

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, NOVEMBER 16, 2012

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. SEC-2012-00040

Ex Parte: In the matter of Adopting
a Revision to the Rules Governing the
Virginia Retail Franchising Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-572 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: www.scc.virginia.gov/case.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission a number of revisions to Chapter 110 of Title 21 of the Virginia Administrative Code entitled "Retail Franchising Act Rules" ("Rules"). Most of the changes are minor, but add clarification in some instances. In addition, the Division is requesting that the Commission require franchisors to provide electronic copies of their disclosure document and retain certain records for regulatory compliance.

Rules 21 VAC 5-110-30, 5-110-40, and 5-110-50 have each been amended to require a franchisor to file a copy of its disclosure document on a CD-Rom or on other electronic media approved by the Division, in addition to the filed paper version for application for registration, amendment and renewal, respectively. The current regulation under each section allows the franchisor, at the franchisor's option, to file an electronic version of the disclosure document.

Rule 21 VAC 5-110-40 proposes to add an amendment to require a franchisor to amend its effective registration within thirty (30) days after the occurrence of a material change.

Rule 21 VAC 5-110-75 4 a (exemption for seasoned franchisor) proposes to add another subparagraph that requires the franchisor to provide an auditor's report that has not been modified with a going concern paragraph, when the franchisor claims an exemption from registration under this section.

Rule 21 VAC 5-110-80 proposes to add a new subsection B requiring a franchisor to retain and make available to the Commission upon request, a sample copy of each materially different version of the franchisor's disclosure document for three years from the close of the fiscal year in which the disclosure document was last provided to a prospective franchisee.

The Division also proposes to adopt the Guarantee of Performance Form adopted by the North American Securities Administrators Association, Inc., by substituting it for the current Guarantee of Performance Form. This substitution will conform the form with the other states' franchise forms.

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with an effective date of March 1, 2013. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by mail or e-mail request and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by January 15, 2013.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before January 15, 2013. Any request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. SEC-2012-00040. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons may also request a copy of the proposed revisions from the Division by telephone, mail, or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the *Virginia Register*.

AN ATTESTED COPY HEREOF shall be sent to the Division's Director, who shall forthwith mail or e-mail a copy of this Order to any interested persons as he may designate.

STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING
2012 Proposed Franchise Rule Revisions

21VAC5-110-30. Registration application; documents to file; interim financial statements.

A. An application for registration of a franchise is made by filing with the commission the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;
2. Total Costs and Sources of Funds for Establishing New Franchises, Form B;
3. Uniform Consent to Service of Process, Form C;
4. If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;
5. Franchise Disclosure Document;
6. Application fee (payable to the "Treasurer of Virginia"); and
7. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the Franchise Disclosure Document.

B. An application for registration shall contain:

1. One copy of a complete franchise registration application, including the Franchise Disclosure Document, on paper;
2. One copy of a complete franchise registration application, including the Franchise Disclosure Document, on a CD-ROM in PDF format, or on other electronic media approved by the Division; and

3. A cover letter containing a representation that all of the information contained in the electronic file is identical to the paper documents.

C. If the commission's review of the application results in any revision to the documents submitted, the franchisor shall file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all revised pages, unless the commission directs otherwise. In addition to filing the complete clean Franchise Disclosure Document and black-lined pages on paper, a franchisor shall include copies on a CD-ROM in PDF format or on other electronic media approved by the Division. The revised electronic file shall be accompanied by a transmittal letter as described in subdivision B 3 of this section.

D. The electronic version of the Franchise Disclosure Document shall be text searchable.

BE. If the date of the most recent audited financial statements in the Franchise Disclosure Document precedes the date of the application by more than 120 days, the Franchise Disclosure Document shall also include the following financial statements prepared in accordance with generally accepted accounting principles:

1. An unaudited interim balance sheet as of a date within 120 days of the date of the application; and
2. An unaudited interim statement of income or operations for the period from the most recent audited financial statements to the date of the interim balance sheet.

GE. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the registration application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the registration application.

~~D. In addition to paper copies of the materials required by subsection A of this section, the franchisor may file one copy of the complete franchise registration application, including the~~

~~Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:~~

- ~~1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;~~
- ~~2. The electronic version of the Franchise Disclosure Document must be text searchable; and~~
- ~~3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.~~

EG. Examples of Forms A through C are printed at the end of this chapter.

21VAC5-110-40. Pre-effective and post-effective amendments to the registration.

A. Upon Within 30 days after the occurrence of a material change, the franchisor shall amend the effective registration filed at the commission. An amendment to an application filed either before or after the effective date of registration may include only the pages containing the information being amended if pagination is not disturbed. The amended pages must be black-lined to show all additions, deletions, and other changes from the franchisor's previous submission. The franchisor may not use margin balloons or color highlights to show changes.

B. An application to amend a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;
2. One complete clean copy of the amended Franchise Disclosure Document;

3. One complete copy of the amended Franchise Disclosure Document black-lined to show all additions, deletions, and other changes; and
4. Application fee (payable to the "Treasurer of Virginia"). The fee shall accompany all post-effective amendments unless submitted in connection with an application for renewal.

C. An application to amend a registration shall contain:

1. One copy of a complete franchise amendment application, including the amended Franchise Disclosure Document, on paper;
2. One copy of a complete franchise amendment application, including the amended Franchise Disclosure Document, on a CD-ROM in PDF format, or on other electronic media approved by the Division; and
3. A cover letter containing a representation that all of the information contained in the electronic file is identical to the paper documents.

D. If the commission's review of the application results in any revision to the documents submitted, the franchisor shall file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all revised pages, unless the commission directs otherwise. In addition to filing the complete clean Franchise Disclosure Document and black-lined pages on paper, a franchisor shall include copies on a CD-ROM in PDF format or on other electronic media approved by the Division. The revised electronic file shall be accompanied by a transmittal letter as described in subdivision C 3 of this section.

E. The electronic version of the Franchise Disclosure Document shall be text searchable.

GF. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the amendment application,

including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the amendment application.

~~D. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise amendment application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:~~

- ~~1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;~~
- ~~2. The electronic version of the Franchise Disclosure Document must be text searchable; and~~
- ~~3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.~~

~~E.G.~~ An example of Form A is printed at the end of this chapter.

21VAC5-110-50. Expiration; application to renew the registration; interim financial statements.

A. A franchise registration expires at midnight on the annual date of the registration's effectiveness. An application to renew the franchise registration should be filed 30 days prior to the expiration date in order to prevent a lapse of registration under the Virginia statute.

B. An application for renewal of a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;
2. Updated Franchise Disclosure Document;
3. One complete copy of the amended Franchise Disclosure Document black-lined to show all additions, deletions, and other changes, using no margin balloons or color highlights; and
4. Application fee (payable to the "Treasurer of Virginia").

C. An application for renewal of a franchise registration shall contain:

1. One copy of a complete franchise renewal application, including the updated Franchise Disclosure Document, on paper;
2. One copy of a complete franchise renewal application, including the updated Franchise Disclosure Document, on a CD-ROM in PDF format, or on other electronic media approved by the Division; and
3. A cover letter containing a representation that all of the information contained in the electronic file is identical to the paper documents.

D. If the commission's review of the application results in any revision to the documents submitted, the franchisor shall file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all revised pages, unless the commission directs otherwise. In addition to filing the complete clean Franchise Disclosure Document and black-lined pages on paper, a franchisor shall include copies on a CD-ROM in PDF format or on other electronic media approved by the Division. The revised electronic file shall be accompanied by a transmittal letter as described in subdivision C 3 of this section.

E. The electronic version of the Franchise Disclosure Document shall be text searchable.

GF. If the date of the most recent audited financial statements in the Franchise Disclosure Document precedes the date of the application by more than 120 days, the Franchise Disclosure Document shall also include the following financial statements prepared in accordance with generally accepted accounting principles:

1. An unaudited interim balance sheet as of a date within 120 days of the date of the application; and
2. An unaudited interim statement of income or operations for the period from the most recent audited financial statements to the date of the interim balance sheet.

DG. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the renewal application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the renewal application.

~~E. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise renewal application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:~~

- ~~1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;~~
- ~~2. The electronic version of the Franchise Disclosure Document must be text searchable; and~~
- ~~3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application~~

~~documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.~~

~~FH.~~ An example of Form A is printed at the end of this chapter.

21VAC5-110-75. Exemptions.

Any offer or sale of a franchise in a transaction that meets the requirements of this section is exempt from the registration requirement of § 13.1-560 of the Act.

1. Sale or transfer by existing franchisee. The sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account is exempt if:

a. The franchisee's entire franchise is sold or transferred and the sale or transfer is not effected by or through the franchisor.

b. The sale or transfer is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or transfer or requires payment of a reasonable transfer fee.

2. Renewal or extension of existing franchise. The offer or sale of a franchise involving a renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business, and there is no material change in the franchise relationship, is exempt. For purposes of this subdivision, an interruption in the franchised business solely for the purpose of renovating or relocating that business is not a material change in the franchise relationship or an interruption in the operation of the franchised business.

3. Offers and sales to existing franchisees. The offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account is exempt if the franchise being sold is substantially the same as the franchise that the franchisee has

operated for at least two years at the time of the offer or sale of the franchise, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered or exempt pursuant to the requirements of the Act.

4. Seasoned franchisor.

a. The offer or sale of a franchise by a franchisor is exempt if:

(1) The franchisor has a net equity, according to its most recently audited financial statements, of not less than \$15,000,000 on a consolidated basis, or \$1,000,000 on an unaudited basis and is at least 80% owned by a corporation or entity that has a net equity, on a consolidated basis, according to its most recently audited financial statements, of not less than \$15,000,000, and the 80% owner guarantees the performance of the franchisor's obligations; and

(2) The auditor's report accompanying the audited financial statements described in subdivision 4 a (1) of this section does not contain an explanatory paragraph expressing doubt as to the entity's ability to continue as a going concern; and

~~(2)~~ (3) The franchisor or any 80% owner of the franchisor or the franchisor's predecessor, or any combination thereof, has had at least 25 franchisees conducting the same franchise business to be offered or sold for the entire five-year period immediately preceding the offer or sale;

b. The exemption set forth in subdivision 4 of this section may be claimed only if the franchisor:

(1) Files a Form H Notice of Claim of Exemption and other material as set forth in subdivision 7 of this section no later than 10 business days before the offer or sale of any franchise; and

(2) Submits financial statements demonstrating compliance with the conditions set forth in subdivision 4 a (1) of this section.

c. An initial exemption filing and any renewal filing shall expire after a period of one year. The franchisor shall file for a renewal by making an exemption filing if it intends to offer or sell franchises for any additional period annually, at least 10 business days before the expiration of the previously filed Notice of Claim of Exemption.

5. Institutional franchisee.

a. The offer or sale of a franchise to a bank, savings bank, savings and loan association, trust company, insurance company, investment company, or other financial institution, or to a broker-dealer is exempt when the:

(1) Purchaser is acting for itself or in a fiduciary capacity; and

(2) Franchise is not being purchased for the purpose of resale to an individual not exempt under this regulation.

b. The exemption set forth in subdivision 5 a of this section may be claimed only if the franchisor files an initial filing Form H, Notice of Claim of Exemption, and other material as set forth in subdivision 7 a of this section, at least 10 business days before each offer or sale of each franchise.

6. Disclosure requirements.

a. If a franchisor relies upon any of the exemptions set forth in subdivision 3, 4 or 5 of this section, the franchisor shall provide a disclosure document complying with 21VAC5-110-55 and 21VAC5-110-95 together with all proposed agreements relating to the sale of the franchise to a prospective franchisee 14 calendar days before the signing of the agreement or the payment of any consideration.

b. Franchisors filing a claim of exemption under subdivisions 4 or 5 of this section shall include a self-addressed stamped envelope by which the commission may return to the franchisor a confirmation of receipt of the filing and the exemption file number assigned. Correspondence shall refer to the assigned file number in all subsequent related filings and correspondence with the commission.

7. Filing requirements for exemptions set forth in subdivisions 4 and 5 of this section.

a. Initial exemption filing.

(1) The initial exemption period shall expire after a period of one year.

(2) Franchisor files an application for exemption of a franchise by filing with the commission no later than 10 business days before the offer or sale of any franchise, the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) Uniform Consent to Service of Process, Form C;

(c) If the applicant is a corporation or partnership, an authorizing resolution is required if the application is verified by a person other than applicant's officer or general partner;

(d) Franchise Disclosure Document;

(e) Files an undertaking by which it agrees to supply any additional information the commission may reasonably request; and

(f) Application fee of \$500 (payable to the Treasurer of Virginia).

b. Amendment to exemption filing.

(1) Upon the occurrence of a material change, the franchisor shall amend the effective exemption filed at the commission.

(2) An application to amend a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the amended Franchise Disclosure Document; and

(c) Application fee of \$100 (payable to the Treasurer of Virginia).

c. Renewal exemption filing.

(1) A franchise exemption expires at midnight on the annual exemption effective date. An application to renew the franchise exemption shall be filed 10 days prior to the expiration date in order to prevent a lapse of exemption under the Act.

(2) An application for renewal of a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the Franchise Disclosure Document; and

(c) Application fee of \$250 (payable to the Treasurer of Virginia).

21VAC5-110-80. General requirements for preparation of disclosure documents; record retention; master franchises; electronic disclosure.

A. Disclosure instructions.

1. Disclose all required information clearly, legibly, and concisely in a single document using plain English.

2. The disclosure for each FDD item shall be separately titled and in the required order. Do not repeat the question in the FDD. Respond to each question fully. If the disclosure is not applicable, respond in the negative, but if an answer is required "if applicable,"

respond only if the requested information applies. Do not qualify a response with a reference to another document unless permitted by the instructions to that Item.

3. For each Item in the FDD, type the requirement's Arabic number and item title. Exhibits should be identified by a letter of the alphabet.

4. The disclosure must be in a form that permits each prospective franchisee to store, download, print, or otherwise maintain the disclosure document for future reference.

5. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the FDD.

6. Use 8-1/2 by 11 inch paper for the FDD and other forms. All documents and disclosures must be readable, using not less than 11-point type.

7. Franchisors may prepare multistate disclosure documents by including nonpreempted, state-specific information in the text of the FDD or in a Virginia Addendum attached to the FDD. The Virginia Addendum may be included in an exhibit to the FDD. Any amendments to the franchise agreement may be included in the Virginia Addendum or in a separate exhibit immediately following the franchise agreement.

8. The two copies of the Item 23 receipt pages should be the last two pages of the FDD and should be attached after all exhibits.

9. Before furnishing a FDD, the franchisor must advise the prospective franchisee of the formats in which the FDD is made available, any prerequisites for obtaining the FDD in a particular format, and any conditions necessary for reviewing the FDD in a particular format.

10. Grossly deficient applications may be rejected summarily by the commission as incomplete for filing.

B. Retention of Records.

1. Franchisors shall retain, and make available to the commission upon request, a sample copy of each materially different version of their disclosure documents for a period of three years after the close of the fiscal year in which the disclosure document was last provided to a franchisee or prospective franchisee.
2. For each completed franchise sale, franchisors shall retain a copy of the signed receipt for at least three years.

BC. Master franchises.

1. When the applicant is a master franchisor seeking to sell master franchises (subfranchises), references in these regulations to "franchisee" include the master franchisee (subfranchisor).
2. The offer of master franchises (subfranchises) is an offer separate from the offer of franchises and usually requires a separate registration or exemption. A single application may register the sale of a single unit and multiunit franchises if the FDD is not confusing.
3. In an offering by a master franchisee (subfranchisor), "franchisor" means both the master franchisor and master franchisee.
4. Master franchisees (subfranchisors) must disclose the required information about the master franchisor, and to the extent applicable, the same information concerning the master franchisee.

GD. Electronic disclosure.

1. A franchisor may deliver a franchise disclosure document over the Internet or by other electronic means, or in machine-readable media, provided:
 - a. The disclosure document is delivered as a single, integrated document or file;

- b. The disclosure document has no extraneous content beyond what is required or permitted by law or regulation, but which may include customary devices for manipulating electronic documents in machine-readable form and tools or access to tools that may be necessary or convenient to enable the recipient to receive and view the disclosure document;
 - c. The disclosure document has no links to or from external documents or content;
 - d. The disclosure document is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document;
 - e. The disclosure document conforms as to its content and format to the requirements of applicable law or regulation;
 - f. The franchisor can prove that it delivered the disclosure document electronically in compliance with this subsection, and that it did so at or before the time required by applicable law or regulation; and
 - g. The franchisor keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the commission.
2. For the sole purpose of enhancing the prospective franchisee's ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features such as audio, video, animation, pop-up screens or links to external information are prohibited.
3. "Delivery" requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure is stored be physically delivered to the prospective franchisee in accordance with subdivision 1 a of this subsection.

4. This subsection does not change or waive any other requirement of law or regulation concerning registration or presale disclosure of franchise offerings.

DE. Other requirements.

1. If the franchise agreement requires a franchisee to sign a release or waiver as a condition of consenting to some future action, such as a transfer or assignment of the franchise, include a sample copy of the document the franchisee will be asked to sign. This requirement does not apply to negotiated releases or waivers that a franchisee may sign to resolve a dispute with the franchisor.
2. The commission may modify or waive the provisions of this chapter or may require additional documentation or information.

FORMS (21VAC5-110)

FORM A, Uniform Franchise Registration Application (eff. 7/1/95; rev. 7/08).

FORM B, Franchisor's Costs and Sources of Funds (eff. 7/1/95; rev. 7/08).

FORM C, Uniform Consent to Service of Process (rev. 7/08).

FORM E, Affidavit of Compliance -- Franchise Amendment/Renewal (rev. 7/08).

FORM F, Guarantee of Performance (rev. ~~7/08~~ 3/13).

FORM G, Franchisor's Surety Bond (rev. 7/99).

FORM H, Notice of Claim of Exemption (eff. 7/07; rev. 7/08).

FORM K, Escrow Agreement (eff. 7/07).

Form F—Guarantee of Performance
7/01/08

GUARANTEE OF PERFORMANCE

For value received, (name of guarantor), a (state of formation and form of entity) (the “Guarantor”), located at (address), absolutely and unconditionally guarantees the performance by (name of Franchisor) , located at (address) (the “Franchisor”) of all of the obligations of the Franchisor under its franchise registration in the Commonwealth of Virginia, and of its Franchise Agreements executed after (Date), . This guarantee continues until all obligations of the Franchisor under its franchise registration and franchise agreements are satisfied. The Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. Notice of default on the part of the Franchisor is not waived. This guarantee is binding on the Guarantor and its successors and assignees.

The Guarantor signs this guarantee at , on the day of 20 .

Guarantor:

By: _____

Name: _____

Title: _____

Form F – Guarantee of Performance
Rev. 3/01/13

GUARANTEE OF PERFORMANCE

For value received, (name of guarantor) , a (state of formation and form of entity) (the “Guarantor”), located at (address) , absolutely and unconditionally guarantees to assume the duties and obligations of (name of Franchisor) , located at (address) (the “Franchisor”), under its franchise registration in each state where the franchise is registered, and under its Franchise Agreement identified in its (year) Franchise Disclosure Document, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This guarantee continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, whichever first occurs. The Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. The Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns. The Guarantor signs this guarantee at , on the day of .

Guarantor:

By:

Name:

Title: