other] and La Mancha Franchise, LLC, a Delaware limited liability company. These restrictions prohibit transfer without the prior written approval of La Mancha Franchise, LLC"; and

(7) the entity assumes your obligations under this Agreement, you remain liable under this Agreement and all parties in interest guarantee the entity's obligations under this Agreement; to evidence these agreements, we, you, the entity and any other parties in interest will sign the Assignment and Assumption Agreement in the form attached as Exhibit 4.

F. Approval Not a Warranty; Not a Waiver. Our consent to a proposed transfer indicates only that the transferee meets, or we have waived, our established criteria for franchise owners as of the time of the transfer. Our consent does not constitute a warranty or guaranty, express or implied, of the suitability of the terms of transfer or of the transferee's successful operation or profitability of the Franchised Business. Our consent will not constitute a waiver of any claims we may have against you, nor will it be deemed a waiver of our right to demand exact compliance with any of the terms of this Agreement by the transferee.

G. Our Right of First Refusal. We will have a right of first refusal to purchase the Franchised Business or any direct or indirect interest in the Franchised Business according to the following procedures:

(1) If you want to sell or otherwise transfer the Franchised Business, you must first give us notice (the "*Offer Notice*"). The Offer Notice must contain: (a) the price and terms of the offer; (b) the name and address of the proposed purchaser; (c) a copy of the

proposed sales contract; (d) our Franchise Application completed by the proposed purchaser; and (e) any other information that we may request to evaluate the offer. The Offer Notice will constitute an offer by you to sell to us your interest in the Franchised Business (or equity interest in the entity franchisee) on the price and terms set forth in the Offer Notice. You will also provide, together with the Offer Notice, evidence that you have complied or you are diligently proceeding to comply with any applicable requirement to repair and replace vehicles, equipment, signs, decals and promotional material or other items and upgrade the computer system, software and communication system.

(2) If we want to accept this offer, we will give you written notice (the "Acceptance Notice") within 30 days of our receipt of the last of the information you deliver required to be contained in the Offer Notice. During this 30 day period, we will have the right to inspect all of your books and records relating to the Franchised Business's operation, specifically including all financial records and statements for the past three full fiscal years. Our acceptance will be on the same terms as stated in the Offer Notice, except the closing will be extended to 60 days after the date of the Acceptance Notice and we will have the right to substitute equivalent cash for any non-cash consideration included in the offer. If we and you cannot agree within a reasonable time on the equivalent cash for any non-cash consideration, the fair market value will be determined by three appraisers chosen in the following manner: we will select one and you will select one, and the two appraisers so chosen will select a third appraiser. The decision of the majority of the appraisers so chosen will be conclusive. Each party will bear the cost of the appraiser selected by it and the cost of the third appraiser will be shared equally by the parties. If the Offer Notice involves assets not related to the operation of the Franchised Business, we will have the option to purchase only the assets related to the operation of the Franchised Business or to purchase all of the offered assets, and the purchase price will be allocated accordingly. We will have the right to substitute our own form of sales contract providing the same economic terms as in the contract delivered with the Offer Notice. If we elect to use the original form of sales contract, we may add all customary warranties and representations given by a seller, including those concerning ownership, condition, title, liens and encumbrances, validity of contracts and truth, accuracy and completeness of material information.

(3) If we reject the offer in writing, or if we do not give you the Acceptance Notice within 30 days, we will be deemed to have rejected the offer and you may, subject to the other provisions of this Agreement, sell your interest in the Franchised Business to a qualified third party on the price and terms in the Offer Notice but not on terms more favorable to the transferee than those in the Offer Notice. You must complete the sale to the proposed purchaser, but only with our prior written consent and subject to the conditions for approval set forth in Section 12.C., within 60 days after we reject the offer or we will again have the right of first refusal provided in this Section 12.G.

(4) Our election not to exercise our right of first refusal as to any offer does not constitute our consent to any proposed transfer. If this Agreement has been transferred to an entity for convenience of ownership, the transfer of 20% or more of the interests in the entity requiring our prior written consent as described in Section 12.I. will be subject to the right of first refusal contained in this Section 12.G. and we will also have the right to inspect the entity's governing documents, minute books and transfer records.

(5) We may assign our right of first refusal to any person or entity, including any of our affiliates or a franchisee.

(6) The right of first refusal contained in this Section 12.G. does not apply to transfers to an entity for convenience of ownership under Section 12.E. or a transfer to your affiliate.

H. Involuntary Transfers by You. The following provisions will govern involuntary transfer due to death or incapacity:

(1) Upon your death or permanent incapacity, or if you are a partnership, the death or permanent incapacity of the operating or managing partner, or if you are a corporation or limited liability company, the death or permanent incapacity of the key operating or financially responsible shareholder or member, the heirs, personal representative or the remaining owners of the entity (for ease of reference, referred to as “heirs”), will have 90 days from the date of death or incapacity to notify us in writing of their election to continue to operate the Franchise Business or make some other disposition of the Franchised Business. If the heirs elect to sell the Franchised Business or their interest in the franchisee entity, all of the applicable provisions of this Section 12 regarding voluntary transfers (including our right of first refusal, unless the transferee is an affiliate) will apply, except no transfer fee will be payable. The heirs must complete the sale within six months after the date of death or permanent incapacity or other time period required by law. If the heirs elect to operate the Franchised Business and to succeed to the rights under this Agreement (or the ownership of an entity franchisee), only the provisions of this Section 12. regarding approval of proposed transferees will apply, including the requirement to sign our then-current form of Franchise Agreement and any applicable guaranty; no transfer fee will be payable. If the heirs don’t meet our requirements, or if the heir or other person proposed as the Operating Principal or General Manager is not acceptable to us, then the heirs will have six months after the date of death or permanent incapacity or other time period required by law, in which to arrange a sale acceptable to us, which will be subject to all of the applicable provisions of this Section 12 regarding voluntary transfers (including our right of first refusal, unless the transferee is an affiliate), except no transfer fee will be payable. As used in this Agreement, “permanent incapacity” means a physical or mental incapacity that prevents the affected person from performing the duties customarily performed in connection with the operation of the Franchised Business for 120 days, whether or not consecutive, out of any 12 consecutive months and that can reasonably be expected in the judgment of a physician selected by us, to continue.

(2) If you are a partnership, corporation or limited liability company and a partner, shareholder or member dies or becomes incapacitated who is not the operating or managing partner, or key operating or financially responsible shareholder or member, as applicable, you may continue to operate the Franchised Business, provided you satisfy our requirements under Section 4.D. for maintaining persons who have satisfactorily completed our initial training; and the heirs may succeed to the interest of the deceased or incapacitated partner, shareholder or member, subject only to the provisions of this Section 12. regarding approval of proposed transferees, including the requirement to sign our then-current form of Franchise Agreement and any applicable guaranty, and no transfer fee will be payable; however, any subsequent transfer by the heirs will be subject to all of the requirements on voluntary transfer of this Section 12.

(3) The heirs will provide for the continued operation of the Franchised Business in compliance with this Agreement, including the payment of all amounts due under this Agreement until some other disposition is effected under this Section 12. In the event of a death or permanent incapacity described above, we have the right, but not the obligation, at our sole election, to operate the Franchised Business to prevent an interruption in the operation of the Franchised Business or an injury to the System, without

waiving any other rights or remedies we may have under this Agreement. If we exercise our step-in rights, we will keep in a separate account all monies generated by the operation of the Franchised Business, less the expenses of the Franchised Business, which may include a reasonable fee for our services and expenses incurred by or payable to us, including Royalty Payments and Brand Fund Contributions. If we exercise our step-in rights, you agree to hold us and our representatives harmless for all acts or omissions during the course of this temporary operation. You also agree to reimburse us for all reasonable costs, including attorneys' fees, we may incur in exercising our step-in rights. We are not assuming any of your liabilities by exercising our step-in rights. If we exercise our step-in rights, we will operate the Franchised Business for up to 90 days, provided that we may extend our period of operation for additional 90 day periods, for up to one year. We will periodically discuss the status of operations and need for us to continue operations with the heirs.

I. Transfer of Interest in an Entity Franchisee. A sale, assignment, transfer, encumbrance or other disposition of an interest in an entity requiring our prior written consent under Section 12.B. will be deemed to occur:

(1) if you are a corporation or limited liability company, upon any sale, assignment, pledge or transfer of 20% or more of the voting stock or membership interests in you, any increase in the number of outstanding shares of voting stock or membership interests which results in a change of ownership of 20% or more of your total voting stock or membership interests, or any series of sales, assignments, pledges or transfers totaling in the aggregate 20% or more of the voting stock or membership interests in you;

(2) if you are a partnership, upon the assignment, sale, pledge or transfer of 20% or more of the partnership ownership interests or any series of sales, assignments, pledges or transfers totaling in the aggregate 20% or more of the partnership ownership interests.

You will notify us of any change in stock, membership or partnership ownership interests in the franchisee entity which will result in a sale, assignment, transfer, encumbrance or other disposition within the meaning of this Section 12.

J. Public Offering or Private Placements by You. You and your affiliates may not engage in a public offering or private placement of any securities without our prior written consent, whether or not our consent is otherwise required under this Section 12., if the securities are offered by you or the proceeds will be invested in or loaned to you, or if the offering materials mention us or describe the franchise relationship created by this Agreement. You must comply with our requirements to submit the preliminary or final offering document and a legal opinion in a form satisfactory to us concerning compliance with laws. We may withhold our consent until you correct any deficiencies we list. You and any other participants in the offering must fully indemnify us in connection with the offering. You will reimburse us for our costs and expenses incurred while reviewing the offering document and legal opinion, including attorneys' fees; we may estimate the amount of our expenses and require payment in advance.

### 13. **PRINCIPALS AND GUARANTORS**

A. Principals. We permit partnerships, corporations, limited liability companies and other entities we specify in the Manual or otherwise to sign this Agreement as franchisee. If you are an entity, we have entered into this Agreement in partial consideration of, and in reliance on the personal qualifications, skills and abilities and the continued involvement in the operation of the Franchised Business of your owners, directors, executive officers and their spouses, all of whom will be listed in the Owners/Officers Certificate in the form attached as Exhibit 5 ("*Principals*").

Any withdrawal of any Principal from your business without our prior written approval will be a material breach of this Agreement.

B. Guarantors. We would not enter into this Agreement without the personal guaranty of each Principal and any other person or entity we require to sign this Agreement as guarantor (collectively, “*Guarantors*”). If you are an individual, your spouse will be a party to this Agreement. We have entered into this Agreement in partial consideration of the delivery of a separate Guaranty by Guarantors in the form of the Attachment following the signature page to this Agreement.

C. Obligation of Principals and Guarantors. Each Principal and each Guarantor is signing this Agreement for the express purpose of being bound specifically by the provisions of this Agreement applicable to the Principals and Guarantors, respectively. The following Sections are applicable to Principals, and the reference to “you” in certain of these Sections will include Principals, where the context permits: Section 8 (Records and Reporting), Section 9 (Proprietary Marks and Other Proprietary Rights), Section 10 (Manual and Other Confidential Information), Section 12 (Transferability of Interest), Section 15 (Obligations Upon Termination or Expiration), Section 16 (Covenants Against Unauthorized Use and Competition), Section 17 (Independent Contractor and Indemnification), Section 18 (Dispute Resolution) and Section 24 (Representations, Warranties and Acknowledgments), as well as the general provisions of this Agreement. The following Sections are applicable to Guarantors: Section 16 (Covenants Against Unauthorized Use and Competition), Section 17 (Independent Contractor and Indemnification), Section 18 (Dispute Resolution) and Section 24 (Representations, Warranties and Acknowledgments) and the separate Guaranty, as well as the general provisions of this Agreement. Each Principal will also sign the Owners/Officers Certificate in the form attached as Exhibit 5 which contains additional representations and warranties.

#### 14. **OUR RIGHT TO TERMINATE**

A. Your Curable Defaults. We may terminate this Agreement if you are in breach of any material provision of this Agreement not listed in Section 14.B., by giving you written notice of the event or circumstances giving rise to the breach. The notice will state specifically the nature of the breach and allow you the following amount of time to correct the breach after receipt of our notice:

(1) seven days if the failure relates to the use of the Proprietary Marks or the Confidential Information;

(2) seven days or within the time permitted by any citation from an agency, whichever is shorter, if a threat or danger to public health or safety results from the maintenance or operation of the Franchised Business, except you must correct the violation immediately upon discovery by you or notice from us or the agency if the violation can be corrected immediately;

(3) 15 days or within the time permitted by any notification of non-compliance by appropriate authorities if the failure relates to your failure to comply with any laws, rules, regulations, ordinances, standards, and directives applicable to the Franchised Business and does not pose a threat or danger to public health or safety;

(4) 15 days if the failure relates to your failure to make any payment of money to us, our affiliates or any lender which has provided financing to you under an arrangement with us;

(5) 15 days if the failure relates to your interference with our relations with others or our ability to franchise or license the System, the Proprietary Marks or any other system or marks to a third party;

(6) 60 days if at any time after you have been operating the Franchised Business for at least one year you have not achieved at least a 10% market penetration level of windmill operators in the Designated Area; and

(7) 30 days if the failure relates to any other breach not listed in this Section 14.A. or in Section 14.B.

If you fail to cure any material breach within the applicable cure period, we may terminate this Agreement for that reason by providing written notice to you, except if the breach is not susceptible to cure within the time permitted but you take action within the time permitted to begin curing the breach and act diligently to complete the corrective action within a reasonable time, you will be deemed to have timely cured the breach.

B. Your Non-curable Defaults. We may terminate this Agreement and the franchise, without prejudice to any of our other rights or remedies by delivering a written notice of termination to you, without any opportunity for you to cure, if:

(1) you are insolvent; you make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy or you are adjudicated bankrupt or insolvent; you file or acquiesce in the filing of a petition seeking reorganization or arrangement under any federal or state bankruptcy or insolvency law, or consent to or acquiesce in the appointment of a trustee or receiver for you or the Franchised Business; or involuntary proceedings are commenced against you to have you adjudicated as bankrupt or to seek a reorganization under any state or federal bankruptcy or insolvency law and these proceedings are not dismissed within 60 days, or a trustee or receiver is appointed for you or the Franchised Business without your consent, and any appointment is not vacated within 60 days;

(2) you allow a final judgment against you to remain unsatisfied of record for 30 days (unless an appeal bond has been filed) or you allow levy of execution to be made upon any property used in the Franchised Business and the levy is not discharged within seven days;

(3) you abandon or cease to operate all or part of the Franchised Business (even if you operate a different business under a different trademark) or you fail to operate without our permission for three consecutive business days or five individual days within a 12 month period when required to operate, unless the failure is beyond your reasonable control;

(4) you fail to begin operation of the Franchised Business by the date required in Section 4.A.;

(5) you purport to transfer, contrary to the terms of Section 12, including without obtaining our prior written consent: (a) any of your rights or obligations under this Agreement; (b) any interest in the Franchised Business; or (c) a controlling interest in the entity operating the franchise;

(6) you are convicted of a felony or a crime or engaged in conduct which, in our judgment has adversely affected or may adversely affect the goodwill of the Proprietary Marks, the System or the Franchised Business;

(7) you knowingly maintain false books or records or knowingly submit any false sales report, financial statement or other information to us;

(8) if any examination or audit shows that your Gross Receipts for any period have been understated by more than 4%, or if more than three examinations or audits

within any 24 month period show that your Gross Receipts have been understated by more than 2% for the periods reviewed, as provided under Section 8.E.

(9) you make any material misrepresentation or omission in connection with the application for the franchise or any subsequent agreement, relocation or transfer, or any of your representations and warranties do not remain true throughout the Term of this Agreement;

(10) you fail to comply with the covenants contained in Section 16 against unauthorized use and competition;

(11) after curing any default after receiving notice of the default from us, you commit the same type of default within 12 months; or

(12) you fail on three or more occasions within any 12 month period to comply with any one or more provisions of this Agreement, whether or not the failures to comply are corrected.

## 15. OBLIGATIONS UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement:

A. Cease Operation. You will immediately cease operation of the Franchised Business.

B. Cease Affiliation. You will immediately cease to be, and you will immediately cease holding yourself out as, a System franchisee or as any way presently or formerly affiliated with us or the System, including as a franchisee, with respect to the Franchised Business.

C. Discontinue Use of System. You will immediately and permanently discontinue use of the System, including the Manual, the Proprietary Marks, including the service mark **LA MANCHA**<sup>SM</sup> and any colorable imitation of them, the trade dress, decals, and any distinctive form, slogan, equipment, signs, symbols, devices, process, products or equipment bearing the Proprietary Marks and printed advertising or stationery associated with the System. You will immediately cease accessing our website(s) and/or intranets and any databases we maintain for franchisees.

D. Return of Manual and Materials. You will promptly return to us at your cost by a method that allows tracking of the shipment, all copies of portions of the Manual and all other manuals and Confidential Information you have existing in any tangible form, whether printed or on electronic media, loaned or otherwise provided to you, together with all records, files, agreements, instructions, correspondence, promotional materials, and all other materials related to operating the Franchised Business, and all stationery, printed matter, signs, advertising and other materials furnished under this or any other agreement with us or the Fund, and you will delete any copies of these items existing in electronic form only, including emails and electronic files on your computer, and furnish us with evidence satisfactory to us of your compliance with these obligations within 15 days after termination or expiration of this Agreement.

E. Telephone Numbers and Computer Addresses. You will immediately cease use of the telephone numbers and any computer addresses used in conjunction with the Franchised Business and the Proprietary Marks and sign all documents we reasonably request to confirm our ownership of any telephone numbers, telephone listings, telephone directory advertisements, databases, websites, computer addresses and all related rights associated with the Proprietary Marks and furnish us with evidence satisfactory to us of your compliance with this obligation within 15 days after termination or expiration of this Agreement.

F. Assumed Names. You will take all actions as may be necessary to cancel any assumed name or equivalent registration which contains the mark **LA MANCHA**<sup>SM</sup> or any other

service mark or trademark owned or licensed by us and furnish us with evidence satisfactory to us of your compliance with this obligation within 15 days after termination or expiration of this Agreement.

G. Settle Accounts. You will promptly pay all sums owing to us, the Fund, suppliers, vendors, lenders, employees, taxing authorities and others in connection with your operation of the Franchised Business.

H. De-identify Vehicles and Any Premises. You will immediately make all modifications to or alterations to the inside and outside of the vehicles used in connection with the operation of the Franchised Business, including the trade dress, decals, and any distinctive form, slogan, equipment, signs, symbols, devices, products or equipment bearing the Proprietary Marks, necessary to distinguish it clearly from the vehicles associated with the System and to remove all evidence of the Proprietary Marks, including any changes we specifically request, unless we elect to purchase the vehicle, in which case you will, at our direction, take all steps necessary to allow us to purchase the vehicle and immediately deliver possession of the vehicle to us. You will furnish us with photographs or other evidence we specify satisfactory to us of your compliance with this obligation within 15 days after termination or expiration of this Agreement, together with an affidavit in a form satisfactory to us confirming compliance with the requirements of Sections 15.A. through 15.H. If you fail to make the modifications or alterations, we will have the right to do so and charge you our costs plus a fee for our personnel or authorized representatives.

I. Option to Purchase Inventory and Other Assets. We will have the right, but not the obligation, for 60 days starting on the date of termination or expiration, to purchase any or all of the assets of the Franchised Business, including the equipment, the vehicles and materials that bear the Proprietary Marks, at the lower of depreciated book value or fair market value exclusive of any goodwill. You may not offer to sell the assets of the Franchised Business to a third party unless we have given notice that we will not exercise our option or the 60 day period has ended. We may exclude from the purchased assets any furniture, vehicles, equipment, signs, products or supplies that we have not previously approved as meeting quality or performance standards for the System. If we and you cannot agree within a reasonable time on the price of any of the items we elect to purchase, the fair market value will be determined by three appraisers chosen in the following manner: we will select one and you will select one, and the two appraisers so chosen will select a third appraiser. The decision of the majority of the appraisers so chosen will be conclusive. Each party will bear the cost of the appraiser selected by it and the cost of the third appraiser will be shared equally by the parties. The closing of the purchase will take place no later than 60 days after you receive our notice that we are exercising this option. At the closing, you will deliver to us, in a form satisfactory to us, good and merchantable title to the assets purchased, free and clear of any encumbrances, together with all permits, certifications and licenses which may be assigned or transferred. You will be responsible for all sales and other transfer taxes. We will have the right to set-off against the purchase price all amounts you owe to us.

J. Delivery of Customer Records. You acknowledge that any customer purchasing products or services from you is a customer of the System and you have no ownership rights in or to the customer or protected right to provide System services to the customer. You will deliver all customer records to us upon request, provided you may maintain copies (or originals, if legally required) of any customer records you are required to maintain by law or which are necessary or useful in connection with any tax inquiry, audit, dispute, litigation or investigation or any other matter requiring the records for any reasonable business purpose.

K. Release. You will sign a General Release and other documents we request, including a Termination Agreement, in form satisfactory to us.

L. Survival of Covenants; Other Provisions. You will comply with the covenants contained in Section 9 and Section 10 not to misuse or take actions adverse to our ownership rights in the Proprietary Marks or disclose or divulge the contents of the Manual or other trade secrets or Confidential Information. You will also comply with the post termination covenants contained in Section 16 against unauthorized use and competition. Any other provisions which specifically or by their nature survive, including all indemnity obligations, will survive the termination or expiration of this Agreement.

M. Our Right to Sign Documents as Your Agent. By executing this Agreement, you irrevocably appoint us as your attorney-in-fact to execute in your name and on your behalf all documents necessary to discontinue your use of the Proprietary Marks and Confidential Information.

N. Other Franchise Agreements. Notwithstanding anything in this Section 15, if you operate a Business under another effective Franchise Agreement with us, your obligations under this Section 15 will not affect your right to hold yourself out as a franchisee of the System or to use the System and the Proprietary Marks in connection with the other Business.

## 16. COVENANTS AGAINST UNAUTHORIZED USE AND COMPETITION

A. No Unauthorized Use of the System. You will use best and continuing efforts during the Term of this Agreement to promote and develop the business of the Franchised Business. In consideration of the substantial value to you to use the System and to receive disclosure of the System, including all Proprietary Marks, the Manual and Confidential Information, neither you, any Principal or General Manager nor any person or entity with an interest in the franchise or the Franchised Business will, during the Term and after the expiration, transfer or termination of this Agreement, regardless of the cause of termination, or after the date on which you cease to operate the Franchised Business following the expiration, transfer or termination of this Agreement, whichever is later, own, maintain, engage in, be employed by, finance, or have any interest in any business, other than a Business licensed by us, which uses or duplicates the System in whole or in part, or is a colorable imitation of a Business, or offer or sell any LA MANCHA<sup>SM</sup> or other System brand products and/or services or colorable imitations of them, other than in or from the Franchised Business or another Business operated under an effective license from us.

B. Limited Covenant Against Competitive Activities During Term. During the Term, neither you, any Principal or General Manager nor any person or entity with an interest in the franchise or the Franchised Business will, directly or indirectly, for yourself, himself, herself or itself, through, on behalf of, or in conjunction with any other person or entity:

(1) divert or attempt to divert any business or customer of the Franchised Business or any Business to any competitor;

(2) employ or seek to employ any person then employed by us or by any other franchisee operating a Business or attempt to induce the person to leave his/her employment; or

(3) own, maintain, engage in, be employed by, finance or perform any services in any capacity for any business (other than another licensed LA MANCHA<sup>SM</sup> business) providing windmill testing services, or for any other business offering other services or products, which are the same as or similar to those offered at any Business.

C. Limited Covenant Against Competitive Activities Post Term. For 24 months after the expiration, transfer or termination of this Agreement, regardless of the cause of termination, or after the date on which you cease to operate the Franchised Business following the expiration, transfer or termination of this Agreement, whichever is later, neither you, any Principal or General

Manager nor any person or entity with an interest in the franchise or the Franchised Business will, directly or indirectly, for yourself, himself, herself or itself, or through, on behalf of, or in conjunction with any other person or entity, engage in any of the acts proscribed by Section 16.B., which are incorporated by reference, or otherwise own, maintain, engage in, be employed by, finance or perform any services in any capacity for, or have any interest in, any business providing windmill testing services for windmills, or for any other business offering services or products which are the same as or similar to those offered at any Business, (i) within the Designated Area, (ii) within a radius of 50 miles of the Office Location (regardless of whether points within this radius are outside the Designated Area), (iii) within the territory of any existing or proposed Business, or (iv) to a former customer of the Franchised Business. Nothing in this Section 16.C. will restrict you, any Principal or General Manager from performing services as an employee for an employer (other than a former customer of yours), on an employer's own windmills, but not for others.

D. Our Reduction in Scope of Covenants. We have the right to reduce the scope of any of the covenants set forth in this Section 16., without your consent, effective immediately upon your receipt by written notice of our election to do so and you will immediately comply with any covenant as so modified.

E. Court Reduction in Scope of Covenants. If any court or other tribunal having jurisdiction to determine the validity or enforceability of this Section 16. determines that this Section 16., or any part of this Section 16. would be invalid or unenforceable as written, then the provisions of this Section 16. will be deemed to be modified to the extent or in the manner necessary for those provisions to be valid and enforceable to the greatest extent possible.

F. Additional Franchise; Small Ownership of Public Entity. The provisions of this Section 16. will not prohibit you, any Principal or General Manager nor any person or entity with an interest in the franchise or the Franchised Business, from operating any other franchise which we grant, or owning less than a 2% beneficial interest of the outstanding equity securities of any publicly held entity.

G. Independent Covenants. Each of the covenants above in this Section 16. will be construed as independent of each other and any other covenant or provision of this Agreement.

H. Confidentiality and Noncompetition Agreement. At our request, you will require any Principals, your General Manager, other employees who receive training from us and other key employees, to sign a written agreement, in form and substance satisfactory to us, that they will comply with the covenants contained in this Section 16 and they will recognize us and Licensor as third-party beneficiaries with the independent right to enforce the covenants either directly in our or Licensor's own name as beneficiary or acting as agent. You hereby appoint us and Licensor as your agent with respect to the enforcement of these covenants. In addition to the original Principals agreeing to be bound by this Agreement as evidenced by their signatures, an example of a separate written agreement currently considered satisfactory and including the confidentiality covenants required under Section 10.C. is the Confidentiality and Noncompetition Agreement attached as Exhibit 3. You will retain all written Confidentiality and Noncompetition Agreements with your business records for the time period specified in the Manual. You will enforce all covenants and will give us notice of any breach or suspected breach of which you have knowledge.

## 17. **INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

A. Independent Contractor. This Agreement does not create a fiduciary relationship between us. You will operate the Franchised Business as an independent contractor, and nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee or servant of the other for any purpose. Although you must comply with this Agreement and the System, you will have full and complete control of the manner in

which you comply and full and complete control of the day-to-day operation of the Franchised Business and your business policies and practices.

B. Notice of License. During the Term, you will hold yourself out to the public as an independent contractor operating the business pursuant to a license from us and/or Licensor, as appropriate. You will take all actions necessary to do so, including exhibiting a notice of that fact in a form satisfactory to us in a conspicuous place in the Franchised Business and on a legend on your stationery, checks and other business forms.

C. No Authority to Act as Agent. Nothing in this Agreement authorizes you to make any contract, agreement, warranty or representation on our behalf, or incur any debt or other obligation in our name, and we will in no event assume liability for, or be deemed liable as a result of any act or omission by you in your conduct of the Franchised Business or any claim or judgment against us arising from any of these acts or omissions by you.

D. Indemnification. **YOU WILL INDEMNIFY AND HOLD HARMLESS US AND OUR AFFILIATES, AND OUR AND THEIR OFFICERS, DIRECTORS, MANAGERS, MEMBERS, LIMITED PARTNERS, GENERAL PARTNERS, SHAREHOLDERS, INDEPENDENT CONTRACTORS AND EMPLOYEES (THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL LIABILITY, INJURY, LOSS, COST, DAMAGE AND EXPENSE OF ANY TYPE ARISING DIRECTLY OR INDIRECTLY FROM, AS A RESULT OF, OR IN CONNECTION WITH ANY CLAIM (ACTUAL OR THREATENED) AND THE COSTS OF THE SETTLEMENT OR DEFENSE OF THE CLAIM (INCLUDING ATTORNEYS' FEES), WHICH ARISES OUT OF OR IS BASED ON YOUR OWNERSHIP OR OPERATION OF THE FRANCHISED BUSINESS OR YOUR OCCUPATION OF THE OFFICE LOCATION OR VIOLATION OR BREACH BY YOU OF ANY WARRANTY, REPRESENTATION, AGREEMENT OR OBLIGATION IN THIS AGREEMENT OR IN ANY OTHER AGREEMENT YOU ENTER INTO WITH US OR ANY OTHER INDEMNIFIED PARTIES. WE AND THE OTHER INDEMNIFIED PARTIES DO NOT ASSUME AND WILL NOT BEAR ANY LIABILITY FOR ANY ACTS, ERRORS OR OMISSION BY YOU, OR ANY OFFICER, DIRECTOR, EQUITY OWNER, AGENT, PARTNER, REPRESENTATIVE, INDEPENDENT CONTRACTOR OR EMPLOYEE OF YOURS, INCLUDING THOSE ARISING FROM OPERATION OF A MOTOR VEHICLE, PROVIDING SECURITY TO THE FRANCHISED BUSINESS, ANY EMPLOYMENT DECISION OR FUNCTION OR ANY DEFAMATORY STATEMENTS.**

E. Notice of Indemnification Claim. We and any Indemnified Party will promptly give you written notice of any claim for indemnification under this Section 17. Any failure or delay to give the notice will not relieve you of any liability under this Agreement except to the extent the failure or delay causes actual material prejudice.

F. Counsel; Control of Defense. We will have the right to control all litigation, and defend and/or settle any claim against us or other Indemnified Parties affecting our interests, in any manner we deem appropriate with counsel of our own choosing. You will advance or reimburse our costs. Our exercise of this control over the litigation will not affect our rights to indemnification under this Section 17. You may not consent to the entry of judgment with respect to, or otherwise settle, an indemnified claim without the prior written consent of the applicable Indemnified Parties. We and the other Indemnified Parties do not have to seek recovery from third parties or otherwise attempt to mitigate losses to maintain a claim to indemnification under this Section 17.

G. Survival. The provisions of this Section 17. will survive the termination or expiration of this Agreement.

## 18. DISPUTE RESOLUTION

A. Informal Discussion; Mediation. Before any party takes any steps to litigate any dispute or claim arising out of or related to this Agreement or any other agreement between you and us (“*Dispute*”), the following is required, except as otherwise provided in this Agreement.

(1) The aggrieved party must give the other party (or parties) written notice of any Dispute (the “*Dispute Notice*”). The Dispute Notice will specify in reasonable detail the nature of the Dispute and will be addressed to the individual or the Operating Principal, president, general partner, manager or other executive officer of an entity, as applicable.

(2) A representative from each entity that is a party or the individual party involved in the Dispute will meet where our corporate headquarters are then located at a mutually acceptable time to attempt in good faith to resolve the Dispute.

(3) If the Dispute has not been resolved within 60 days after delivery of the Dispute Notice, any party to the Dispute, by written notice to the other parties, may initiate mediation, which will be conducted under the auspices of Judicial Arbitration and Mediation Services, Inc. (“*JAMS*”) under its rules governing mediation, in Philadelphia, Pennsylvania, or in a city we or JAMS select close to where our headquarters are then located, by a mediator selected from the JAMS panel. We and you will share the cost of the mediation equally, except as otherwise provided in Section 18.F. All aspects of the mediation will be privileged and confidential and will not be admissible in any proceeding.

(4) If the Dispute is not resolved by mediation within 120 days after the delivery of the Dispute Notice, any party to the Dispute may commence litigation.

B. Governing Law. This Agreement takes effect when accepted and executed by us in New Jersey. This Agreement will be construed under the laws of the State of New Jersey and any dispute between the parties will be governed by and determined in accordance with the substantive law of the State of New Jersey, which laws will prevail in the event of any conflict of law; except you will not be entitled to any rights under any franchise registration or disclosure law or any franchise relationship law of the State of New Jersey unless the Designated Area is located in the State of New Jersey and/or the jurisdictional requirement of the law is otherwise met without reference to the choice of law provision in this Section 18.B. If we move our corporate headquarters, we will have the option of determining that the substantive law of the state to which we move will replace all references to New Jersey law in this Agreement, or of continuing to have New Jersey law apply. If we choose to have the law of the new state apply, we will notify all franchisees within six months of our move, and the chosen law will apply to all franchisees; except any franchise registration or disclosure law or any franchise relationship law of the new state will only apply where the jurisdictional requirements of the law are otherwise met.

C. Forum. You acknowledge that you have and will continue to develop a substantial and continuing relationship with us at our offices in the State of New Jersey, where our decision-making authority is vested and franchise operations are conducted and supervised. Except for our right to obtain injunctive relief in any appropriate forum, any action arising out of or relating to this Agreement will be commenced, conducted and concluded only in a state or federal court of general jurisdiction in the State of New Jersey for the district or county in which our headquarters are then located. You irrevocably submit to the jurisdiction of these courts, waive any objection you may have to either the jurisdiction or venue of these courts and agree not to argue that these courts are inconvenient forums. If we move our corporate headquarters, you acknowledge that you will have a substantial and continuing relationship with us in the state to which we move and that any references to New Jersey in this Section 18.C. will be deemed to be references to the new state.

D. Rights and Remedies Cumulative. No right or remedy under this Agreement will be deemed to be exclusive of any other right or remedy under this Agreement or of any right or remedy otherwise provided by law or and equity. Each right and remedy will be cumulative.

E. Injunctive Relief, Declaratory Relief or Monies Owed. Notwithstanding the above, nothing in this Agreement will prevent us from obtaining injunctive relief in any appropriate forum against actual or threatened conduct that will cause us loss or damages, under the usual equity rules, including applicable rules for obtaining restraining orders and preliminary injunctions, including for your unauthorized use of the Proprietary Marks or the Confidential Information or for your violation of any of the post-termination covenants in this Agreement, nor will we be obligated to pursue any informal resolution or mediation of these claims before seeking injunctive relief.

F. Attorneys' Fees, Costs and Expenses. If a party brings any action against another party under this Agreement, whether by complaint, counterclaim, appeal or otherwise, the prevailing party in the action will be entitled to recover, in addition to any other recovery, reasonable attorneys' fees, court costs and expenses of mediation and litigation.

G. **NO CLASS PROCEEDINGS. YOU AGREE TO LITIGATE EACH DISPUTE WITH US ON AN INDIVIDUAL BASIS. YOU WILL NOT CONSOLIDATE ANY DISPUTE WITH A CLAIM OF ANY OTHER FRANCHISEE, INDIVIDUAL, OR ENTITY, AND YOU WILL NOT PURSUE ANY CLASS CLAIMS IN ANY MEDIATION, ARBITRATION, OR LITIGATION FORUM THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT.**

H. **ONLY OUR ENTITY HAS ANY LIABILITY TO YOU. YOU MAY SEEK DAMAGES UNDER THIS AGREEMENT OR ANY REMEDY UNDER LAW OR EQUITY ONLY AGAINST OUR BUSINESS ENTITY. YOU AGREE THAT OUR AFFILIATES AND OUR/THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, LIMITED PARTNERS, GENERAL PARTNERS, SHAREHOLDERS, INDEPENDENT CONTRACTORS AND EMPLOYEES WILL NOT BE LIABLE AND MAY NOT BE NAMED AS A PARTY IN ANY LITIGATION, ARBITRATION OR OTHER PROCEEDING COMMENCED BY YOU IF YOUR CLAIM ARISES OUT OF OR RELATES TO THIS AGREEMENT. YOU FURTHER AGREE THAT ALL OF THE FOREGOING PARTIES ARE INTENDED BENEFICIARIES OF THIS CLAUSE.**

I. **NO PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES. A COURT MAY AWARD INJUNCTIVE RELIEF AS WELL AS DAMAGES, BUT WILL HAVE NO AUTHORITY TO AWARD PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.**

J. **JURY TRIAL WAIVER. WE AND YOU, RESPECTIVELY, WAIVE ANY RIGHT WE OR YOU MIGHT HAVE TO TRIAL BY JURY ON ANY AND ALL CLAIMS ASSERTED BY ANY PARTY. WE AND YOU, RESPECTIVELY, EACH ACKNOWLEDGE THAT WE AND YOU, RESPECTIVELY HAVE HAD A FULL OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL CONCERNING THIS WAIVER, AND THAT THIS WAIVER IS INFORMED, VOLUNTARY, INTENTIONAL AND NOT THE RESULT OF UNEQUAL BARGAINING POWER.**

#### 19. **EXCUSED DELAY**

If performance of any party is delayed, interrupted, or prevented by an act of God, fire, flood, riot, war, terrorist act, strike, inability to obtain equipment due to government action or order, failure of carriers to transport equipment, or other government action or law, then except for

your payment obligations, the time for performance by a party will be extended for an amount of time equal to the delay caused by the event.

## 20. NOTICES

Any notices required or permitted under this Agreement will be in writing and may be personally delivered or delivered by a nationally recognized overnight courier service, mailed by registered or certified mail, or sent electronically or by facsimile except that any notice of your intention or our intention regarding entering into a new franchise agreement for a Subsequent Term, any default notice or notice of our intention to terminate this Agreement must be delivered personally or by overnight courier service or sent by registered or certified mail. Notices will be sent to the parties at their respective addresses listed on the signature page of this Agreement unless a different address has been designated in writing. Notices will become effective upon receipt except any notice by certified or registered mail is deemed to have been given at the date and time of mailing.

## 21. APPROVALS AND WAIVERS

A. Approval. Whenever this Agreement requires our approval or consent, you will make a timely written request to us beforehand; we must provide the requested approval or consent in writing for it to be effective.

B. Action Not Warranty. We make no warranties or guarantees upon which you may rely, and assume no liability or obligation to you, by providing any waiver, approval, consent or suggestion in connection with this Agreement, or by reason of any neglect, delay or denial of any request for any of these actions.

C. Waiver. No failure on our part to exercise any power reserved to us by this Agreement, or to insist upon strict compliance with any obligation or condition under this Agreement, and no custom or practice of the parties at variance with the terms of this Agreement, will be a waiver of our right to demand exact compliance with any of its terms. Our acceptance of any late payments will not be deemed to be a waiver of any preceding breach by you of any terms, covenants or conditions of this Agreement.

## 22. ENTIRE AGREEMENT

This Agreement and any attachments constitute the complete and integrated agreement between you and us concerning the subject matter of this Agreement and supersede all prior agreements; no other representations have induced you to execute this Agreement except that you may rely on our representations in the most recent Franchise Disclosure Document (“FDD”) we delivered to you, including its exhibits and any amendments, in connection with this Agreement. No representations, promises or agreements, oral or otherwise, not appearing in or attached to this Agreement or in the FDD were made by either party and none will have any effect with reference to this Agreement. No change in this Agreement will be binding on either party unless it is mutually agreed to in writing.

## 23. SEVERABILITY AND CONSTRUCTION

A. Severance of Invalid Provision. Any provision of this Agreement which is prohibited by, or unlawful or unenforceable under any applicable law will be ineffective only to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

B. Greater Notice Required by Law. If any applicable law or rule of any jurisdiction requires a greater notice of the termination of or election not to enter into a subsequent agreement, or the taking of some other action with respect to the termination or election not to enter into a

subsequent agreement than is required in this Agreement, the prior notice or other action required by law or rule will be substituted for the notice or other action required in this Agreement.

C. No Rights Granted to Others. Nothing in this Agreement is intended, nor will be deemed, to confer upon any person or legal entity other than you or us or our or your respective permitted successors and assigns under Section 12 (or as specifically provided Licensor and our affiliates and our/their respective officers, directors, managers, members, shareholders and employees), any rights or remedies under or by reason of this Agreement.

D. Captions. All captions in the Agreement are intended solely for the convenience of the parties, and none will be deemed to affect the meaning or construction of any provision.

E. Number and Gender. All references to gender and number will be construed to include any other gender and number as the context may require, and all acknowledgments, promises, covenants, agreements and obligations made in this Agreement or undertaken by you will be deemed jointly and severally undertaken by all parties (other than us) to this Agreement on your behalf. No change in marital or other legal status between any of the parties to this Agreement will alter or limit that joint and several liability without our express written release, which release may be withheld at our sole discretion.

F. Day. All references to “day” will mean a calendar day unless a business day is specified.

G. Counterparts. This Agreement may be signed in counterparts; each signed copy will be deemed an original and all of which, together, will constitute the same instrument. Facsimile signing and delivery of this Agreement is legal and binding for all purposes.

H. Background Part of Agreement. The BACKGROUND Section at the beginning of this Agreement contains contractual terms that are not mere recitals.

## 24. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

A. Representations and Warranties. You (which includes each Principal and each Guarantor), jointly and severally make the following warranties, representations, agreements and acknowledgments to us:

(1) Data and Plans. You have examined relevant data relating to the local economy and the competitive market in the area where you will develop the Franchised Business.

(2) Investigation of Franchised Business; No Representations Outside Agreement. You are entering into this Agreement after having conducted an independent investigation of the business franchised and our operations and all facts you deem relevant and not upon any representation as to profits which the Franchised Business might be expected to realize. You acknowledge we have not made any representations or promises to you that are not contained in this Agreement, including attachments, and that no salesperson, representative or other person has the authority to bind or obligate us, except an authorized officer in a written document. You acknowledge that no representations, promises, inducements, guarantees or warranties of any kind were made by or on behalf of us which have led you to enter into this Agreement.

(3) Risk. You understand ventures in the windmill testing service industry, including the business venture contemplated by this Agreement, involve a high degree of financial risk and the success of the Franchised Business will be largely dependent upon your abilities and those of any Operating Principal, General Manger and other employees. You acknowledge other factors beyond our or their control will affect the success of the Franchised Business, including policies of each potential customer related to the inspection of windmills, weather conditions, competition (including self-testing), interest rates, economic conditions, government policies, local laws, rules and regulations, inflation, labor costs, technological advances, market conditions, and

other conditions which may be difficult to anticipate, assess, or even identify. You also acknowledge that some franchisees are more, or less, successful than other franchisees. We expressly disclaim the making of, and you acknowledge that you have not received, any warranty or guaranty, express or implied, as to the potential sales, income, profits, or success of the business venture contemplated by this Agreement.

(4) Authority; No Conflict. Each of you has the right, power, legal capacity, and authority to sign, deliver, and perform your obligations under this Agreement and any related agreements, and no approval or consent of any other person, firm, corporation, or governmental entity is necessary in connection with the signing, delivery, or performance of this Agreement by you. The signing and delivery of this Agreement and the carrying on of the business of the Franchised Business will not result in a breach or an event that, with notice or lapse of time or both, would be a breach or violation of any lease, license, promissory note, sales contract, commitment, indenture, mortgage, deed of trust, employment, confidentiality, noncompetition or other agreement, instrument, or arrangement to which you or any of your affiliates is a party, or an event that would permit any party to terminate any agreement or to accelerate the maturity of any indebtedness or other obligation of yours or the creation or imposition of any lien, charge, or encumbrance on any of your properties or any of your affiliates' properties.

(5) Truth of Information. All information and materials, including all financial statements and business plans you provided to us individually or collectively are true and correct and complete to the best of your knowledge, and all assets listed on your financial statements and business plans are available to satisfy your obligations arising under this Agreement.

(6) Legal Proceedings. There are currently no pending or threatened lawsuits or other legal proceedings, administrative actions by any governmental body, or outstanding judgments against you that have not been disclosed in writing to us.

(7) Anti-Terrorism Law. Neither you, nor any person or entity with an ownership interest in the franchise, nor any Operating Principal, officer, director, General Manager, manager or employee of yours or of these other persons or entities or of any affiliate or yours, is, or at any time will be named, either directly or by an alias or nickname, on the list of Specially Designated Nationals or Blocked Persons, which includes the names of suspected terrorists, as designated by the United States Department of the Treasury's Office of Foreign Assets Control, currently at <http://www.ustreas.gov/offices/eotffc/ofac/sdn/index.html>. You acknowledge that we intend to comply, and you must comply, with all prohibitions against corrupt business practices, money laundering and support of terrorist activities, including those contained in the United States Patriot Act (currently at <http://www.epic.org/privacy/terrorism/hr3162.html>), as amended, Executive Order 13224 (currently at <http://www.treas.gov/offices/enforcement/ofac/legal/eo/13224.pdf>), and related United States Treasury regulations and any similar law ("*Anti-Terrorism Law*"). You will immediately notify us of any misrepresentation or breach of this Section 24.(D)(7). We may terminate this Agreement without any opportunity for you to cure as provided in Section 14.B.(8) upon any misrepresentation or breach by you of this Section 24.(D)(7).

(8) Disclosure. You acknowledge that you received our Franchise Disclosure Document at least 14 calendar days (and at least 10 business days in Michigan and Washington, and at least the earlier of 10 business days or the first personal meeting in New York and Rhode Island), before you signed this Agreement or paid us any monies, refundable or otherwise, or earlier in the sales process if you requested it. You acknowledge receipt of this Agreement, with all blanks completed and with any amendments and exhibits, at least seven calendar days before you signed this Agreement, not including merely inserting your name and address and other information, or incorporating any changes that were a result of negotiated changes you requested

and had an opportunity to review before signing this Agreement. You acknowledge that before furnishing a Franchise Disclosure Document to you, we or our agent advised you of the formats in which the Franchise Disclosure Document is made available and any prerequisites for obtaining and conditions necessary for reviewing the Franchise Disclosure Document in a particular format.

(9) Business Advisors. We have recommended that you seek advice from your business advisors and you have had the opportunity to obtain a review of this Agreement and our Franchise Disclosure Document by your lawyer, accountant or other business advisor before signing this Agreement.

(10) Ability to Ask Questions. You acknowledge you have read and understood this Agreement, the attachments to this Agreement, and any other agreements relating to this Agreement, if any, and agree to be bound by their terms and conditions. You represent we have allowed you ample time and opportunity to consult with advisors of your own choosing about the potential benefits and risks of entering into this Agreement. You represent you have had full opportunity to ask all questions you may have about investing in this franchise and all of their questions have been answered to your satisfaction, except we do not answer questions about or make representations concerning potential sales, income, profits, or success, except information we provide in Item 19 of the Franchise Disclosure Document, and except as permitted in Item 19 relating to (a) the actual records of an existing Business you considered buying, or (b) a supplement to the information provided in Item 19.

(11) Use of Information; Background Checks. You acknowledge we have the right to use information you provide us or which concerns you for business purposes relating to the administration of this Agreement and the Fund and the operation of the System. This information includes your name, business or home address, business or home telephone number, email address, financial information and business records. We may disclose all or a portion of this information to vendors, the Fund, any purchasing cooperative or corporation, prospective franchisees, existing franchisees, governmental authorities and others for legitimate business purposes. You acknowledge we will disclose certain information in our Franchise Disclosure Document as required by federal or state laws and regulations. We will also honor validly served subpoenas, warrants and court orders. You also acknowledge that circumstances may arise when we deem it advisable to conduct an investigative background search on you. You authorize us or our designee to conduct an investigative background search, which may reveal information about your business experience, education, criminal record, civil judgments, property ownership, liens, association with other individuals, creditworthiness, job performance and other matters. You authorize any credit reporting agency, financial institution, credit bureau, governmental agency or other information reporting agency to furnish information about you to us, without any liability to us.

**B. YOU, EACH PRINCIPAL AND EACH GUARANTOR ACKNOWLEDGE THEY HAVE READ THIS FRANCHISE AGREEMENT AND UNDERSTAND ITS TERMS. YOU, EACH PRINCIPAL AND EACH GUARANTOR FURTHER ACKNOWLEDGE THEY WOULD NOT SIGN THIS FRANCHISE AGREEMENT IF THEY DID NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.**

**[ SIGNATURES APPEAR ON THE NEXT PAGE ]**

Intending to be legally bound, the parties have signed or caused their duly authorized representative to sign this Agreement as of the date first written above.

**FRANCHISEE:**

\_\_\_\_\_ [entity name]  
A \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
email: \_\_\_\_\_  
facsimile ( ) \_\_\_\_\_

**LA MANCHA FRANCHISE, LLC**  
A Delaware Limited Liability Company  
12 Tilting Avenue  
Plane, NJ 07999  
email: \_\_\_\_\_  
facsimile ( ) \_\_\_\_\_

By: \_\_\_\_\_ [signature]  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_ [signature]  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*[If individuals sign as franchisee, use the following instead]:*

Signature: \_\_\_\_\_ (Seal)  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
email: \_\_\_\_\_ facsimile \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_ (Seal)  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
email: \_\_\_\_\_ facsimile \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_ (Seal)  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
email: \_\_\_\_\_ facsimile \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_ (Seal)  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
email: \_\_\_\_\_ facsimile \_\_\_\_\_  
Date: \_\_\_\_\_

**Person designated under Section 4.D. as Operating Principal to communicate all decisions regarding this Agreement on behalf of the franchisee:** \_\_\_\_\_

Each of the undersigned Principals and Guarantors acknowledge and agree:

(1) Each is a "Principal" and/or "Guarantor" as defined in Section 13.A. and Section 13.B. of this Agreement, as applicable;

(2) Each has read this Agreement and acknowledges the undertakings and covenants required of each Principal and/or each Guarantor, as applicable, under this Agreement, and that the undertakings by Principals and Guarantors, including the signing and delivery of the following Guaranty by Guarantors, are made and given in partial consideration of, and as a condition to, our grant of rights to operate the Franchised Business; and

(3) Each individually, jointly and severally makes all of the covenants, representations and agreements of Principals and/or Guarantors, as applicable, set forth in this Agreement.

Intending to be legally bound, each of the undersigned Principals and Guarantors join in the signing of the Franchise Agreement and have signed this Agreement as of the date first written above. *[Sign as both a Principal and a Guarantor, if applicable]*

**PRINCIPALS:**

**GUARANTORS:**

Signed: \_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_  
\_\_\_\_\_

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

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

Address: \_\_\_\_\_  
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Date: \_\_\_\_\_  
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Signed: \_\_\_\_\_  
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Printed Name: \_\_\_\_\_  
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Address: \_\_\_\_\_  
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Date: \_\_\_\_\_  
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Signed: \_\_\_\_\_  
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Printed Name: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
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Date: \_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

## ATTACHMENT TO FRANCHISE AGREEMENT

### GUARANTY

**AS AN INDUCEMENT TO AND IN CONSIDERATION OF La Mancha Franchise, LLC**, a Delaware limited liability company (“**you**”), entering into the Franchise Agreement dated the same date as this Guaranty, including all attachments (the “**Franchise Agreement**”) with \_\_\_\_\_, a \_\_\_\_\_ (state of formation) \_\_\_\_\_ (type of entity) (“**Franchisee**”), the undersigned individuals, (“**we**” or “**us**”), each jointly and severally agree:

1. We unconditionally guaranty to you, jointly and severally, in the same manner and with the same recourse against us as if we were Franchisee, as a primary obligor and not merely as a surety, the full and timely payment of all sums due and the performance by Franchisee of all of Franchisee’s obligations under the Franchise Agreement, including any amendments or modifications (collectively, the “**Obligations**”). We will render any payment guaranteed upon demand if Franchisee fails or refuses punctually to make payment. This is a guaranty of payment and not collection. This Guaranty will be continuing and irrevocable until and unless you specifically release any of us.
2. We waive all setoffs and counterclaims, presentments, notices and demands with respect to the Franchise Agreement, this Guaranty or all or any part of the Obligations to which we may be entitled, including notice of amendment or modification of this Guaranty or the Franchise Agreement, demand for payment or performance by Franchisee, any default by Franchisee or any guarantor, release of any guarantor or any security for the Obligations, protest and notice of protest. Our liability will not be contingent or conditioned on your pursuit of any remedies against Franchisee, any of us or any other person as a condition of liability.
3. Upon the bankruptcy, winding-up or distribution of any of the assets of Franchisee, or any of the undersigned, your rights will not be affected or impaired by your omission to prove your claim or to prove your full claim and you may prove any claims as you see fit and may refrain from proving any claim.
4. We will do, execute and perform any acts, deeds, documents and other things required to give you the full benefit and effect of, or intended by this Guaranty. You will not be deemed to have waived any term, condition, provision, or right under this Guaranty except by express written waiver signed by you, and then only to the particular circumstances specified. Neither your forbearance nor indulgence will constitute a waiver of any provision of this Guaranty. Without affecting our obligations, you may renew, extend, modify or release any Obligation or settle, adjust, or compromise any claims against Franchisee, without notice to us.
5. This Guaranty will be binding upon each of us, and our respective heirs, executors, administrators, successors and assigns and will inure to your benefit and the benefit of your successors and assigns. This Guaranty may be signed in counterparts, each will be deemed an original and all of which together will be one instrument.
6. This Guaranty will be governed by and construed in accordance with the laws of the State of New Jersey, without reference to the body of law governing conflicts of law.

**EACH GUARANTOR ACKNOWLEDGES HE/SHE HAS READ THIS GUARANTY AND UNDERSTANDS ITS TERMS. EACH GUARANTOR FURTHER ACKNOWLEDGES HE/SHE WOULD NOT SIGN THIS GUARANTY IF HE/SHE DID NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.**

**IN WITNESS WHEREOF**, intending to be legally bound, we have signed, sealed and delivered this Guaranty as of \_\_\_\_\_, 200\_.

GUARANTOR(S)

WITNESS(ES)

\_\_\_\_\_  
\_\_\_\_\_  
*Guarantor Signature*  
Printed Name:

\_\_\_\_\_  
\_\_\_\_\_  
*Witness Signature*  
Printed Name:

\_\_\_\_\_  
\_\_\_\_\_  
*Guarantor Signature*  
Printed Name:

\_\_\_\_\_  
\_\_\_\_\_  
*Witness Signature*  
Printed Name:

\_\_\_\_\_  
\_\_\_\_\_  
*Guarantor Signature*  
Printed Name:

\_\_\_\_\_  
\_\_\_\_\_  
*Witness Signature*  
Printed Name:

\_\_\_\_\_  
\_\_\_\_\_  
*Guarantor Signature*  
Printed Name:

\_\_\_\_\_  
\_\_\_\_\_  
*Witness Signature*  
Printed Name:



**LA MANCHA FRANCHISE, LLC**

**FRANCHISE AGREEMENT**

**EXHIBITS**

- Exhibit 1 The Designated Area
- Exhibit 2 Conditional Assignment of Franchisee's Telephone Numbers
- Exhibit 3 Confidentiality and Noncompetition Agreement
- Exhibit 4 Assignment and Assumption Agreement
- Exhibit 5 Owners/Officers Certificate



**EXHIBIT 1**  
**TO LA MANCHA FRANCHISE, LLC**  
**FRANCHISE AGREEMENT**  
**THE DESIGNATED AREA**

The Designated Area is defined as: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The Designated Area will be considered fixed by the geographical area defined by the above description as of the Effective Date of this Agreement, so that if county boundaries change, the geographic area contained in the Designated Area will not change except by written agreement among the parties and any other affected franchisees.

Franchisee Initials \_\_\_\_\_ Date: \_\_\_\_\_

La Mancha Franchise, LLC Representative Initials \_\_\_\_\_ Date: \_\_\_\_\_



**EXHIBIT 2**  
**TO LA MANCHA FRANCHISE, LLC**  
**FRANCHISE AGREEMENT**

**CONDITIONAL ASSIGNMENT OF FRANCHISEE'S TELEPHONE NUMBERS**

**CONDITIONAL ASSIGNMENT OF FRANCHISEE'S TELEPHONE NUMBERS**

**FOR VALUE RECEIVED**, the undersigned (“Assignor”), hereby conditionally assigns, transfers and sets over unto **La Mancha Franchise, LLC**, a Delaware limited liability company, with its principal place of business at 12 Tilting Avenue, Plane, NJ 07999 (“Assignee”), all of Assignor’s right, title and interest in all telephone numbers and listings used by Assignor in the operation of its **LA MANCHA<sup>SM</sup>** business (the “Franchised Business”). These numbers are as follows: \_\_\_\_\_

This Conditional Assignment of Franchisee’s Telephone Numbers (this “Conditional Assignment”) will become effective automatically upon expiration, termination or transfer by Assignor of the Franchise Agreement between Assignor and Assignee for the operation of the Franchised Business. Upon the occurrence of that condition, Assignor will do all things required by the telephone company to assure the effectiveness of the assignment of telephone numbers as if Assignee had been originally issued the telephones, telephone numbers, and telephone listings and granted the right to use the telephone numbers.

Assignor agrees to pay the telephone company on, before or immediately following the effective date of assignment all amounts owed for the use of the telephones, telephone numbers, and telephone listings and for any telephone directory advertising associated with the telephone numbers for the period prior to and through the effective date. Assignor further agrees to reimburse and indemnify Assignee for any sums Assignee must pay the telephone company to effectuate this Conditional Assignment, and agrees to fully cooperate with the telephone company and Assignee in effectuating this Conditional Assignment.

Assignor represents and warrants to Assignee that it has full power and authority to assign the telephone numbers and listings.

The obligations of Assignor hereunder will be individual, joint and several.

**ASSIGNOR HAS READ THIS CONDITIONAL ASSIGNMENT AND UNDERSTANDS ITS TERMS. ASSIGNOR WOULD NOT SIGN THIS CONDITIONAL ASSIGNMENT IF ASSIGNOR DID NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.**

Intending to be legally bound, the parties have signed this Conditional Assignment on \_\_\_\_\_, 201\_.

**FRANCHISEE:**  
\_\_\_\_\_[Entity Name]  
Address: \_\_\_\_\_  
\_\_\_\_\_  
email: \_\_\_\_\_  
facsimile ( )  
  
By: \_\_\_\_\_  
  
Printed Name: \_\_\_\_\_  
  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**LA MANCHA FRANCHISE, LLC**  
12 Tilting Avenue, Plane, New Jersey 07999  
email: \_\_\_\_\_  
facsimile ( )  
  
By: \_\_\_\_\_  
  
Printed Name: \_\_\_\_\_  
  
Title: \_\_\_\_\_

*[If individuals sign as franchisee, use the following instead]:*

Signed: \_\_\_\_\_ (Seal)  
Printed Name:  
Address:  
email: \_\_\_\_\_ facsimile \_\_\_\_\_

Signed: \_\_\_\_\_ (Seal)  
Printed Name:  
Address:  
email: \_\_\_\_\_ facsimile \_\_\_\_\_

Signed: \_\_\_\_\_ (Seal)  
Printed Name:  
Address:  
email: \_\_\_\_\_ facsimile \_\_\_\_\_

Signed: \_\_\_\_\_ (Seal)  
Printed Name:  
Address:  
email: \_\_\_\_\_ facsimile \_\_\_\_\_



**EXHIBIT 3**  
**TO LA MANCHA FRANCHISE, LLC**  
**FRANCHISE AGREEMENT**

**CONFIDENTIALITY AND NONCOMPETITION AGREEMENT**

**LA MANCHA FRANCHISE, LLC**  
**CONFIDENTIALITY AND NONCOMPETITION AGREEMENT**  
**(for trained employees, owners and others associated with Franchisee)**

In consideration of my being a \_\_\_\_\_ [fill in relationship to the franchisee, for example, equity owner, employee, vendor] of \_\_\_\_\_ [fill in name of franchisee] (“you”), the disclosure to me of certain confidential information and trade secrets, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, intending to be legally bound, I acknowledge and agree that:

1. You have acquired the right and franchise from **LA MANCHA FRANCHISE, LLC**, a Delaware limited liability company (the “*Company*”) to establish and operate a windmill testing business under the mark **LA MANCHA**<sup>SM</sup> (the “*Franchised Business*”) and the right to use in the operation of the Franchised Business the Company's licensed trade names, trademarks, service marks, including the service mark **LA MANCHA**<sup>SM</sup> (the “*Proprietary Marks*”) and the Company's licensed system for operation and management of **LA MANCHA**<sup>SM</sup> businesses (the “*System*”), as they may be changed, improved and further developed from time to time in the Company's sole discretion.

2. You have licensed from the Company certain proprietary and confidential information of the Company relating to the operation of the System, which includes the Operations Manual (the “*Manual*”), trade secrets and copyrighted material, methods and other techniques and know-how (together, “*Confidential Information*”). La Mancha Inc., a New Jersey corporation granted a license to use the System and the Confidential Information to the Company's affiliate La Mancha Holdings, LLC, a Delaware limited liability company, and La Mancha Holdings, LLC has granted a sublicense to the Company to use the System and the Confidential Information and to sublicense them to the Company's franchisees. (La Mancha Inc. and La Mancha Holdings, LLC are jointly or singly referred to as “*Licensors*”).

3. In my position with you described at the beginning of this Agreement, you and/or the Company will disclose Confidential Information to me.

4. I acknowledge that the System is unique and not available to the general public and I had no part in the creation or development of the System, including the Proprietary Marks, the Manual and other Confidential Information. I will not acquire any interest in Confidential Information. Confidential Information is owned by the Company and/or Licensors, involves trade secrets of the Company and/or Licensors, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I will hold in strict confidence all Confidential Information. I will not use, copy, disclose or divulge any part of the Manual or other Confidential Information which may be communicated or disclosed to me or which I may learn in my position with you other than to employees who reasonably require the information to fulfill their employment responsibilities, but only to the extent necessary. The use or duplication of Confidential Information for any use outside the System would be unauthorized disclosure and an unfair method of competition.

5. I will only have the right to use Confidential Information for the purpose it is disclosed to me in my capacity with you unless the Company otherwise grants me permission in writing. For example, if I am an employee, I may use Confidential Information only in the performance of my duties in the operation of the Franchised Business. I will continue not to disclose any Confidential Information and I will not use any Confidential Information for my own benefit or the benefit of any other person or company even after I cease my relationship with you unless I can demonstrate that the information has become generally known or easily accessible other than by my breach of this Agreement or your breach of an obligation to the Company or unless the Company otherwise grants me permission in writing.

6. I will disclose promptly to you any idea, concept, technique or material concerning the System that I create in the operation of the Franchised Business or using assets of yours or of the Company or Licensor, including any aspects of the System or any Confidential Information (“Ideas”). The Company or Licensor will own all rights in all Ideas. Any copyrightable Ideas will be deemed works made for hire and the Company or Licensor will own all rights in them. If Ideas do not qualify as works made for hire, by signing this Agreement I assign to the Company and Licensor ownership of any and all rights in Ideas. You, the Company and Licensor may use any Ideas or other information I provide to you in any manner in my relationship with you without any additional compensation to me. I will, upon request, promptly sign all applications, assignments, or other instruments that the Company or Licensor deem necessary to apply for and obtain invention rights, patents, patent applications, letters patent, copyrights, trademarks, and reissues of any of these rights in the United States and foreign countries on Ideas and to confirm the assignment to the Company and Licensor of the sole and exclusive rights, title, and interest in and to my right in and to Ideas.

7. Except as otherwise approved in writing by the Company, I will not, (A) at any time, own, maintain, engage in, be employed by, finance, or have any interest in any business which uses or duplicates the System in whole or in part, or is a colorable imitation of the Franchised Business, or offer or sell any **LA MANCHA**<sup>SM</sup> or other System brand products and/or services or colorable imitations of them, other than in or from the Franchised Business or another Business operated under an effective license from the Company, and (B) while in my position with you and for 24 months after my relationship with you ceases or terminates, regardless of the cause, either directly or indirectly, for myself or through, on behalf of, or in conjunction with any other person or entity, do any of the following:

(i) divert or attempt to divert any business or customer of the Franchised Business or the Business to any competitor;

(ii) employ or seek to employ any person then employed by you or by any other System franchisee or attempt to induce such person to leave his/her employment; or

(iii) own, maintain, engage in, be employed by, finance or perform any services in any capacity for any business (other than another licensed **LA MANCHA**<sup>SM</sup> business) providing windmill testing services, or for any other business offering other services or products, which are the same as or similar to those offered at any Business; provided that after my relationship with you ceases or terminates, the covenant in this paragraph (iii) will restrict me from being involved with a competing business only if the competing business is (a) within the territory serviced by you under your franchise agreement with the Company, (b) within a radius of 50 miles of your office (regardless of whether points within this radius are outside of your territory), (c) within the territory of another existing **LA MANCHA**<sup>SM</sup> business or proposed **LA MANCHA**<sup>SM</sup> business or (d) providing services to a former customer of your Franchised Business. This restriction does not apply to my ownership of less than a 2% beneficial interest in the outstanding securities of any publicly-held corporation nor does it restrict me from performing services for an employer (other than a former customer of yours) as an employee, on my employer’s own windmills but not for others.

8. I agree that each of the covenants above will be construed as independent of the others and of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which the Company is a party, I expressly agree to be bound by any lesser covenant included within the terms of the covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

9. I understand and acknowledge that the Company will have the right to reduce the scope of any covenant set forth in this Agreement, or any portion of any covenant, without my consent, effective immediately upon receipt by me of written notice; and I agree to comply with any covenant as so modified.

10. The Company and Licensor are third-party beneficiaries of this Agreement and may enforce it, solely and/or jointly with you. I am aware that my violation of this Agreement will cause you, the Company and Licensor irreparable harm; therefore, I acknowledge and agree that you, the Company and/or Licensor may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay you, the Company or Licensor all the costs you, the Company or Licensor incur, including, without limitation, legal fees and expenses, if this Agreement is enforced against me. Due to the importance of this Agreement to you, the Company and Licensor, any claim I have against you or the Company will be a separate matter and will not entitle me to violate this Agreement and will not justify any violation of this Agreement.

11. This Agreement will be governed by the internal laws of the State of New Jersey. This Agreement may only be changed in a writing signed by both me and you and consented to by the Company.

Signature: \_\_\_\_\_  
[of equity owner, employee, vendor, etc.]

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

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

Title/Relationship: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGED BY FRANCHISEE**

**FRANCHISEE:**

\_\_\_\_\_ [entity name]

A \_\_\_\_\_

By: \_\_\_\_\_ [signature]

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

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

Date: \_\_\_\_\_

**EXHIBIT 4**  
**TO LA MANCHA FRANCHISE, LLC**  
**FRANCHISE AGREEMENT**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**(PARTNERSHIP, CORPORATION OR LIMITED LIABILITY COMPANY)**

## LA MANCHA FRANCHISE, LLC

### ASSIGNMENT AND ASSUMPTION AGREEMENT (PARTNERSHIP, CORPORATION or LIMITED LIABILITY COMPANY)

This Assignment and Assumption Agreement (this “*Agreement*”) is entered into on \_\_\_\_\_, 201\_, among LA MANCHA FRANCHISE, LLC, a Delaware limited liability company, with its principal place of business at 12 Tilting Avenue, Plane, New Jersey 07999 (“*we*” or “*us*”), the individual(s) with an address at \_\_\_\_\_ (“*Assignor*”) and \_\_\_\_\_, a \_\_\_\_\_ [corporation/partnership/ limited liability company], with its principal place of business at \_\_\_\_\_ (“*Assignee*”).

### BACKGROUND

A. We and Assignor entered into a certain Franchise Agreement dated \_\_\_\_\_, 201\_ (the “*Franchise Agreement*”) whereby Assignor was given the right and undertook the obligation to operate a windmill testing business under the mark **LA MANCHA**<sup>SM</sup> (the “*Franchised Business*”).

B. Assignor has organized Assignee for the convenience and purpose of owning and operating the Franchised Business.

C. Assignor desires to assign its rights and obligations under the Franchise Agreement to Assignee pursuant to and in accordance with the provisions of the Franchise Agreement.

D. We are willing to consent to the assignment of the Franchise Agreement to Assignee, subject to the terms and conditions of this Agreement, including Assignor’s agreement to guarantee the performance by Assignee of its obligations under the Franchise Agreement and to continue to be bound by all of the provisions of the Franchise Agreement.

E. We and you **WAIVE ANY RIGHT TO TRIAL BY JURY on any and all claims asserted by any party, as provided in Section 18.**

### AGREEMENT

For valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Assignor assigns and transfers over to Assignee all of Assignor’s right, title and interest in and to the Franchise Agreement, effective as of the date of this Agreement.

2. Assignee assumes all of Assignor’s obligations, agreements, commitments, duties and liabilities under the Franchise Agreement, and agrees to be bound by and observe and faithfully perform all of the obligations, agreements, commitments and duties of the Franchisee under the Franchise Agreement, with the same force and effect as if the Franchise Agreement were originally written with Assignee as Franchisee.

3. Assignor agrees that it will continue to be bound by the terms and conditions of the Franchise Agreement, including the provisions contained in Section 8.D. (Other Reports), Section 9 (Proprietary Marks and Other Proprietary Rights), Section 10 (Manual and Other Confidential

Information), Section 12 and Schedule 1 (Transferability of Interest), Section 16 (Covenants Against Unauthorized Use and Competition) and Section 24 (Representations, Warranties and Acknowledgements), and that nothing contained in this Agreement will be deemed to relieve Assignor of any of Assignor's obligations contained in the Franchise Agreement.

4. Assignor further agrees to, and by this Agreement does, guarantee the performance by Assignee of all of its obligations, commitments, duties and liabilities under the Franchise Agreement. Without limiting Assignor's obligations under this guarantee, Assignor irrevocably and unconditionally guarantees to us: (a) Assignee will pay all amounts to be paid and otherwise will comply with all provisions of the Franchise Agreement or any other agreement with us or our affiliates concerning the operation of the Franchised Business; and (b) if Assignee defaults in making any of these payments or complying with any of these provisions, Assignor will pay immediately upon demand all amounts due and owing to us or our affiliates and all damages that may arise as a result of any default or non-compliance.

5. In the enforcement of any of our rights against Assignor, we may proceed as if Assignor were the primary obligor under the Franchise Agreement. Assignor waives any right to require us to first proceed against Assignee or to proceed against or exhaust any security (if any) held by us or to pursue any other remedy available to us before proceeding against Assignor. No dealings between Assignee and us will exonerate, release, discharge or in any way reduce the obligations of Assignor under the Franchise Agreement or this Agreement, in whole or in part and in particular and without limiting the generality of the foregoing, we may modify or amend the Franchise Agreement, grant any indulgence, release, postponement or extension of time, waive any term or condition of the Franchise Agreement, or any obligation of Assignee, take or release any securities or other guarantees for the performance by Assignee of any of its obligations, and otherwise deal with Assignee as we may see fit without affecting, lessening or limiting in any way the liability of Assignor. Notwithstanding any assignment for the general benefit of creditors or any bankruptcy or other act of insolvency by Assignee and notwithstanding any rejection, disaffirmation or disclaimer of this Agreement or the Franchise Agreement, Assignor will continue to be fully liable.

6. The BACKGROUND Section at the beginning of this Agreement contains contractual terms that are not mere recitals.

7. This Agreement will be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

8. Any provision of this Agreement which is prohibited by, or unlawful or unenforceable under any applicable law will be ineffective only to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

9. All references to gender and number will be construed to include any other gender and number as the context may require, and all acknowledgments, promises, covenants, agreements and obligations made in this Agreement or undertaken by Assignor or Assignee will be deemed jointly and severally undertaken by the parties signing as Assignor and Assignee. No change in marital or other legal status between any of the parties to this Agreement will alter or limit that joint and several liability without our express written release, which release may be withheld at our sole discretion.

10. This Agreement may be executed in counterparts; each executed copy will be deemed an original and all of which, together, will constitute the same instrument. Facsimile execution and delivery of this Agreement is legal and binding for all purposes.

11. This Agreement and any attachments constitute the complete and integrated agreement between the parties concerning the subject matter of this Agreement and supersede all prior agreements; no other representations have induced Assignor or Assignee to execute this Agreement. No

representations, promises or agreements, oral or otherwise, not appearing in or attached to this Agreement were made by any party and none will have any effect with reference to this Agreement. No change in this Agreement will be binding on any party unless it is agreed to in writing by all of the parties.

12. Any notices required or permitted under this Agreement will be in writing and may be personally delivered, mailed by registered or certified mail, or sent electronically or by facsimile. Notices will be sent to the parties at their respective addresses listed on the signature page of this Agreement unless a different address has been designated in writing. Notices will become effective upon receipt except any notice by certified or registered mail is deemed to have been given at the date and time of mailing.

13. This Agreement takes effect when we accept and execute it in the State of New Jersey. This Agreement will be construed under the laws of the State of New Jersey and any dispute between the parties will be governed by and determined in accordance with the substantive law of the State of New Jersey, which laws will prevail in the event of any conflict of law. If we move our corporate headquarters, we will have the option of determining that the substantive law of the state to which we move will replace all references to New Jersey law in the Franchise Agreement and in this Agreement, or of continuing to have New Jersey law apply. If we choose to have the law of the new state apply, we will so notify Assignor and Assignee within six months of our move, and the chosen law will apply to the parties.

14. Assignor and Assignee acknowledge that they have and will continue to develop a substantial and continuing relationship with us at our offices in the State of New Jersey, where our decision-making authority is vested and franchise operations are conducted and supervised. Except for our right to obtain injunctive relief in any appropriate forum, any action arising out of or relating to this Agreement will be commenced, conducted and concluded only in a state or federal court of general jurisdiction in the State of New Jersey for the district or county in which our headquarters are then located. Assignor and Assignee irrevocably submit to the jurisdiction of these courts, waive any objection to either the jurisdiction or venue of these courts and agree not to argue that these courts are inconvenient forums. If we move our corporate headquarters, Assignor and Assignee acknowledge that they will have a substantial and continuing relationship with us in the state to which we move and that any references to New Jersey in this Section will be deemed to be references to the new state.

15. This Agreement will constitute the entire integrated agreement between the parties with respect to the subject matter contained in this Agreement and will not be subject to change, modification, amendment or addition without the express written consent of all the parties.

16. If a party brings any action against another party under this Agreement, whether by complaint, counterclaim, appeal or otherwise, the prevailing party in the action will be entitled to recover, in addition to any other recovery, reasonable attorneys' fees, court costs and expenses of mediation and litigation.

**17. WE ARE THE SOLE ENTITY AGAINST WHICH ASSIGNOR OR ASSIGNEE MAY SEEK DAMAGES OR ANY REMEDY UNDER LAW OR EQUITY. OUR AFFILIATES, AND OUR AND OUR AFFILIATES' OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES MAY NOT BE NAMED AS A PARTY AND WILL NOT BE LIABLE IN ANY PROCEEDING COMMENCED BY ASSIGNOR OR ASSIGNEE IF THE CLAIM ARISES OUT OF OR RELATES TO THIS AGREEMENT OR THE FRANCHISE AGREEMENT.**

**18. EACH PARTY TO THIS AGREEMENT WAIVES ANY RIGHT IT MIGHT HAVE TO TRIAL BY JURY ON ANY AND ALL CLAIMS ASSERTED BY ANY PARTY. EACH PARTY ACKNOWLEDGES THAT IT HAS HAD A FULL OPPORTUNITY TO CONSULT WITH COUNSEL CONCERNING THIS WAIVER, AND THAT THIS WAIVER IS INFORMED, VOLUNTARY, INTENTIONAL AND NOT THE RESULT OF UNEQUAL BARGAINING POWER.**

19. Each party declares that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted by it, after having a reasonable opportunity to retain and confer with counsel. This Agreement is entered into after a full investigation by the parties, and the parties are not relying upon any statements or representations not contained in this Agreement.

Intending to be legally bound, the parties have signed or caused their duly authorized representative to sign this Agreement as of the date first written above.

**ASSIGNOR:**

Signature: \_\_\_\_\_ (Seal)  
Printed Name:  
Address:  
email: \_\_\_\_\_ facsimile \_\_\_\_\_

Signature: \_\_\_\_\_ (Seal)  
Printed Name:  
Address:  
email: \_\_\_\_\_ facsimile \_\_\_\_\_

Signature: \_\_\_\_\_ (Seal)  
Printed Name:  
Address:  
email: \_\_\_\_\_ facsimile \_\_\_\_\_

Signature: \_\_\_\_\_ (Seal)  
Printed Name:  
Address:  
email: \_\_\_\_\_ facsimile \_\_\_\_\_

**ASSIGNEE:** \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
email: \_\_\_\_\_  
facsimile \_\_\_\_\_

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

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

**LA MANCHA FRANCHISE, LLC**  
12 Tilting Avenue, Plane, New Jersey 07999  
email: \_\_\_\_\_  
facsimile ( ) \_\_\_\_\_

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

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



**EXHIBIT 5**  
**TO LA MANCHA FRANCHISE, LLC**  
**FRANCHISE AGREEMENT**  
**OWNERS/OFFICERS CERTIFICATE**

**OWNERS/OFFICERS CERTIFICATE**

**OF**

\_\_\_\_\_ (“Franchisee”)

Dated: \_\_\_\_\_

1. The undersigned \_\_\_\_\_ (*title of authorized officer, partner or member*) of Franchisee, individually and acting on behalf of Franchisee, certifies:

- A. Franchisee is a corporation, general partnership or limited liability company and is a party, as franchisee, to the Franchise Agreement with **La Mancha Franchise, LLC**, as franchisor, to which this Owners/Officers Certificate is or will be attached (the “*Franchise Agreement*”), relating to the development and operation of a **LA MANCHA<sup>SM</sup>** windmill testing business.
- B. Franchisee is duly organized and validly existing under the laws of the State of \_\_\_\_\_ (*name of state*) and is in good standing in that state; Franchisee is duly qualified to do business in the State of \_\_\_\_\_ (*name of state*) and is in good standing in that state; and there are no provisions or agreements limiting Franchisee’s right to enter into the Franchise Agreement.

\_\_\_\_\_, Individually and on behalf of Franchisee  
(*signature of officer, partner or member signing above*)

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

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

Date: \_\_\_\_\_

2. Franchisee and each of the undersigned Principals of Franchisee, being all of the officers, directors, owners, shareholders, members and partners of Franchisee, and their respective spouses, certify:

As of the date of this Owners/Officers Certificate, the information on the attached Schedule A listing all of the officers, directors, owners, shareholders, members and partners of Franchisee, their respective ownership percentages and contact information, is true and correct.

*One officer, partner or member must sign on behalf of Franchisee, and then all of Franchisee's Principals (each officer, director, owner, shareholder, member and partner of Franchisee, and their respective spouses) (including the individual who signed on behalf of Franchisee) must sign and date below to certify to the truth of the above statements.*

**Franchisee:** \_\_\_\_\_  
(print name of entity franchisee)

a \_\_\_\_\_  
(state where organized) (print corporation, general partnership or limited liability company)

By: \_\_\_\_\_, On behalf of Franchisee  
(signature of officer, partner or member signing above)

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

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

Date: \_\_\_\_\_

**PRINCIPALS, Individually:**

Signed: \_\_\_\_\_

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

Date: \_\_\_\_\_

